



Restitution in Saskatchewan



Restitution in Saskatchewan

Susan McDonald
Melissa Northcott
and
Jacinthe Loubier

rr10-vic1e

*The views expressed in this report are those of the authors
and do not necessarily represent the views of the Department of Justice Canada
or the Government of Canada.*

Contents

Acknowledgements.....	vi
Highlights.....	vii
Executive Summary	viii
1. Introduction.....	12
1.1 History of Restitution and the Criminal Justice System.....	12
<i>Criminal Code</i> restitution provisions.....	13
1.2 Overview of the Victims Services Branch of the Saskatchewan Ministry of Justice and Attorney General	15
1.3 Overview of the Saskatchewan Adult Restitution Program	16
2. Review of Research	19
2.1 Case law	19
2.2 Social Science Research	21
2.3 Statistics.....	24
2.4 Research Gaps	25
3. Study Methodology.....	26
3.1 Data Sources	26
3.2 Ethics	30
4. Study Findings	31
4.1 The Offences.....	31
4.1.1 Types of Offences	31
4.2 The Offenders	33
4.3 Comparison of Offenders in 2007/08	36
4.4 Types of Victims and Order Information.....	39
4.5 Factors Related to Payment.....	41
4.5.1 Multivariate Analysis-Factors Influencing Full Payment	43
4.5.2 Other Factors	44
4.5.3 Summary	46
4.6 Stand Alone Orders (manual file review)	46
4.7 Orders attached to other dispositions (manual file review)	48
4.8 Summary	50
4.9 Victims' Data	51
4.10 Summary of Victims' Data	65
4.11 Perspectives from Criminal Justice Professionals.....	65
4.12 Summary of Interviews with Criminal Justice Professionals	77

5. Discussion.....	78
5.1 Key Learnings	78
5.2 Imposition: Ability and Willingness to Pay and Full Information before the Court	78
5.3 A Formal Program for the Administration of Restitution Orders	81
5.4 Communication amongst All Agencies.....	83
5.5 Addressing Information and Assistance Needs of Victims	84
5.6 In Conclusion	86
References.....	88
Appendix A	90
Appendix B	101
Appendix C	111

Tables

Table 1: Collection on restitution orders in Saskatchewan Provincial Court, 2003/04 – 2007/08	18
Table 2: Obstacles to the use of restitution, as reported by victim services and advocacy groups across Canada, 2004.....	23
Table 3: Sample for Victim Questionnaires.....	28
Table 4: Crimes against the person offences in Saskatchewan, 2000/01 to 2006/07	32
Table 5: Crimes against property in Saskatchewan, 2000/01 to 2006/07	32
Table 6: Crimes against the administration of justice in Saskatchewan, 2000/01 to 2006/07	32
Table 7: Other Criminal Code offences in Saskatchewan, 2000/01 to 2006/07	33
Table 8: Traffic offences in Saskatchewan, 2000/01 to 2006/07	33
Table 9: Other federal statutes in Saskatchewan, 2000/01 to 2006/07	33
Table 10: Logistic regression for factors influencing full payment, Saskatchewan, 2001/02 to 2007/08	44
Table 11: Type of payment by status of order for stand alone orders, 2005/06-2007/08	47
Table 12: Status of payment by addictions treatment order for offenders with stand-alone ordered, 2005/06-2007/08.....	48
Table 13: Payment status of restitution orders attached to other dispositions by victim type, 2005/06-2007/08	49
Table 14: Type of payment of restitution orders attached to other dispositions by payment status, 2005/06-2007/08.....	49
Table 15: Status of Payment of restitution orders attached to other dispositions by addictions treatment order for all other orders, 2005/06-2007/08	50
Table 16: Payment status as reported by Victim Questionnaire respondents, 2008	55
Table 17: Oral explanation of the restitution process to Victim Questionnaire respondents, 2008	58
Table 18: Written explanation of the restitution process to Victim Questionnaire respondents, 2008	59

Charts

Chart 1: Percentage of guilty cases receiving restitution orders, 1994/95 – 2006/07	24
Chart 2: Restitution orders and property crime rates – 1994/95 to 2006/07	25
Chart 3: Offence types for restitution orders in Saskatchewan, 2006/07	31
Chart 4: Age of offenders who received restitution orders, 2000/01 – 2007/08	34
Chart 5: Employment status of offenders, 2000/01-2007/08	35
Chart 6: Education level of offenders, 2000/01-2007/08.....	35
Chart 7: Skill level of offenders, 2000/01-2007/08	36
Chart 8: Age of all offenders and restitution order offenders, 2007/08	37
Chart 9: Marital status of all offenders and restitution order offenders, 2007/08	37
Chart 10: Number of dependents of all offenders and restitution order offenders, 2007/08	38
Chart 11: Employment status of all offenders and restitution order offenders, 2007/08	39
Chart 12: Type of victim for restitution orders, 2000/01-2007/08.....	40
Chart 13: Average amount of restitution ordered and collected, 2000/01 to 2007/08.....	40
Chart 14: Restitution payment status for private citizens and private companies for stand-alone orders, 2005/06-2007/08.....	47
Chart 15: Education level of Victim Questionnaire respondents, 2008	52
Chart 16: Employment status of Victim Questionnaire respondents, 2008.....	52
Chart 17: Gross household income of Victim Questionnaire respondents, 2008	53
Chart 18: Types of offences for restitution orders as reported by Victim Questionnaire respondents, 2008.....	54
Chart 19: Expectation of receiving total restitution by Victim Questionnaire respondents	55

Acknowledgements

The authors would like to acknowledge the significant support of Kim Hala, Murray Selinger, Frankie Jordan and Pat Thiele, Saskatchewan Ministry of Justice and Attorney General and Rick Davis, Saskatchewan Ministry of Corrections, Public Safety and Policing for all their efforts to ensure that this project was possible. In addition, the authors would like to thank Dr. Chad Nilson for completing the interviews, Marsha Axford for undertaking the manual file reviews, Rina Egbo for assistance with the literature searches, and Albert Brews for his initial work on the statistical data. Finally, the authors are grateful for comments on the report from Charlotte Fraser, Jocelyn Sigouin, Nicole Crutcher, Ab Currie, Kwing Hung and Alyson MacLean.

Highlights

- Between 2000/01-2007/08, the majority of restitution orders were made for property offences (approximately 80%). Crimes against the Administration of Justice and Crimes against the Person were also tied to restitution orders during this time.
- During that same time period, the amount of monies ordered consistently exceeded the amount of monies collected. More than half of the restitution orders were paid in full (53%), no payment was made on almost one-third (31%) of the orders and a partial payment was made on 16% of the orders.
- The majority of offenders who received restitution orders were young, male, unemployed and single with no dependents.
- For restitution orders attached to probation or a conditional sentence, almost half of victims (46%) who received restitution orders were private citizens. Private businesses made up almost a quarter (23%) of victims.
- A manual file review of 36 stand-alone orders found that almost all of the stand-alone orders were one time payments. An equal number of the offenders had made a full payment or no payment on their stand-alone orders.
- A manual file review of 121 orders attached to conditional sentences or probation orders for the same time period found that most orders were one time payments and that the majority of these offenders had made a full payment on their orders.
- Two key points emerged from the victim surveys and interviews: 1) victims want full payment in the time ordered by the court and if they do not receive full payment, their confidence in the entire justice system is shaken; and 2) victims need improved information and assistance with all aspects of restitution.
- The victim surveys and interviews revealed that the information they received regarding restitution, both oral and written, was helpful. However, the source of this information was inconsistent.
- Probation officers noted that although restitution is an important element of the criminal justice system, it is not a priority for many of them when there are competing issues such as addictions.
- Interview respondents believed that ability and willingness to pay should be taken into account by judges as key factors when considering restitution orders.

Executive Summary

Originally called “compensation,” restitution has been in the *Criminal Code* since 1892. It is defined as compensation paid by an offender to his/her victim for loss, destruction or damage to property, as well as for pecuniary damages such as loss of income or support caused by bodily or psychological harm. The court can impose a restitution order as a condition of a probation order or a conditional sentence, or as a stand-alone order, not tied to any other disposition (s. 738). There have been numerous amendments to the restitution provisions over the years.

Since 1975, Saskatchewan has had an Adult Restitution Program that monitors cases where restitution has been ordered. In 2005, Saskatchewan’s Adult Restitution Program was transferred from Corrections to the Ministry of Justice and Attorney General, Victims Services Branch. This was designed to improve the services to victims of crime by focusing specifically on victims, linking the Restitution Program to other Victims Services programs, and assisting offenders with successfully paying their restitution.

This study was initiated to gain a greater understanding of how restitution is working in Saskatchewan and to better understand the application of restitution orders as part of the sentencing process, including their impact on the system, victims and offenders.

Six main research questions addressed:

- 1) What offences receive restitution orders?
- 2) What are the characteristics of offenders who receive restitution orders and how do they compare to the overall provincial offender population?
- 3) What factors, if any, are related to the payment of restitution orders? Factors might include offender characteristics (age, employment status, etc.), as well as type of restitution order (stand-alone, attached to probation or a conditional sentence).
- 4) What are the characteristics of the victims?
- 5) What are the benefits and challenges of the current structural organization of the Adult Restitution Program?
- 6) How do victims experience the restitution program/process and what are the benefits and challenges for them?

Methodology

This study used a mixed-methods approach. Quantitative data from the Corrections Management Information System ($n=6290$, 2000/01-2007/08) were gathered to determine the types of offences and characteristics of victims and offenders that receive restitution orders. Overall, restitution order data was provided by the Adult Criminal Court Survey from the Canadian Centre for Justice Statistics. Information regarding stand-alone restitution orders ($n=36$) and orders attached to conditional sentences or probation orders ($n=121$) were gathered from a manual review of files kept by the Adult Restitution Program ($n=157$, 2005/06-2007/08). A mail out/electronic survey was also sent to all private citizen victims in four court locations (Regina, Saskatoon, Yorkton and Meadow

Lake) for whom their offenders had received a restitution order in 2007/08 ($n=50/295$). Finally, interviews were conducted with 67 offenders and criminal justice stakeholders, including victims, court staff, probation officers, defence, Crown prosecutors and Ministry of Justice and Attorney General programs/policy officials between August and October 2008 in the four court locations noted above.

Study Findings

Offence, Offender and Victim Information

Data provided by the Canadian Centre for Justice Statistics revealed that annually, approximately 80% of restitution orders in Saskatchewan were made for property offences. In 2006/07, 9% of restitution order offences were tied to Crimes against the Administration of Justice and 7% were tied to Crimes against the Person offences. Across the 2000/01-2007/08 fiscal years, the amount of monies ordered exceeded the amount of monies collected. During this time period, more than half of the restitution orders were paid in full (53%), while no payment was made for almost one-third (31%) of the orders and a partial payment was made on 16% of the orders.

The majority of offenders who received restitution orders were young, single unemployed men with no dependents. A comparison with the general offender population in 2007/08 revealed that restitution order offenders did not differ from general population offenders on these demographics. Data provided by CCJS and the Victims Questionnaire revealed that the majority of victims were private citizens who are older, employed full time and married/common law.

Stand-alone and Other Orders

A manual file review of stand-alone orders for 2005/06-2006/07 found that almost all of the orders were one time payments. An equal number of the offenders had made a full payment or no payment on their stand-alone order. The majority of victims for the stand-alone orders were private citizens (42%), followed by private companies (36%) and government (22%). Private companies were either paid in full or not at all.

A manual file review of orders attached to conditional sentences or probation orders for the same time period found that most orders were one time payments and that the majority of these offenders had made a full payment on their orders. Again, the majority of victims for these orders were private citizens (56%), followed by private companies (32%). The majority of private citizens and private companies were paid in full.

Perspectives of Victims and Criminal Justice Professionals

Victim surveys and interviews revealed that although the information they received regarding restitution was helpful, the source of this information was inconsistent. Most victims surveyed had either received no payment or a partial payment of the money owed. Full payment in the time ordered was found to be the most important part of the restitution process for the victims, followed by improved information and assistance.

Interviews with criminal justice professionals revealed that they all believed that restitution plays an important role in the criminal justice system; however, many probation officers noted that restitution is not a top priority for them. Understanding of restitution was strong among the respondents but their perceptions of how well it is understood by victims and offenders varied. The respondents believed that ability and willingness to pay should be taken into account by judges as key factors when considering restitution orders.

Key Learnings

Previous research (Sims 2000), as well as this study, has found that restitution is most successful for victims and offenders when there is/are:

- 1) At imposition, a consideration of offenders' ability and willingness to pay;
- 2) A formal program for the administering of restitution orders;
- 3) Communication among all agencies involved in the ordering and collecting of restitution;
- 4) Different ways to address the information and assistance needs of victims.

For each of these components, key learnings and suggested next steps were identified:

1. It is very important for all criminal justice professionals to have full information in order to consider the offenders' ability and willingness to pay restitution, as well as be able to make an accurate determination of restitution owed to the victim. As such,

- ✓ **Additional and more detailed follow-up information and assistance would be hugely beneficial – for the victims and for the court at sentencing.**
- ✓ **The use of Pre-Sentence Reports or Restitution Assessment Reports would provide additional clarity and information on the offenders' ability and willingness to pay.**

2. Saskatchewan has had a formal program for the administration of restitution orders since 1975. All those interviewed recognized the value of the Adult Restitution Program and also recognized where improvements could benefit victims, offenders and the justice system itself. As such,

- ✓ **Develop and maintain appropriate data tracking tools.**
- ✓ **Ensure willingness of probations staff to monitor restitution as diligently as they do other matters through increased awareness of impact of non-payment on victims.**
- ✓ **Ensure consistent and strategic approaches to enforcement throughout the province.**

3. The Adult Restitution Program's success is also dependent upon strong communication and consistent approaches to enforcement throughout the province. Any system is only as strong as its

parts and in that, probation officers and court staff all have roles to play. As such, the following is suggested:

- ✓ **A mapping exercise that lays out roles and responsibilities would provide clarity and enhance communication amongst all agencies and stakeholders.**
- ✓ **Site visits by the Adult Restitution Program to courts and probation offices are an ideal mechanism for formal training, as well as providing informal opportunities for all agencies/stakeholders to ask questions and learn about how different locations operate.**

4. It is important to recognize that information and assistance both play important roles to ensure that victim expectations are realistic and that those victims, who wish to, are able to participate fully in the justice system. Four key areas can be identified from the study findings where greater information and assistance would make a difference for victims:

- i) Raising awareness to foster understanding of restitution at different stages of the criminal justice system through targeted information and education;
- ii) Providing more assistance with making an application for restitution;
- iii) Timely up-dates and information on payment status; and
- iv) More assistance with collection through the civil courts.

The following are the suggested next steps in order to address the information and assistance needs for victims:

- ✓ **Through research and evaluation, provide well-tested and thorough materials and assess what levels of assistance could be made available.**
- ✓ **Examine possibilities to adapt the now developed pilot project in BC, www.victiminfo.ca, which utilizes a secure, private site for victims to access information about their own case, as well as provide information on the criminal justice system on a public site through reading, audio and video. See the link for information on restitution - <http://www.victiminfo.ca/en/about-court/going-to-trial/how-trial-will-proceed/sentencing/restitution>.**
- ✓ It is important that a comprehensive evaluation of new programs, such as the Restitution Civil Enforcement Program, is undertaken to ensure that all jurisdictions can benefit from the learnings.

1. Introduction

The primary objective of this research study is to better understand restitution orders as part of the sentencing process, including their impact on the system, victims and offenders. This information will be used to improve the Saskatchewan Adult Restitution Program to better meet the needs of victims of crime receiving restitution orders in the Province of Saskatchewan. This study is unique in that it captures the issues surrounding restitution from the perspectives of offenders, victims, as well as criminal justice professionals.

The Introduction will situate restitution within the modern criminal justice system and provide an overview of victim services in Saskatchewan and its provincial Restitution Program. Section 2 will present a review of available research, Section 3 will describe the study methodology, and Section 4 will provide the research findings. Finally, Section 5 completes the report with a short discussion of those findings and their implications and some concluding remarks.

1.1 History of Restitution and the Criminal Justice System

To understand restitution conceptually, it is important to realize that the modern criminal justice system, wherein the Crown is responsible for the prosecution of the accused, is relatively new in Anglo-Saxon legal history. As modern criminal law evolved in common law jurisdictions from the Middle Ages onward, crimes were redefined as acts against the state, addressing the losses of individual victims was no longer a primary goal, and “the victim was transformed from prosecutor to mere witness” (see Young 2001, 5-7; Young 2008, 2). Prior to 1857, in Ontario, the Attorney General was the Crown’s chief prosecutor and frequently appeared in court in serious criminal cases. The vast majority of cases, however, were prosecuted by what was called a “private informant” - the victim or another interested party. The onus fell on the victim to investigate, take into custody, and prosecute (or pay a barrister to prosecute) the accused. The victim was also the sole recipient of any payment (Karmen 1995). Hillenbrand (1990) notes that “private prosecution” was intended to be a means by which restitution could be provided to the victims of property crimes.

In 1857, the Attorney General for Canada West, John A. MacDonald, introduced the *Upper Canada County Attorneys Act*, establishing a network of criminal prosecutors to appear on his behalf, which was on behalf of the Crown or Queen Victoria. The new law was proclaimed in force on January 1, 1858. Nineteen prosecutors were appointed to represent the Crown by the Governor General, as Canada was still a British Colony (Ministry of the Attorney General 2008).

In the United Kingdom, the right of a victim’s family to compensation in any case of wrongful death was re-instated in legislation in 1846.¹ In the United States, restitution re-emerged in the early 1900s when new sentencing laws allowed courts to impose alternatives to incarceration (Frank 1992). In Canada, since its inception in 1892, the *Criminal Code* has permitted a sentencing court to order “compensation” for lost property as the result of the commission of an offence.

¹ [Lord Campbell’s Act 1846 (U.K.) c. 93]

The Canadian provisions governing compensation were mostly unchanged until amendments in 1996 repealed the compensation order provisions, replacing them with restitution order provisions. The terminology was changed to reflect that “restitution” refers to payments the offender should make while “compensation” generally refers to payments from the state. While the original compensation provisions were only available for loss, destruction or damage to property, restitution is also available for pecuniary damages including loss of income or support incurred as a result of bodily harm arising from the commission of an offence, or to cover expenses associated with moving out of the household shared with an offender in cases of bodily harm or its threat. The sentencing court may now order restitution on its own, whereas previously it could only be initiated by an aggrieved person.

In 1988, Bill C-89, which would have created a criminal enforcement scheme for restitution orders, was passed by Parliament but never enacted due to concerns raised by the provinces after the Bill’s passage regarding the prohibitive costs of creating and operating such a scheme. After much study on the costs and operational implications, it was determined that there would be support for the existing civil enforcement scheme, but not a criminal enforcement scheme due to the costs to the provinces associated with implementation. It was determined that the annual operating costs would far exceed the financial benefits realized by victims.

In 2004, s. 741 of the *Criminal Code* was amended to expand a victim’s ability to receive a civil order for an unpaid restitution order to restitution orders made as a condition of probation or as part of a conditional sentence. Previously this option was only available for stand-alone orders. In 2005, s. 738(1)(b) was expanded so that readily ascertainable pecuniary damages, such as loss of income caused by the commission of an offence, became possible in the case of “psychological harm” resulting from the commission of an offence. Previously this restitution order was only available in cases of “bodily harm” resulting from an offence.

***Criminal Code* restitution provisions**

Stand-alone Restitution Order

s. 738 (1) Where an offender is convicted or discharged under section 730 of an offence, the court imposing sentence on or discharging the offender may, on application of the Attorney General or on its own motion, in addition to any other measure imposed on the offender, order that the offender make restitution to another person as follows:

- (a) in the case of damage to, or the loss or destruction of, the property of any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding the replacement value of the property as of the date the order is imposed, less the value of any part of the property that is returned to that person as of the date it is returned, where the amount is readily ascertainable;**
- (b) in the case of bodily or psychological harm to any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding all pecuniary damages incurred as a result of the harm, including loss of income or support, if the amount is readily ascertainable; and**

(c) in the case of bodily harm or threat of bodily harm to the offender's spouse or common-law partner or child, or any other person, as a result of the commission of the offence or the arrest or attempted arrest of the offender, where the spouse or common-law partner, child or other person was a member of the offender's household at the relevant time, by paying to the person in question, independently of any amount ordered to be paid under paragraphs (a) and (b), an amount not exceeding actual and reasonable expenses incurred by that person, as a result of moving out of the offender's household, for temporary housing, food, child care and transportation, where the amount is readily ascertainable.

(2) The lieutenant governor in council of a province may make regulations precluding the inclusion of provisions on enforcement of restitution orders as an optional condition of a probation order or of a conditional sentence order.

Restitution to persons acting in good faith

s. 739. Where an offender is convicted or discharged under section 730 of an offence and

(a) any property obtained as a result of the commission of the offence has been conveyed or transferred for valuable consideration to a person acting in good faith and without notice, or

(b) the offender has borrowed money on the security of that property from a person acting in good faith and without notice,

the court may, where that property has been returned to the lawful owner or the person who had lawful possession of that property at the time the offence was committed, order the offender to pay as restitution to the person referred to in paragraph (a) or (b) an amount not exceeding the amount of consideration for that property or the total amount outstanding in respect of the loan, as the case may be.

Restitution as a condition of a probation order

s. 732 (3.1) The court may prescribe, as additional conditions of a probation order made in respect of an organization, that the offender do one or more of the following:

(a) make restitution to a person for any loss or damage that they suffered as a result of the offence;

Restitution as a condition of a conditional sentence

s. 742 (2) The court may prescribe, as additional conditions of a conditional sentence order, that the offender do one or more of the following:

(f) comply with such other reasonable conditions as the court considers desirable, subject to any regulations made under subsection 738(2), for securing the good conduct of the offender and for preventing a repetition by the offender of the same offence or the commission of other offences.

Enforcing a restitution order

s. 741 (1) Where an amount that is ordered to be paid under section 732.1, 738, 739 or 742.3, is not paid without delay, the person to whom the amount was ordered to be paid may, by filing the order, enter as a judgment the amount ordered to be paid in any civil court in Canada that has jurisdiction to enter a judgment for that amount, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

(2) All or any part of an amount that is ordered to be paid under section 738 or 739 may be taken out of moneys found in the possession of the offender at the time of the arrest of the offender if the court making the order, on being satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the offender, so directs.

1.2 Overview of the Victims Services Branch of the Saskatchewan Ministry of Justice and Attorney General

The Victims Services Branch of the Saskatchewan Ministry of Justice and Attorney General was established in 1992, following the 1988 declaration of Saskatchewan's *Victims of Crime Act*. The vision of the Victims Services Branch is a justice system that is responsive to the needs of victims.

Victims Services has the primary responsibility for assisting victims involved in the criminal justice system in Saskatchewan. Victims of reported crime are the first priority of the program. Initiatives for victims of unreported crime and at-risk individuals are also considered important and are supported to the extent that resources are available. Special emphasis is placed on meeting the needs of more vulnerable individuals such as children and persons with disabilities, as well as Aboriginal people who are disproportionately victimized by crime.

In order to increase understanding about the needs of victims of crime and ensure that basic services are available to meet their needs throughout Saskatchewan, Victims Services offers a range of programs and services, including:

- Police-based Victims Services Programs;
- Aboriginal Resource Officer Programs;
- Specialized victim services for special target groups such as victims of domestic violence and sexual assault;
- Children Exposed to Violence Programs;
- Aboriginal Family Violence Programs;
- Victim/Witness Services;
- Victim Impact Statement Program;
- Victims Compensation Program; and,
- Adult Restitution Program.

Most of the programming available in the province is delivered by community-based agencies or municipal police services that receive funding from Victims Services. Victims Services currently manages funding agreements with 37 agencies for the operation of 47 ongoing programs throughout

Saskatchewan. The Victims Services Branch directly operates the Victim/Witness Services, Victim Impact Statement, Victims Compensation, and Adult Restitution Programs.

Underlying these direct services are other initiatives that improve understanding and increase awareness of the needs of victims, and help ensure a comprehensive and cooperative response. These indirect supports include:

- education and training;
- coordination of services;
- research and evaluation initiatives; and
- programming for the prevention of victimization.

1.3 Overview of the Saskatchewan Adult Restitution Program

A Restitution Program was first established in the province within Adult Corrections in 1975 with a mandate of monitoring and enforcing restitution orders. Three restitution coordinator positions were established, one in each of the province's three largest cities.

In 1995, the Victims' Fund began funding the costs of the Adult Corrections Restitution Program. Over time, it was recognized that the program no longer fit with the priorities of the Ministry of Corrections, Public Safety and Policing and that the coordinators were frequently being utilized for other probation duties. As well, the restitution coordinators only worked with offenders with probation orders, and as such, no services were provided to victims who had stand-alone restitution orders other than the information they may have received from court staff.

In 2005/06, the Restitution Program was transferred from Corrections to the Victims Services Branch in the Ministry of Justice and Attorney General. This move was designed to improve the justice system's response to victims of crime by focusing specifically on victims, and over the long term, to increase payment of restitution orders through monitoring and enforcement.

The current Adult Restitution Program consists of one full-time restitution coordinator and one full-time administrative support staff. There is a toll-free telephone number for offenders who are required to report to the restitution coordinator and for victims who have inquiries about restitution. Two plain language information pamphlets have been developed about the Program, one for offenders and one for victims.

Applications and information on the Restitution Program are available from Police agencies, Police-based Victims Services Programs, Crown Prosecutors' Offices, or by contacting the Victims Services head office in Regina.

The mandate of the Restitution Program is to monitor cases where restitution has been ordered. Restitution collected through adult alternative measures programs is not included in the Program because each community justice program is responsible for monitoring those agreements.²

² In 2007/08, 20% of the agreements in adult alternative measures programs had restitution to victim as part of their successfully completed agreement for a total of \$150,445 and an average of \$614 per agreement. The compliance rate is very high.

In terms of specific duties:

- The restitution coordinator maintains sole responsibility for tracking stand-alone restitution orders and supervising probation orders in which restitution is the only condition. Probation Services in the Ministry of Corrections, Public Safety and Policing does not monitor these orders.
- For probation orders with additional conditions beyond restitution, the restitution coordinator works with Probation Services using their existing policies and supervision standards to determine who will act as the primary supervisor.
- With low risk offenders, the restitution coordinator assumes sole supervision of the restitution condition regardless of additional conditions of the order. In all other probation supervised cases, a probation officer is responsible for all of the conditions, but the restitution coordinator monitors the case to ensure that payments are made, and advises the probation officer about what actions should be taken if restitution is not being paid.
- The restitution coordinator is responsible for monitoring or tracking all court orders in which offenders are ordered to pay restitution to victims. This includes tracking orders and payments through the Justice Automated Information Network (JAIN) and monitoring cases to know when payments are overdue or when breaches have occurred.
- Victims can call the coordinator for information about their outstanding restitution orders, the status of their cases, and how to initiate a civil process to enforce restitution orders. The coordinator can act as a liaison between victims and probation officers.
- The restitution coordinator takes action to ensure that offenders comply with restitution orders. This includes: contacting restitution-only offenders to arrange payment, persuading them to make and keep a payment schedule, and keeping in contact with them to ensure that payment is made. This also includes checking with probation officers to determine why an offender might not be making payments and recommending to probation officers and Crown prosecutors that offenders should be breached for non-payment.

In the fiscal year 2007/08, the restitution coordinator monitored 1,085 new restitution files.

Under this Program, payments continue to be paid to Courts and certified copies of restitution orders continue to be provided to victims by the courts. Once breach action is initiated an offender may be brought back before the Court for failure to pay restitution. If restitution is not paid, the victim can register the order with Court of Queen's Bench and initiate civil action against the offender. The restitution coordinator assists with inquiries from victims regarding the process of registering their orders, and the enforcement measures that are available.

If the Probation or Conditional Sentence Order containing a restitution condition has expired, or a “stand alone” restitution order was originally imposed, the victim can file his/her restitution order as a civil judgment through the Court of Queen’s Bench. This allows the victim to use the mechanisms available under provincial judgment enforcement law for compliance of the order. These mechanisms are all debtor-driven and rely on the victim to take steps to enforce the restitution order.

Just as with any other civil money judgment, the victim’s ability to collect on a restitution order depends on a number of factors, including the resources the accused has, and the type of enforcement tools available to access those resources.

This civil enforcement system is a self-help system and the onus is on the victim to attempt to identify assets or income of the accused which can be garnished or seized. The victim’s ability to recover on the judgment will depend on whether the offender has any resources at his/her disposal.

The Provincial Court records all restitution orders that are made, but does not provide a breakdown between those that are attached to a Probation or Conditional Sentence Order and those that are “stand alone”. Table 1 below shows the total aggregate amounts ordered and collected. Missing is the amount of restitution that has been paid directly to victims in “stand alone” orders.

Table 1: Collection on restitution orders in Saskatchewan Provincial Court, 2003/04 – 2007/08

Fiscal Year	Total number of Restitution Orders	Total Amount Ordered by Provincial Court*	Amount Collected **	Percentage
2003/04	1,361	\$ 3,492,225	\$ 798,860	23%
2004/05	1,302	\$ 2,805,651	\$ 689,103	25%
2005/06	1,118	\$ 2,349,072	\$ 716,780	31%
2006/07	1,098	\$ 4,288,746	\$ 718,293	17%
2007/08	1,118	\$ 3,728,219	\$ 929,147	25%

*All orders including those to be paid directly to the victim

** Only payments made through the court for distribution to the victim

Court Services noted that the total amount ordered in 2006/07 was considerably higher than previous years for a similar number of orders. There were five orders greater than \$100,000 (\$150,000, \$187,000, \$329,685, \$437,000 and \$1,028,871.39). These five orders total over \$2.1 million dollars.

2. Review of Research

This section presents a summary of other research and evaluation reports on restitution beginning with a short review of the Canadian case law, followed by social science research and available Canadian statistics.

2.1 Case law

The published case law provides a valuable, albeit limited, source of understanding about what the judiciary consider in their sentencing decisions. A QuickLaw search was conducted using the relevant *Criminal Code* provisions and the term “restitution” as search terms, going back to 1978. The search was limited to criminal cases.

There have been two Supreme Court of Canada cases on restitution in the past thirty years, several appellate court cases and many cases in all jurisdictions where the provisions were considered in the lower courts. A review of these cases shows that many issues are covered. The Supreme Court decisions in *R. v. Zelensky*³ and *R. v. Fitzgibbon*⁴ established parameters that have been followed without challenge over the past three decades.

In *R. v. Zelensky*, the Supreme Court of Canada made it clear that restitution orders fall under the federal government’s criminal law power only because they are part of the sentencing process and that restitution orders are only appropriate when the amount of the loss is easy to calculate and not in great dispute. Twelve years later, the Supreme Court reiterated in *R. v. Fitzgibbon* that while the offender’s ability to pay the restitution order should be considered, it is not the determining factor in every case.⁵ Criminal courts are not an appropriate forum for awarding damages for pain and suffering or for determining complicated issues regarding the assessment of damages. These matters must be settled in civil courts. Additionally, the offender’s ability to pay, although not determinative, is a factor which must be considered by the judge when determining whether a restitution order is appropriate.⁶ When the court orders restitution as a term of probation, it must first ensure that the offender may reasonably make the payment during the term of probation as non-payment will result in a breach of the probation order. If the offender fails to pay the full amount of the restitution order, the victim must use civil enforcement methods to collect the money.

Another factor considered by judges when determining whether a restitution order is appropriate is the need for the court to consider the impact on the chances for rehabilitation. In *R. v. Siemens*,⁷ the Manitoba Court of Appeal noted that the impact of a restitution order upon the chances of rehabilitation of the accused, either pro or con, is a factor to be considered. Ruining an accused financially would impair his/her chances of rehabilitation. In *R. v. Bullen*,⁸ a 2001 decision from the

³ [1978] 2 S.C.R. 940

⁴ [1990] 1 S.C.R. 1005

⁵ On readily ascertainable amount see also *R. v. Siemens* (1999), 26 C.R. (5th) 502, 136 C.C.C. (3d) 353 (Man.C.A.).

⁶ See also *R. v. Yates*, [2002] B.C.J. No. 2415, 169 C.C.C. (3d) 506 (B.C.C.A.) at para. 26; *R. v. Siemens* (1999), 26 C.R. (5th) 502, 136 C.C.C. (3d) 353 (Man.C.A.).

⁷ *Supra*, *Siemens*, note 4.

⁸ (2001) (48 C.R. (5th) 110 (Yukon Terr. Ct.)

Yukon Territorial Court determined that the timing and amount of restitution must not significantly undermine an offender's will or ability to pursue restitution, and those considerations act as an important constraint at sentencing.

The Alberta Court of Appeal, in *R. v. Brunner*,⁹ focuses our attention on the accused.

This demonstrates that the focus of the compensation legislation is the accused, and not the victim. The goal is not to fully compensate the victim as would be the focus in a civil trial, but rather, to "prevent the convicted criminal from profiting from his crime".

The case law addresses a number of issues without challenging the principles laid down in *Zelensky* and *Fitzgibbon*. One example is the case of *Bullen*, wherein Stuart, C.J. Terr. Ct., provides extensive comments on restitution, highlighting the challenges inherent in the application and implementation of the provisions. Stuart, C.J. examines restitution from a victim's perspective and finds the criminal justice system lacking.

*To engage a victim as a witness to secure a conviction in the interest of the state and then leave the victim to their own means to pursue their injuries in another process, in another court, raises questions of fairness and practicality. In many respects, victims' interests have been unduly subrogated to state interests in the evolution of criminal courts from their beginnings in civil courts.*¹⁰

Because of the focus on Saskatchewan in this research, the case law from that province will be noted in detail. Out of the five cases published through QuickLaw from Saskatchewan, from 1999 – 2006, three dealt with failure to pay restitution as a condition of probation order.

In *R. v. Bird*,¹¹ the appellant appealed his conviction on the charge that he failed to comply with a condition of his probation consisting of a restitution order for \$500 payable within eight months, which was for the victim's deductible for theft and damage to a car. The appellant had been incarcerated for two months (in relation to another charge) and did not collect social assistance during this time. For the remaining months, he received assistance totalling \$870 which was used for living expenses. The trial judge stated, "I am satisfied that even with minimal effort he could have paid the restitution ordered."¹² (at para.5) The appellate judge, after reviewing the case law and the facts of this case, found that "An inability to pay restitution because of abject poverty with no realistic employment opportunity in my view constitutes a reasonable excuse for non-compliance which negates the required *mens rea*."¹³ (at para.12) There was no evidence from the Crown that the appellant could pay the order and was wilful in not doing so.

⁹ (1995), 28 (C.R. (4th) 250, 97 C.C.C. (3d) 31 (Alta.C.A.)

¹⁰ *Ibid.*, at para. 8.

¹¹ (1999), 183 Sask. R. 1999 (Sask. Q.B.)

¹² *Ibid.*, at para. 5

¹³ *Ibid.*, at para. 12.

In *R. v. Pelly*,¹⁴ a 2003 provincial court oral decision, the accused was charged with breach of a condition of his probation order, wilful failure to pay restitution in the amount of \$1,350. The accused had been unemployed and was in receipt of social assistance, with the exception of three days in August 2001 where he worked for three days and earned \$174. He received \$140 a month (on top of rent) and this went to his living expenses, which included alcohol and tobacco. No evidence was led as to an addiction. The judge distinguished the facts of this case from *Bird* noting that even with extremely low levels of income, there was some disposable income and the accused admitted that he would be able to make some small payments. The accused was found guilty of the breach.

In *R. v. Bolen*,¹⁵ another 2003 provincial court decision, the accused failed to comply with a condition of his probation to make restitution of \$393.75 by monthly payments of \$50. During the whole period, the accused and his family (partner and three young children) were in receipt of social assistance. The accused was actively looking for work but these efforts had not resulted in regular employment. The accused indicated that all funds went to living costs, but also confirmed that the monthly payment of \$50 had seemed to be feasible to him. The judge referred to *Bird*, to find that there was nothing in the evidence to support the inference of an intention not to pay and as such the accused was found not guilty of a breach of probation.

In *R. v. Ratt*,¹⁶ the defendant appealed his restitution orders of approximately \$24,000 on the grounds that there were co-accuseds who ought to share responsibility and that at no time did the sentencing judge seek to determine his ability to pay. It was a unanimous decision that the judge ought to have inquired into the appellant's means and as such, the appeal was allowed, the original restitution orders set aside and a new order for a lesser amount (according to what the appellant indicated he could pay upon returning to work) was made.

In *R. v. Rusanov*,¹⁷ (a 2006 Saskatchewan Court of Queen's Bench decision) the accused was found guilty of drug offences and 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 \$6,700.¹⁸

2.2 Social Science Research

In the case of *Bullen*, discussed above, Stuart, C.J.Terr.Ct. refers to empirical research in his lengthy decision; the research cited, however, is from jurisdictions other than Canada. To understand restitution in Canada and to make improvements to the process for victims, a Canadian body of empirical research would be beneficial. Yet, very little empirical research on restitution in Canada exists. There is likewise very little published work in academic journals. The academic articles that were found span decades and were predominantly from the United States. The literature in the last fifteen years has focused on evaluation research of restitution programs, in particular examining

¹⁴ (2003), 229 Sask. R. 280 (Prov. Ct.)

¹⁵ (2003), 240 Sask. R. 308 (Prov. Ct.)

¹⁶ (2005), 269 Sask. R. 238 (C.A.)

¹⁷ (2006), 287 Sask. R. 311 (Sask. Q.B.)

¹⁸ 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."

what factors lead to successful payment to the victims. This section will provide an overview of the articles that dealt with the application of restitution legislation.

Sims (2000) provides an overview of victim restitution programs in the United States, noting that they are part of the “restorative justice” paradigm wherein the critical component is the victim. This article examines both adult and youth restitution by focusing on a history of victim restitution in the U.S., problems with restitution programs, and components of successful restitution programs. The author articulates four components of successful programs: 1) a consideration of offenders’ ability and willingness to pay; 2) a formal program for the administering of restitution orders; 3) communication among all agencies involved in the ordering and collecting of restitution; and 4) an effective means of ensuring compliance with restitution orders, usually accomplished by strict attention to enforcement procedures and process.

Three examples of evaluation research were identified. First, Lurigio and Davis (1990) examine the use of a notification procedure (follow-up letter technique) to ensure compliance of restitution orders in Cook County, Illinois. According to the authors, victims’ satisfaction with the restitution process can be undermined by the lack of follow-up done regarding offender compliance with restitution orders. The authors hypothesized that the procedure would have a greater effect on offenders with paying jobs who also have fewer prior charges. The results of the study show that those with less criminal system experience and jobs were more likely to respond to and complete restitution orders. Based on their findings, the authors concluded that judges should take into account the socio-economic factors related to offenders when making decisions regarding victim restitution.

Second, in a study undertaken in Pennsylvania, Ruback and Shaffer (2005) examined the extent to which victim-related factors influenced judges’ decisions regarding restitution. To attain this information, the authors conducted a state-wide survey of judges regarding the victim-related, offender-related and system-related factors that judges believed influenced restitution decisions. The survey was followed by a statistical analysis of restitution decisions from 55,119 cases. Based on the survey, the authors found that judges believed that the compensation of victims was the primary rationale for restitution. The authors attribute this finding to the changes in Pennsylvania statute which made restitution orders mandatory in certain cases. Of significance, is the finding that victims’ services delivery mechanisms also influence judges’ decisions regarding restitution. Specifically, the authors found that the location and accessibility of victim services offices, as well as their link to court systems was highly influential in restitution decisions. Issues related to victims’ ability to get to offices outside of the courts and their accessibility to other resources necessary for the restitution process showed to have the greatest implication for victim restitution orders. Among the authors’ suggestions is that victims services may be most useful when directly linked to the court system.

Third, an evaluation was undertaken of a project in New Jersey whereby probationers were assigned to a program designed to increase payment of fine and restitution sanctions through a combination of intensive probation, community service, and threats of probation revocation and incarceration. The authors (Weisburd et al. 2008) found that these probationers were more likely to fulfill their obligations than those assigned to regular probation. The outcomes of one treatment group indicate the main cause of fine payment was the deterrent effect of possible incarceration.

The above three examples are evaluation research, guided by the goal of determining whether a particular program or policy has been effective. In Canada, restitution has not been studied to any great extent, either within the context of a restorative justice program, or as part of probation. Despite this, in 2004, Prairie Research Associates undertook a Multi-Site Study. This large, five-site Canadian study interviewed all criminal justice stakeholders (judges, Crown, defence, parole, probations, police, victims, victim services, and victim advocacy groups) on their awareness and perceptions of the victim-related *Criminal Code* provisions. For example, to determine views on when restitution should be requested, judges¹⁹ were asked when, in their view, restitution is appropriate. Surveyed judges responded that damages must be quantifiable (87%), and the offender must be able to pay (61%). They placed less emphasis on the victim's desire for restitution (32%).

Table 2 illustrates the responses from victim services and advocacy groups when asked, “What are the obstacles to the use of restitution?”

Table 2: Obstacles to the use of restitution, as reported by victim services and advocacy groups across Canada, 2004

Obstacles	Victim Services Groups (n=94, 30% of total respondents)	Advocacy Groups (n=19, 40% of total respondents)
Accused usually poor or unable to pay	34%	32%
Victims lack information about restitution or unaware of option	31%	0%
Victim must pay the cost of enforcement	16%	0%
No enforcement	14%	21%
Cumbersome application process	10%	0%
Judicial or Crown Attorney reluctance to order or request	9%	0%
Eligibility criteria too restrictive	7%	11%
Does not compensate victim adequately	0%	21%
Other	11%	26%

Source: Multi-Site Study (Prairie Research Associates 2004)

Note: The *n* for victim services and advocacy groups are those that said there were obstacles to the use of restitution.

A 2002 study in Nova Scotia by Martell Consulting Services, which included interviews with all criminal justice professionals, found that despite the 1996 amendments to the *Criminal Code*, and despite the apparent support for restitution as a condition of sentencing, restitution could only be found on the periphery of the criminal justice system and there was overall, low awareness of restitution among victims. The study concluded that three main barriers exist with respect to accessibility of restitution orders for victims: 1) the lack of enforcement by the criminal justice system; 2) the costs for victims; and 3) the requirement for victims to gather information about the offender, which is needed to register a restitution order as a civil judgment.

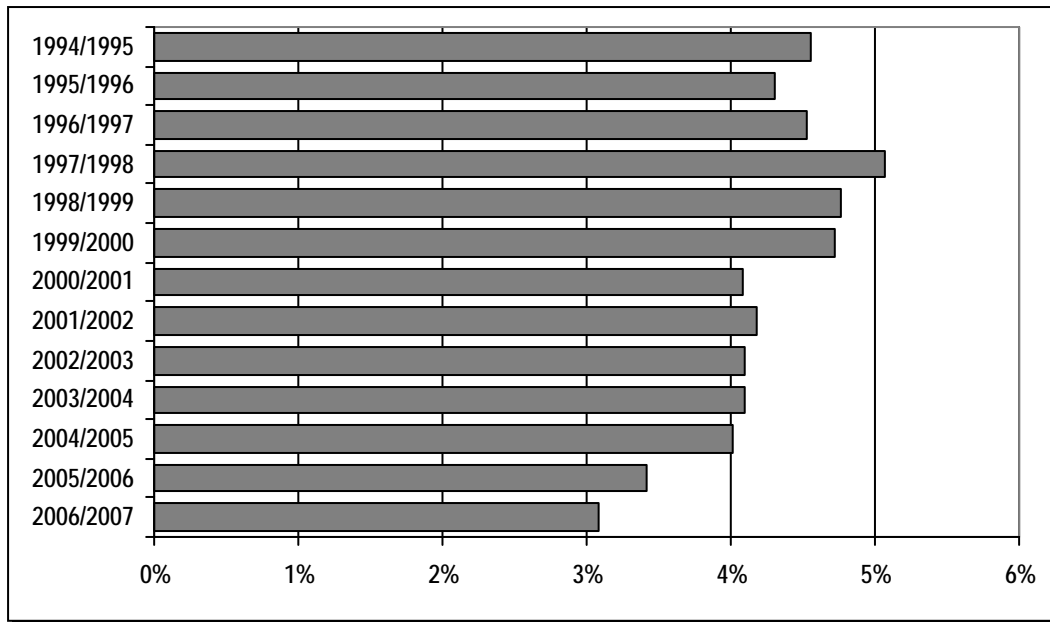
¹⁹ A total of 31 judges completed interviews, and 79 judges completed self-administered questionnaires.

2.3 Statistics

Statistics on restitution are available from the Adult Criminal Court Survey, administered by the Canadian Centre for Justice Statistics of Statistics Canada. These data are limited, however, to the number of orders each year by offence type and by jurisdiction. No data are collected on a national scale on the value of the orders, or on the amount collected. While individual jurisdictions maintain some information on number of orders and payment details, the detail and quality of these data varies considerably across the country.

According to the Adult Criminal Court Survey²⁰, at the national level in 1994/95, a total of 11,017 restitution orders were made nationally, which represented 4.6% of the total 242, 011 guilty cases. In comparison, in 2006/07, 7,490 orders were made, which represented 3.1% of the total 242, 988 guilty cases. Chart 1 below shows that the number of the orders made as a percentage of total cases has fluctuated, but has overall moved downwards over the past decade.

Chart 1: Percentage of guilty cases receiving restitution orders, 1994/95 – 2006/07

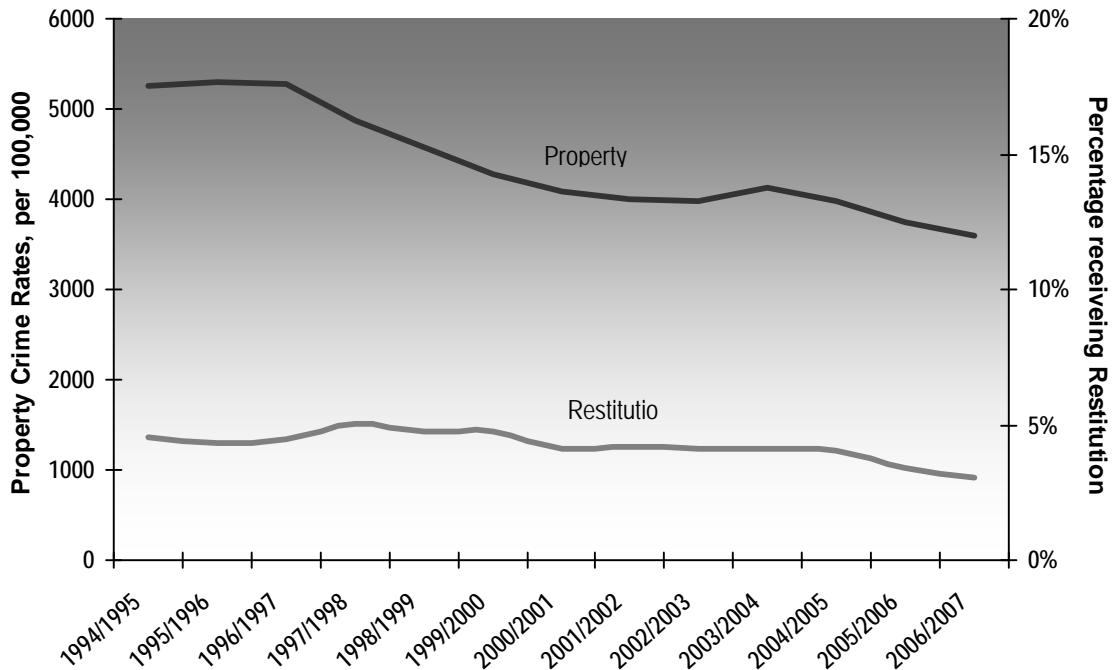


Source: Canadian Centre for Justice Statistics, Adult Criminal Court Survey, 1994/95-2006/07

The majority of restitution orders are made for property crimes. In 2006/07, 80% of all orders were made in cases of property crimes. The downward trend for restitution orders appears to be mirroring the overall downward trend in property crimes as shown in Chart 2 below. The rate of break-ins has been steadily declining since peaking in 1991, reaching its lowest level in over 40 years. For example, in 2007, police reported over 230,000 break-ins, of which about 6 in 10 were residential. The rate of residential break-ins fell 9% in 2007 and break-ins to businesses dropped 8% from the previous year. The rate of motor vehicle theft has also been declining since its peak in 1996, including a 9% drop in 2007 from the previous year (Statistics Canada 2008).

²⁰ Section 4 will provide data for Saskatchewan alone.

Chart 2: Restitution orders and property crime rates – 1994/95 to 2006/07



Source: Canadian Centre for Justice Statistics, Adult Criminal Court Survey, 1994/95 to 2006/07

2.4 Research Gaps

As each province is responsible for the administration of justice, the processing of restitution orders varies depending on the jurisdiction. As well, each jurisdiction tracks information using its own system. While basic information is provided to the Canadian Centre for Justice Statistics, there is a great deal of detail lacking on a nation-wide basis.

Restitution orders constitute another monetary penalty, and along with fines and the federal and provincial victim surcharge, create challenges in imposition and enforcement. Weisbard et al. (2008) looked at all monetary penalties when it examined the factors that were likely to impact full compliance. Unlike fines and surcharge, however, stand-alone restitution orders are made to the victim, rather than the state, and as such, there are additional challenges for enforcement; as noted by Stuart, C.J. Terr. Ct. "...leave the victim to their own means to pursue their injuries in another process, in another court, rais(ing) questions of fairness and practicality."

The research that does exist in Canada suggests that there are policies and programs that may assist victims with restitution. As described in the Introduction, the Saskatchewan Ministry of Justice and Attorney General administers the Adult Restitution Program. This context provides a valuable learning opportunity in terms of how restitution is working for all concerned – victims and offenders.

3. Study Methodology

The overall goal of this study has been to better understand the application of restitution orders as part of the sentencing process, including their impact on the system, victims and offenders.²¹ Specifically, the study sought to determine:

- 1) What offences receive restitution orders?
- 2) What are the characteristics of offenders who receive restitution orders and how do they compare to the overall provincial offender population?
- 3) What factors, if any, are related to the payment of restitution orders? Factors might include offender characteristics (age, employment status, etc.), as well as type of restitution order (stand-alone, attached to probation or a conditional sentence).
- 4) What are the characteristics of the victims?
- 5) What are the benefits and challenges of the current structural organization of the Adult Restitution Program?
- 6) How do victims experience the restitution program/process and what are the benefits and challenges for them?

3.1 Data Sources

Given the particular challenges of the data available, the study was designed to be exploratory and to utilize as many different sources as possible, while at the same time recognizing the limitations of these data. Five main sources of information were used, including court data from the Canadian Centre for Justice Statistics (CCJS), corrections data from the Corrections Management Information System, a review of files from Saskatchewan's Adult Restitution Program, interviews with criminal justice stakeholders and victim surveys.

In Saskatchewan, the Adult Criminal Division of the Provincial Court deals with the large majority of all criminal charges including those under the *Criminal Code of Canada*, *Controlled Drugs and Substances Act*, *Income Tax Act* and other statutes passed by the Parliament of Canada. Court is held in thirteen major centres where permanent court offices are located, as well as in seventy-eight other circuit point locations in the province. Four centres were selected for interviews for this study: Regina, Saskatoon, Meadow Lake and Yorkton. These centres were selected to reflect urban/rural, north/south, and different population demographics. Each of these locations house permanent court facilities and oversee the circuit courts which serve rural or northern communities.

Provincial court data

Almost all (99%) of restitution orders originate from provincial court. According to court staff, there might be three to four cases coming from Court of Queen's Bench in any given year. As such, a decision was made to focus on cases in provincial courts only.

²¹ As noted earlier, the study did not include restitution collected through adult alternative measures.

In practice, court staff send a copy of the restitution order to the victim(s). Although court staff enter some information on restitution orders onto the Justice Automated Information Network (JAIN), the database was of limited utility for this study.

Offender data

A special request was made to the Canadian Centre for Justice Statistics for restitution data. Data was drawn from the Adult Criminal Court Survey and the Youth Criminal Court Survey to provide the number of restitution orders by case, by year, by jurisdiction, and by offence for the past ten years.

All offenders who are part of the provincial corrections system are captured on the Corrections Management Information System (CMIS), a database maintained by the Ministry of Corrections, Public Safety and Policing. This database has data on total amount ordered and payments made, although there are some inconsistencies in how the information is entered. The database does not capture stand-alone orders where there is no other disposition.

A total of 6290 cases with restitution orders were examined from 2000/01 to 2007/08. This sample should reflect all offenders in the provincial corrections system who received a restitution order as part of their disposition. Demographic data on all offenders in the year 2007/08 ($N=30,000$) was also accessed in order to compare the entire population to that of the sub-group of offenders with restitution orders.

Adult Restitution Program data

The Restitution Coordinator maintains paper files on all the restitution orders for which she has responsibility. In 2007/08, the Coordinator monitored 1,085 new restitution files. As of April 2008, the Coordinator has been checking JAIN to see if the court has not missed sending files²².

It was decided to undertake a review of a sample of the files in order to gain some basic understanding of the characteristics of “stand-alones,” as well as gather more in-depth data on those orders attached to probation and conditional sentences. As such, a manual file review of the Adult Restitution Program files was undertaken in the summer of 2008.

A total of 157 files were selected from both the “stand-alone” restitution order files, as well as the conditional sentence or probation order files, equally distributed over a three year period from 2005/06 to 2007/08. Approximately a quarter of all restitution orders are “stand-alone” and as such, 36 of the files were stand-alones with the rest of the orders being attached to conditional sentences or probation orders to reflect the overall breakdown.

Limitations of the restitution data

Saskatchewan does not currently have a data collection system that accurately reflects the amount of

²² As this was not the practice prior to April 2008, it is not possible to definitively say that ALL stand-alone orders were captured prior to that time. Thus, prior to April 2008, these files are not necessarily representative of all the restitution orders in the province.

restitution ordered and the amount paid. There are a number of complications that are well-known to officials, including:

- i) The JAIN and CMIS report the total ordered restitution amounts in a given period, and the total payments received in that same period. This will include, however, payments on orders that were made prior to that time period, resulting in an inaccurate report on the overall rate of payment.
- ii) The systems show the total amount ordered, including stand-alone orders which are payable directly to victims. Payments made directly to victims cannot be tracked and therefore are not included in the payment totals. This results in an artificially low payment rate.

These data limitations must be considered when interpreting the findings of this study.

Victim questionnaires

A short questionnaire was developed and mailed through the Ministry of Justice and Attorney General to all private citizen victims in the four sites (Regina, Saskatoon, Meadow Lake and Yorkton) who had received, according to the provincial court database (JAIN), a restitution order in 2007/08²³. Victims had the option of completing and mailing back the hard copy to Justice Canada using a self-addressed stamped envelope, or completing the survey online using a password. The letter and questionnaire can be found in Appendix C.

Table 3 below summarizes the sample as selected from JAIN.

Table 3: Sample for Victim Questionnaires

	Regina	Saskatoon	Yorkton	Meadow Lake	Totals
Total # of orders	234	402	90	55	781
Total # non-private citizens* (governments, businesses, etc.)	125	224	35*	20	404
Total initial estimate to private citizens	109	178	55	35	377
Returned/no information on JAIN	35	31	5	11	82
Final total received by private citizens	74	147	50	24	295

* For example, in Yorkton, "non-private citizen victim" included: 4 City/First Nation, 2 Housing Authority, 2 RCMP / Police, 3 Insurance/SGI, 2 Gov't agency, 12 Large Industry/Business, 7 Banks, and 3 School/Church.
Source: JAIN 2007/08

²³ Governments (municipal, provincial), businesses (banks, etc.), and non-governmental organizations were not included

A total of 50 questionnaires were received (49 mail and 1 on-line) out of a final sample of 295 for a response rate of 17%. While not high, this response rate is in keeping with rates associated with mail-in surveys where there is no follow-up to encourage participation.

Interviews with criminal justice stakeholders

Interviews were undertaken with criminal justice stakeholders. Most were completed in-person at a location convenient to that individual, and when scheduling did not permit these, a few were completed over the telephone. The interviews were taped and transcribed and the data sent to Justice Canada for analysis.

Interviews were completed with 67 individuals from August to October 2008. The different stakeholders included: offenders (6), victims (23), court staff (8), probation officers (16), defence (both private bar and Legal Aid, 8), Crown prosecutors (4), and Ministry of Justice and Attorney General programs/policy officials (2). An attempt was made through the office of the Chief Judge of the Provincial Court to solicit participation from a small number of judges. In the end, no judges volunteered to be interviewed.²⁴

The majority of the stakeholders were contacted with the assistance of Saskatchewan officials. For example, probation officers provided contact information for offenders who were willing to be interviewed. For victims, some, who were already in contact with the restitution coordinator, were asked and agreed to participate. Others indicated on the mail-in questionnaire that they were willing to be contacted and provided contact information (see Table 3 above).

The interview guide, which also included questions on the federal victim surcharge for another project, was developed by Justice Canada, in consultation with Saskatchewan officials, and was based on previous restitution research in Canada (Prairie Research Associates 2004; Martell Consulting Services 2002). Different questions were asked of the different stakeholders. The interview guides can be found in Appendix B.

The interview data are limited in that those interviewed may not necessarily reflect the entire range of situations or experiences. For example, probation officers recommended offenders for interviews; all those interviewed were making payments and might be considered “success stories.”

²⁴ One written response was received, but because there was only one from the judiciary, a decision was made not to incorporate this response as including this information would identify the individual.

3.2 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 Division has developed an internal ethics review process that is based on the principles articulated in the ***Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans***.²⁵ An Ethics Template was completed and presented to the Committee, along with copies of the letter of information and letter of consent for the interviews and for the victim questionnaires.

To protect victim privacy, addresses for victim questionnaires were accessed only by officials of the Ministry of Justice and Attorney General. If victims wanted to be contacted for an interview, it was their choice. All other contacts for interviews with victims and offenders were facilitated through Saskatchewan officials (restitution coordinator and probation officers). The Victims Services Branch 1-800 phone number was provided to all victims, as well as direct lines to the Research and Statistics Division and the Saskatchewan Restitution Coordinator.

Three victims who received questionnaires contacted the Restitution Coordinator ($n=2$) and the Research and Statistics Division ($n=1$). They were confused about why they had received the questionnaire. In at least one case, it was determined that the victim had never received a letter and order from the court. In another case, the individual had received a cheque from the government, but had no recollection of being a victim of a crime or of any court case. Those who called were encouraged to complete the questionnaire as best they could; from the responses received, however, it is not clear whether or not they completed it. All phone calls were dealt with in a timely and sensitive manner.

²⁵ 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). It is noted that the Tri-Council Policy Statement is currently under revision. For more information, please see: <http://www.pre.ethics.gc.ca/eng/index/>

4. Study Findings

The organization of the study findings presented some challenges due to the number of different sources and methods of data collection. The findings are presented here organized by the original research questions, although we have also tried to group data sources together to assist with clarity.

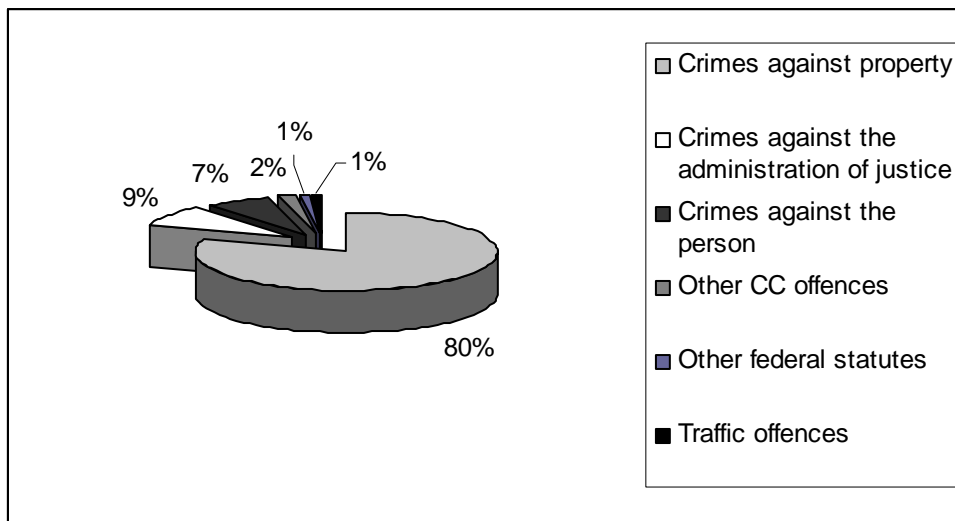
4.1 The Offences

4.1.1 Types of Offences

Research Question: What offences receive restitution orders?

The data presented in this section reflect case information from Canadian Centre for Justice Statistics. Looking at 2006/07 for Saskatchewan, 80% of the cases with restitution orders were property offences, while 19% of restitution orders were given for administration of justice offences and 5% were given for crimes against the person offences (see Chart 3). This is similar to the rest of Canada where in 2006/07, 80% of all offences with restitution orders were property offences.

Chart 3: Offence types for restitution orders in Saskatchewan, 2006/07



n=1350

Source: Adult Criminal Court Survey, Canadian Centre for Justice Statistics, 2006/07

Tables 4 through 9 show the types of offences for which a restitution order was given in Saskatchewan from fiscal years 2000/01 to 2006/07. Within the category of property offences, fraud, mischief and theft received the majority of orders. The highest percentage of restitution orders tied to property crimes was seen in 2001/02, wherein 87% of all restitution orders were related to property crimes. Although this percentage has decreased over time, dropping to 77% in 2005/06, the average percentage of cases linked to property crimes has centered around 80%.

Table 4: Crimes against the person offences in Saskatchewan, 2000/01 to 2006/07

Offences	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07
Robbery	3	9	10	5	3	6	3
Sexual assault	0	0	0	0	0	3	0
Major assault	16	23	31	22	19	19	11
Common assault	24	22	16	15	33	24	20
Uttering threats	3	6	6	2	5	6	8
Criminal harassment	0	0	0	0	0	1	0
Other crimes against persons	1	0	3	1	1	1	0
Total	47	60	66	45	61	60	42

Source: Adult Criminal Court Survey, Canadian Centre for Justice Statistics

Table 5: Crimes against property in Saskatchewan, 2000/01 to 2006/07

Offences	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07
Theft	146	194	171	148	145	112	119
Break and enter	92	113	127	73	95	86	61
Fraud	259	309	261	233	215	189	134
Mischief	189	203	167	197	149	135	138
Possess stolen property	42	59	49	42	32	37	20
Other property crimes	3	9	5	9	3	11	3
Total	731	887	780	702	639	570	475

Source: Adult Criminal Court Survey, Canadian Centre for Justice Statistics

Table 6: Crimes against the administration of justice in Saskatchewan, 2000/01 to 2006/07

Offences	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07
Fail to appear	1	0	3	1	2	3	0
Breach of probation	35	63	68	47	61	66	41
Unlawfully at large	1	0	0	0	0	1	1
Fail to comply with order	1	1	0	3	5	4	6
Other admin. justice	2	2	0	4	2	0	3
Total	40	66	71	55	70	74	51

Source: Adult Criminal Court Survey, Canadian Centre for Justice Statistics

Table 7: Other Criminal Code offences in Saskatchewan, 2000/01 to 2006/07

Offences	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07
Weapons	1	2	3	5	4	3	4
Prostitution	0	0	0	0	0	0	0
Disturbing the peace	0	0	0	0	1	0	2
Residual Criminal Code	3	15	14	6	8	6	5
Total	4	17	17	11	13	9	11

Source: Adult Criminal Court Survey, Canadian Centre for Justice Statistics

Table 8: Traffic offences in Saskatchewan, 2000/01 to 2006/07

Offences	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07
Criminal Code traffic	6	7	3	10	7	6	1
Impaired driving	11	11	11	8	8	7	5
Total	17	18	14	18	15	13	6

Source: Adult Criminal Court Survey, Canadian Centre for Justice Statistics

Table 9: Other federal statutes in Saskatchewan, 2000/01 to 2006/07

Offences	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07
Drug possession	0	7	0	0	0	0	0
Drug trafficking	0	0	2	1	0	1	3
Youth Criminal Justice Act	3	4	0	0	1	1	0
Residual federal statutes	2	5	5	7	7	9	4
Total	5	16	7	8	8	11	7

Source: Adult Criminal Court Survey, Canadian Centre for Justice Statistics

4.2 The Offenders

Research Question: What are the characteristics of those who receive restitution orders?

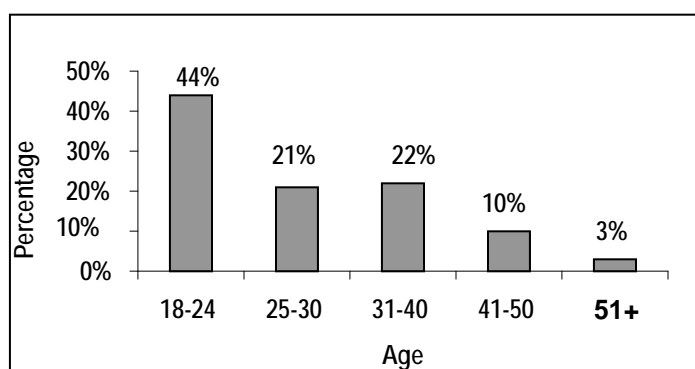
The data used to answer this question is from the CMIS and represent only those offenders within the provincial corrections system who received a restitution order in addition to another disposition (e.g. probation, conditional sentence, or incarceration). That is, they do not include those offenders who received stand-alone orders.

Characteristics of 6,290 offenders²⁶ from fiscal years 2000/01 to 2007/08 were examined and demographics of this population are presented in this section. As well, the demographics of the 2007/08 group of offenders who received restitution orders as part of a sentence disposition ($n=856$) are compared to the demographics of the entire offender population for 2007/08 ($N=30,000$).

All offenders, but one had been convicted of theft from their employer.²⁷ As noted in the section on Methodology, one of the limitations of these data is that they do not convey the range of offender circumstances that actually exist in the data; however, they provide some important insights on offender perspectives that previous Canadian research on restitution has not.

The majority of the CMIS group was comprised of males (82%), individuals who were single (56%), and without any dependents (61%). More than half of the sample (56%) was single, one third (34%) were married or common law and 10% were divorced, separated or widowed. The average age was 29 years with the youngest being 18 years²⁸ and the oldest being 76 years. Chart 4 shows the percentage of the group in each age category. Almost two thirds (65%) are in the 18-30 age groups, showing the relative younger age of the sample.

Chart 4: Age of offenders who received restitution orders, 2000/01 – 2007/08



$n=6,289$

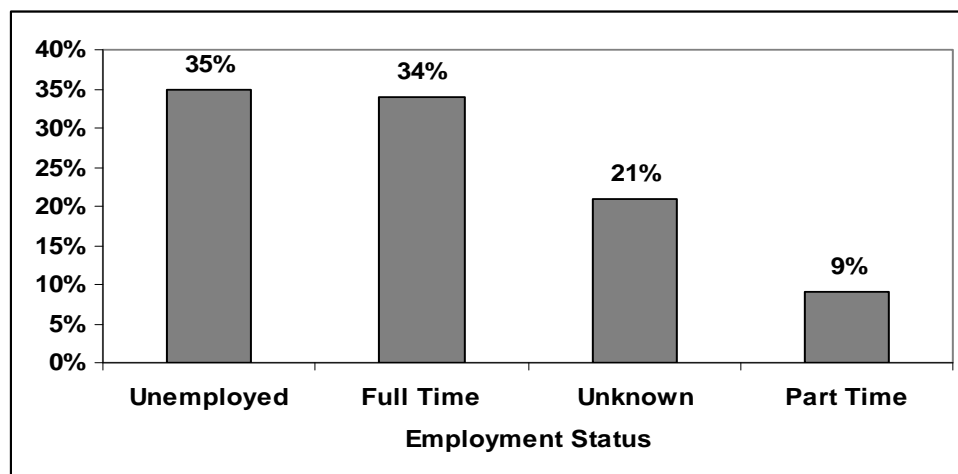
Source: CMIS 2000/01-2007/08

Chart 5 shows the employment status of the group ($n=6,289$) where the information was available. More than one third (35%) were unemployed, a further third were employed full time (34%) and 5% were employed part-time. The employment status was unknown for 21% of the offenders.

²⁶ For some variables, there were many missing values. These are removed. “Unknown” refers to a data entry choice and so is included, particularly because it demonstrates the limitations of the database.

²⁷ As will be discussed in Section 4.4., private citizens are the recipients of restitution orders in almost half (46%) of all the cases, with private business accounting for almost a quarter (23%).

²⁸ The age is an administrative age, meaning age at entry into the provincial corrections system. There is also age at “discharge.” Any offender younger than 18 would be in the youth system.

Chart 5: Employment status of offenders, 2000/01-2007/08

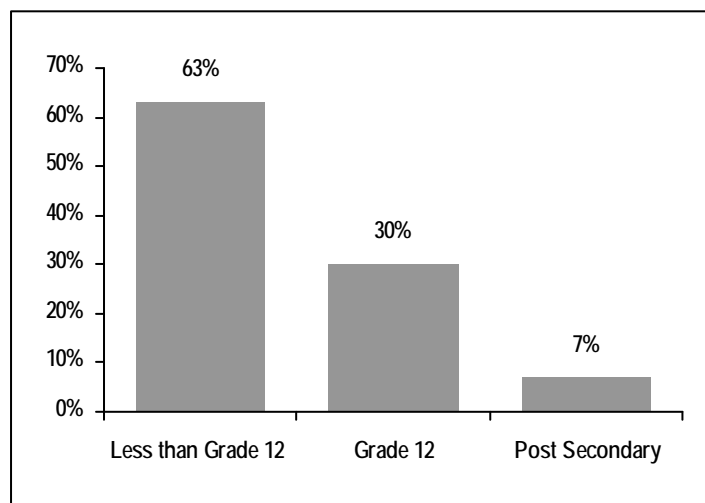
n=6289

Source: CMIS 2000/01-2007/08

The database also provided some information on reasons for unemployment. For the more than one third (35% or *n*=2226) of offenders who were unemployed, the reasons included:

- Temporarily unemployed (63%);
- Student (10%);
- Other (10%)
- Unknown (7%);
- Disabled (6%); and
- Unemployable (4%)

Chart 6 shows that the education level for almost two thirds (63%) of offenders was less than Grade 12. Almost a third (30%) had Grade 12 and a small proportion (7%) had post secondary education.

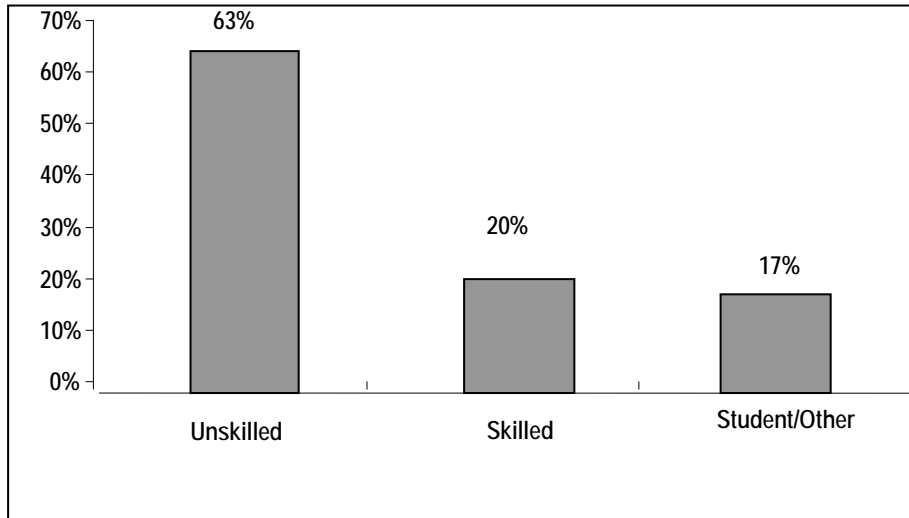
Chart 6: Education level of offenders, 2000/01-2007/08

n=5,032

Source: CMIS 2000/01-2007/08

The database also provided some information on the offenders' skills. The categories were coded together for ease of analysis as follows: Skilled included the categories Skilled, Professional, Farmer, Auto Mechanic, Carpenter, Electrician, Teacher and Plumber; Unskilled included Labourer, Construction Worker, Homemaker and Unskilled; and Student/Other are self-explanatory. As shown in Chart 7, almost two thirds (63%) of offenders were categorized as Unskilled, while 20% were skilled and 17% were considered students/other.

Chart 7: Skill level of offenders, 2000/01-2007/08



n=4795

Source: CMIS 2000/01-2007/08

4.3 Comparison of Offenders in 2007/08

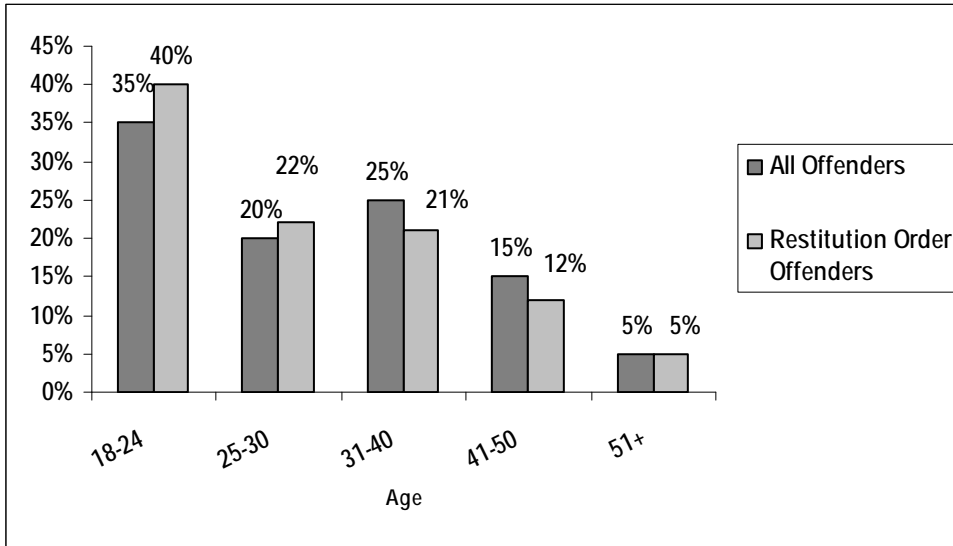
Research Question: How do offenders who receive restitution orders compare to the overall provincial offender population?

As noted, demographic data for all offenders in the provincial corrections system for the year 2007/08 (*N*=30,000) was extracted in order to provide a comparison with those offenders who received restitution orders in that same year (*n*=856). The groups are compared by gender, age, marital status, number of dependents, and employment status.

Both groups were overwhelming male. Four fifths of the entire offender population in 2007/08 was male (82%), as were the restitution order offenders that same year (81%).

As shown in Chart 8, both groups are young. More than one third of all the offenders (35%) and two fifths of restitution order offenders (40%) in 2007/08 were between the ages of 18 to 24. One-fifth of all offenders (20%) and restitution order offenders (22%) fell into the next category of 25-30 years old. The percentage of individuals in the older age categories was similar for all offenders and those who received restitution orders in 2007/08.

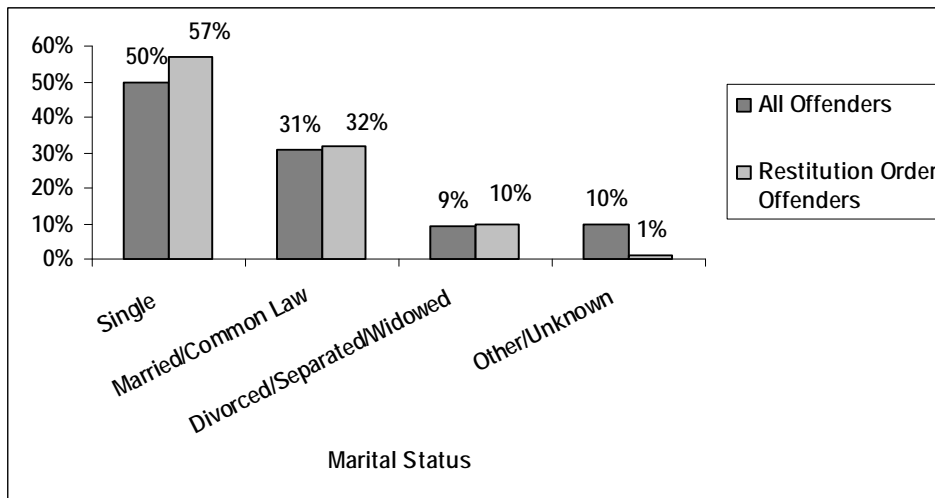
Chart 8: Age of all offenders and restitution order offenders, 2007/08



N all offenders 2007/08=30,000
 n restitution order offenders=856
 Source: CMIS 2007/08

As shown in Chart 9, the majority of all offenders and those who were given restitution orders in 2007/08 were single (50% of all offenders and 57% of offenders who received a restitution order). Almost one-third (31%) of all offenders were married/common law, while 32% of offenders who received a restitution order were considered in this category. A similar proportion of all offenders (9%) and restitution order offenders (10%) were divorced/separated/widowed.

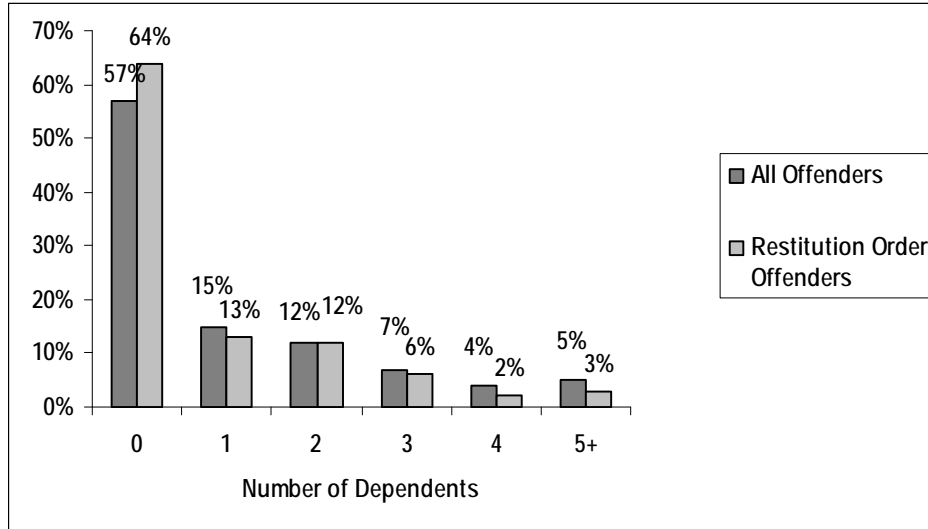
Chart 9: Marital status of all offenders and restitution order offenders, 2007/08



N all offenders 2007/08=30,000
 n restitution order offenders=695
 Source: CMIS 2007/08

As shown in Chart 10, the majority of all offenders (57%) and restitution order offenders (64%) in 2007/08 did not have any dependents, while only 5% of all offenders and 3% of restitution order offenders had five or more dependents.

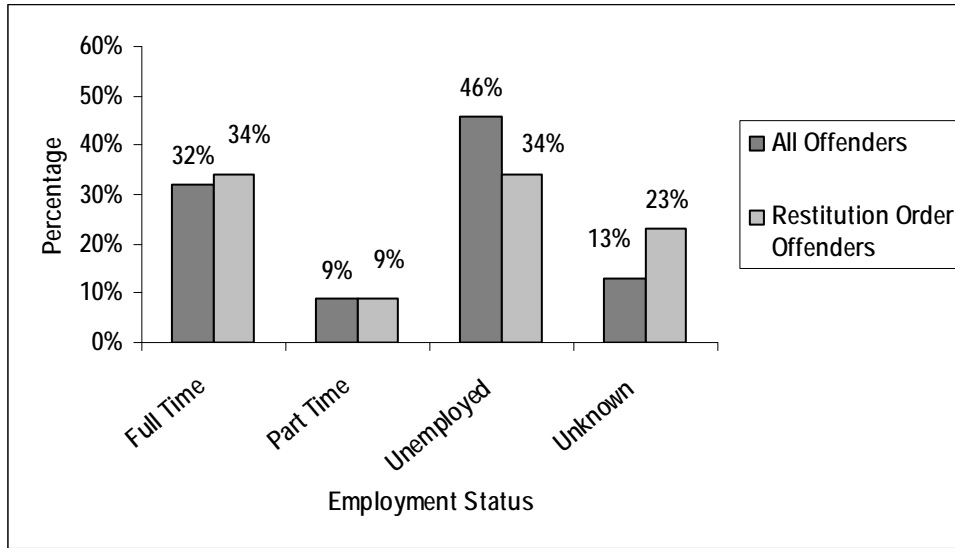
Chart 10: Number of dependents of all offenders and restitution order offenders, 2007/08



N all offenders 2007/08=30,000
n restitution order offenders=856
 Source: CMIS 2007/08

With regard to employment status, almost half (46%) of all offenders in 2007/08 were unemployed, whereas one third (34%) of restitution order offenders were unemployed. This difference may also be due to the large percentage of “Unknowns” for both groups, but in particular for restitution order offenders (23%). Approximately one third of both offenders (32%) and restitution order offenders (34%) were employed full-time. A similar proportion of all offenders and restitution order offenders were employed part-time (9% of all offenders and 9% of restitution order offenders). Given the large “Unknown” for this variable, little more can be said. See Chart 11 below.

Chart 11: Employment status of all offenders and restitution order offenders, 2007/08



N all offenders 2007/08=30,000
n restitution order offenders=856
Source: CMIS 2007/08

This brief comparison of all offenders who entered the provincial correctional system in 2007/08 to those who received restitution orders in the same year clearly illustrates strong similarities in that most were young, single men with no dependents. The only distinction appears to be in the employment status, with 46% of all offenders being unemployed, in contrast to 34% of those were given a restitution order.

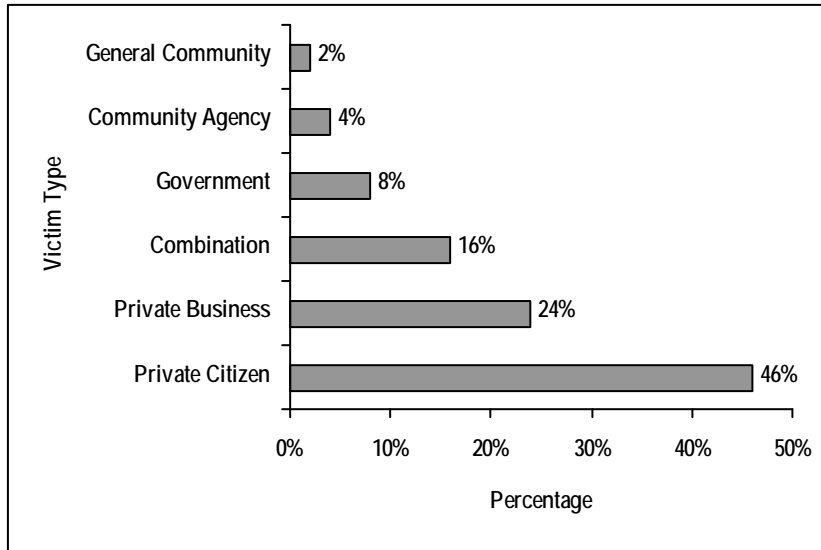
4.4 Types of Victims and Order Information

Research Question: What are the characteristics of the victims?

An additional research question sought to understand the demographics of the victims who received restitution orders. The data available from CMIS for the entire group ($n=6,290$ for 2000/01 to 2007/08) provides information on victim type. Chart 12 illustrates the percentage of the orders that were made to different victim types.

Private citizens are the recipients in almost half (46%) of all the cases, with private business accounting for almost a quarter (24%). The CMIS database does not provide any further detail to determine whether it is a small, medium or large business. A combination of victim types, which might include a private citizen and a business or a government agency and a private business, account for 16% of the cases, with government (8%), non-governmental agencies (4%) and the community in general (2%) all accounting for less than 10 percent each. This is important to note because private citizens, particularly those with few resources, may benefit most from a government focus on the supervision of offenders with probation or a conditional sentence in terms of receiving payments. Large and in some cases, medium private businesses and government tend to have resources such as in-house counsel and collection capabilities to assist them.

Chart 12: Type of victim for restitution orders, 2000/01-2007/08

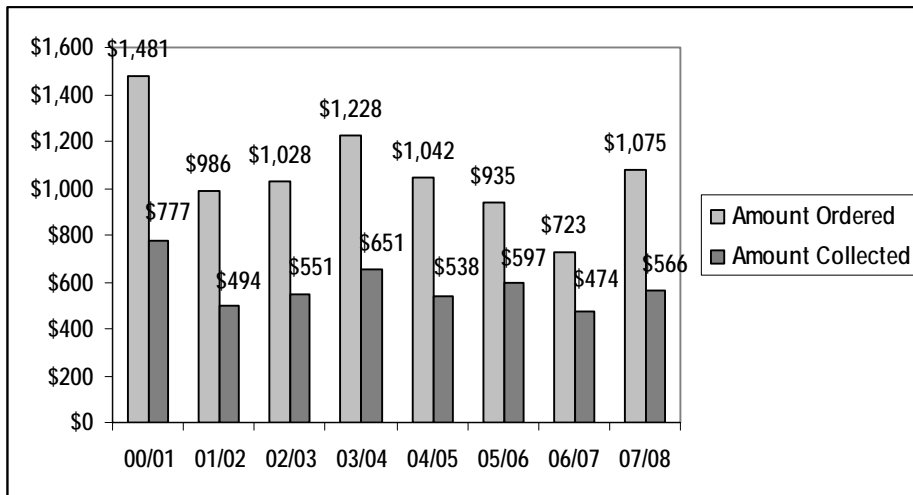


n=4691

Source: CMIS 2000/01-2007/08

Chart 13 shows the average restitution amounts ordered and collected for the fiscal years 2000/01-2007/08. Overall, the average amount ordered for these years was \$1,051. The average amount of restitution collected for these years, according to the data in CMIS is \$573, half of the average amount ordered. It is important to emphasize that, as stated in the data limitations, the amount ordered in any given year does not necessarily coincide with the amount collected. So, an amount collected in the year 2002/03 could have been ordered two or three years earlier, depending upon the payment schedule of the order, the sentence of the offender or the agreed schedule with the probation officer.

Chart 13: Average amount of restitution ordered and collected, 2000/01 to 2007/08



n=6,290

Source: CMIS 2000/01-2007/08

4.5 Factors Related to Payment

Research Question: What factors, if any, are related to the payment of restitution orders? Factors might include offender characteristics (age, employment status, etc.) as well as type of restitution order (stand-alone, attached to probation or a conditional sentence).

A number of bivariate regression analyses were conducted using the CMIS data in order to answer the above question. The authors focused on full payment as this is what matters most to victims according to the findings from victims detailed in the next section²⁹. The following offender demographic variables were examined: age at discharge,³⁰ number of dependents, marital status, employment status, and skill. An additional variable, attendance at an addictions program, was collected from the manual file review and is also analyzed in Section 4.6.

Determining the independent effects of offender demographic variables on the likelihood of full payment

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 victim type and employment status) best predict full payment.

The odds ratio (OR) is a statistic generated by a logistic regression and can be used to assess whether in this study, other things being equal, offenders of a certain age, marital status or whichever variable, are more or less likely to pay restitution in full. An odds ratio near 1.0 indicates that the sub-group's odds of full payment are no more or less than those of the overall group; an odds ratio greater than 1.0 indicates that the sub-group's odds of payment are greater than those of the overall group; and an odds ratio less than 1.0 indicates that the sub-group's odds of full payment are lower than those of the overall group.

Age at discharge

The variable, age at discharge, was coded into 5 categories for this particular analysis: 18-24, 25-30, 31-40, 41-50, and 51+. The overall test demonstrated that age of offender influences payment status, $\chi^2(4, N = 6289) = 48.13, p < .0001$. Offenders are more likely to pay restitution in full when they are 18-24 years old than when they are 25-30 years (OR=1.43), when 41-50 years old than when they are 31-40 years old (OR=1.38) and when they are 51+ than when they are 25-30 years old (OR=1.57). Therefore, there is a general trend in which an offender is more likely to pay

²⁹ Note that the analyses in this section pertain to a dichotomous payment variable in which payment status was categorized into None/Partial and Full. Please see Appendix A for analyses reflecting the three levels of payment status considered separately (None, Partial, Full).

³⁰ "Discharge" is an administrative term that refers to the closing of the case in the database. There are numerous reasons for closing a file. The most common being that the offenders' Term Expired (77%).

their restitution in full when they are older, with the exception of the difference between the age categories of 18-24 and 25-30 years old.

Number of dependents

Number of dependents was also assessed and the overall test showed that the number of dependents an offender has influences payment status, $\chi^2 (10, N = 6289) = 90.06, p < .0001$. Offenders are more likely to pay restitution in full when they have no dependents vs. one dependent (OR=1.40), 1 dependent vs. 2 dependents (OR=1.24) and 0 dependents vs. 2 dependents (OR=1.74). Overall, there is a trend in which an offender is less likely to pay the restitution order in full as the number of his or her dependents increases.

Marital status

A marital status variable was created and included two categories: Married/Common Law and Not Married, which included offenders who were single, divorced, separated, widowed or other. The analysis indicated that marital status influences payment status, $\chi^2 (1, N = 5117) = 6.63, p = .01$, and offenders are more likely to pay their restitution order in full when they are not married than when they are married/common law (OR=1.16). As with dependents, one might hypothesize that family commitments such as children or spouse might impair efforts to pay restitution in full. Of course, separated/divorced individuals might have support payments as well. There was no way to determine these elements.

Employment

Employment was categorized into employed (full-time or part-time) and unemployed. The analysis demonstrated that employment influences payment status, $\chi^2 (1, N = 4963) = 184.08, p < .0001$ and that unemployed offenders are less likely to pay their restitution order in full in comparison to employed offenders, (OR=0.46).

Education

Education level was considered in terms of whether the offender held less than a Grade 12 education, a Grade 12 education or a post-secondary education. This analysis showed that education level also influences payment status, $\chi^2 (2, N = 5032) = 80.91, p < .0001$. An offender is less likely to pay their restitution order in full when they have less than a grade 12 education in comparison to having a grade 12 education (OR=0.63) and a post-secondary education (OR=0.47). An offender is also less likely to pay their restitution order in full when they have a grade 12 education in comparison to having a post-secondary education (OR=0.76).

Skill

The skill of the offender was also considered with regard to likelihood of repaying their restitution order in full. The skill of the offender was broken down into three groups: Skilled (which includes the categories skilled, professional, farmer and auto mechanic), Unskilled (which includes the categories labourer, construction worker, homemaker, and unskilled), and Student/Other (which

includes the categories student and other). This analysis indicated that skill type influences payment status, $\chi^2 (2, N = 4795) = 32.85, p < .0001$. An offender is more likely to pay their restitution order in full when they work in 'skilled' labour in comparison to "unskilled" labour (OR=1.53) and in comparison to being a student/other (OR=1.40). Further, an offender is less likely to pay their restitution order in full when they work in "unskilled" labour in comparison to when they are considered a student/other (OR=0.92).

Victim type

Type of victim was also considered with regard to payment of the restitution. Victim type was grouped into private citizen and "other"³¹ type of victim. The analysis demonstrated that victim type influences payment status, $\chi^2 (1, N = 4691) = 4.37, p = .04$. An offender is more likely to pay their restitution order in full when the victim is a private citizen in comparison to an "other" type of victim (OR=1.13).

These analyses seem to confirm for the most part that full payment is related to certain demographics, including being employed, single, having few dependents, a higher level of education and being considered to work in "skilled" labour.

4.5.1 Multivariate Analysis-Factors Influencing Full Payment

Table 10 presents logistic regression coefficients³² for variables influencing full payment as well as odds-ratio results. For the purpose of this analysis, payment was dichotomized into none/partial payment and full payment. The model predicted full payment better than the null model, $\chi^2 (4, N = 4735) = 259.26, p < .0001$ ³³.

The results of the logistic regression show that the strongest predictor of full payment was employment, meaning that offenders who were employed were more likely to pay their restitution order in full than offenders who were unemployed. Education level was also a significant predictor of full payment: offenders were more likely to pay their restitution order in full when the offenders had at least completed high school in comparison to those who did not complete high school.

Furthermore, individuals with no dependents were more likely to pay their restitution order in full than offenders with one or more dependents. Victim type was also a significant predictor of full payment, in that offenders were more likely to pay their restitution order in full when the victim was considered a private citizen in comparison to an "other" type of victim. These findings are consistent with those found in the previously discussed bivariate analyses.

³¹ Please note that an "other" type of victim includes a private business, community agency, general community, government and combination (which refers to a combination of victim types, including multiple victims, or combination of business and private citizen or government agency).

³² β reflects the number of standard deviation units full payment would change with a change in one standard deviation unit in a variable. Negative values reflect a negative relationship (as one variable increases, full payment decreases) and positive values reflect a positive relationship (as one variable increases, full payment increases). χ^2 reflects the value of the chi-square; the statistical test used to determine the overall fit of the model.

³³ The null model hypothesizes that these variables do not predict full payment, while the proposed model hypothesizes that these variables do predict full payment. The results of the logistic regression show that these variables do in fact predict full payment.

Table 10: Logistic regression for factors influencing full payment, Saskatchewan, 2001/02 to 2007/08

	β	χ^2	Odds Ratio
Education Level (High school)	0.40	41.42	1.50**
Employment	0.72	142.37	2.06**
Victim Type (Private Citizen)	0.16	6.88	1.18*
Dependents (None)	0.36	36.44	1.44**

Source: CMIS

Note: * $p < .001$, ** $p < .0001$

4.5.2 Other Factors

It is also important to understand the qualitative factors related to full payment. This might be described as “the willingness to pay,” which has been noted in the caselaw³⁴ and also by the criminal justice professionals interviewed for this study. Six offenders were interviewed on a variety of topics related to restitution. In order to understand this “willingness,” offenders were first asked, “What is restitution?”

All clearly understood the rationale of restitution and felt fortunate that they received the order, rather than “jail time.” Their words and the tone of their answers clearly indicated a willingness to comply with their orders.

For five of the six offenders interviewed, restitution was seen as something very positive. These comments summarize how they viewed having received restitution as a disposition in their cases:

Restitution is way more fair than jail time. It worked well for me.

It's good because it teaches everyone a lesson.

Because I was totally in the wrong. I'm now on probation and have a conditional sentence order. I'm doing ok. I will be able to make my monthly payments because I am working full time. I did it on my own. No one really helped me, I just started by making the first payment.

Willingness to pay is difficult to operationalize and measure. From the perspective of victims, one would imagine that restitution would usually, if not always be a desired outcome. Yet it might not always be a desired disposition for offenders. It is raised here as a consideration and as always, it is the role of the sentencing judge to balance competing interests and determine the best disposition in each unique case.

³⁴ In *Bullen*, the court wrote that the timing and amount of restitution must not significantly undermine an offender's will or ability to pursue restitution, and those considerations act as an important constraint.

Several of the offenders did note some particular challenges with compliance. For example,

The amount of restitution is high because I just started working.

This particular individual was not complaining about the amount of the restitution, but rather that because she was just recently employed, it took up a significant component of her wages. The comment demonstrates how critical the “ability to pay” is to compliance.

The fact scenarios in the Saskatchewan caselaw,³⁵ three of five which are for breaches of the probation condition of a restitution order, illustrate that ability to pay must be considered when sentencing or there is a likelihood that the accused will return to court on a breach. Or as reflected in the following comment, there are often other serious life issues that can impede one’s best intentions.

The hardest part is for someone who is struggling with budgeting and gambling already—it’s hard to pay back. Especially because I needed a steady job.

Another challenge was the actual logistics of compliance.

It’s tough to physically pay restitution because of my work hours. The court house closes before I can get off work.

One could imagine a number of strategies to address this challenge: one day a week set aside for late hours at the courthouse, making the deposit through a bank with late hours, or working with a Probation Officer to make it as easy as possible for the offender to get the payments in on time.

The role of the criminal justice system in providing some supervision was quite evident. All those interviewed believed that supervision had been an important factor for them.

My probation officer is amazing actually. I’m the type who needs direct comments or orders and she gives them. She works with me to work out how I can make payments.

In one scenario of a break and enter, according to the offender, the victim received her items back and a restitution order was made. This confused the offender who did not understand the rationale for, nor the amount of the order.

I have no idea. Because we gave everything back to the victim. The person we stole from got all her stuff back. Why did all four of us have to pay \$250 each? That’s not fair you know. It makes no sense, she got money for nothing.

Without more information on this particular situation (such as the facts of the case, submissions made at sentencing and the judge’s reasons for the order), we cannot provide any additional

³⁵ *Supra* notes 11-15.

explanations here. We also do not know if an explanation was provided by the Crown prosecutor or defence to the offender and was not understood or was forgotten. This particular individual was, however, confused and somewhat resentful. One can imagine that such negative feelings would not contribute towards rehabilitation or confidence overall in the criminal justice system.

4.5.3 Summary

The quantitative data analyzed thus far show that there are demographic factors that are related to full payment: being employed, single, having few dependents, a higher level of education and being considered to work in “skilled” labour. The qualitative data also illustrates the importance of a good understanding of restitution and the right attitude or the “willingness to pay.” Although this is difficult to quantify, it highlights the need to provide complete information to the judge at sentencing.

4.6 Stand Alone Orders (manual file review)

To understand the factors relating to payment of restitution orders, the type of order was examined: stand-alone, or one where the offender was under the supervision of provincial corrections. There were no court data, nor corrections data on stand-alone orders. As such, the manual file review was intended to provide a picture of a very small sample of these orders. By also examining an additional sample of orders that were part of probation or conditional sentence, we sought to complement the data that were retrieved from the CMIS database.

Thirty-six stand alone orders, 12 from each of the three fiscal years 2005/06, 2006/07 and 2007/08 were randomly selected and examined. As noted above, this number reflects approximately a quarter of the total files reviewed ($n=157$) as stand-alones represent one quarter of all restitution orders. The number of files kept by the Restitution Coordinator varied from year to year.

Offenders given a stand-alone order were convicted of several different offences. The most common offences for which stand-alone offenders were convicted included Mischief (s.430) $n=7$, Breaking and Entering (s.348) $n=6$, Fraud (s.380) $n=6$, Theft (s.344) $n=6$ and Failure to Comply with a Probation Order (s.733) $n=4$.

One third of the cases were from Regina; in addition, there were four other centres represented: Prince Albert ($n=6$), Saskatoon ($n=5$), Estevan ($n=5$) and North Battleford ($n=4$). The average amount of the order was \$5193 with a range from \$15 to \$30,000. Almost all (34/36) of the orders were one time payments. Two had a payment schedule.

Data were available regarding the payment status for one third ($n=12$) of the cases. As Table 11 indicates, offenders who were ordered to make a one-time payment had paid in full in four of the cases, while partial payment was made in one case and no payment was made in five cases. Where a payment schedule was present, one case had been paid in full and one case had partial payment. Given that stand alones are valid for 10 years, this lack of information regarding payment status is not surprising. It is also not known from the file when or how these files came to the Adult Restitution Program. An objective of the Program is for the restitution coordinator to monitor all stand-alone orders, as these will not have any other supervision (e.g. by a probation officer).

Table 11: Type of payment by status of order for stand alone orders, 2005/06-2007/08

	Paid in Full	Partial Payment	No Payment	Total
One-time Payment	4	1	5	10
Payment schedule	1	1	0	2
Total	5	2	5	12

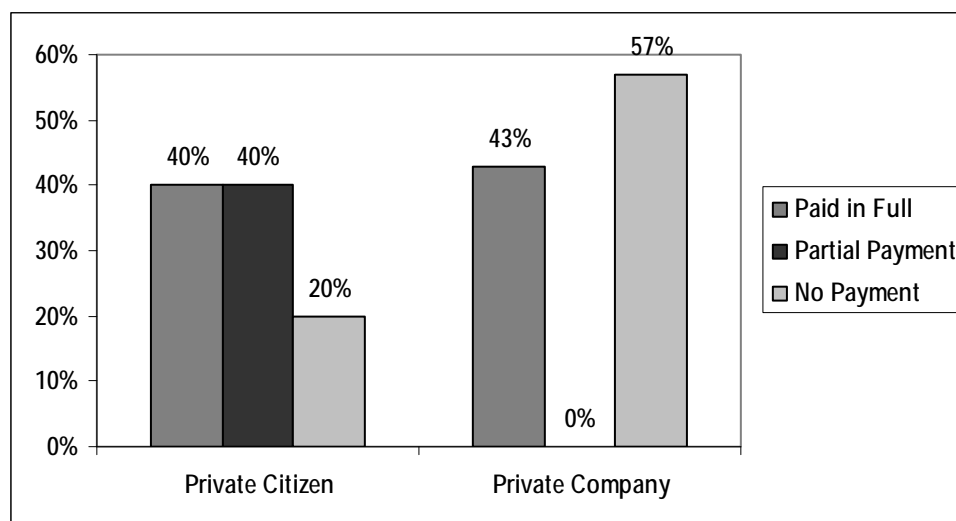
n=12

Source: Saskatchewan Adult Restitution Program files, 2005-2008

The majority of victims for these stand-alone orders (42%) were private citizens, with 36% being private companies and 22% being government. This breakdown of victim type is quite similar to that for the CMIS data.

In looking at the sample of these files for which there was payment status information (*n* = 12), Chart 14 shows that when the victim was a private citizen, 40% of the offenders paid their restitution order in full, 40% partially paid their order, and 20% did not pay. When the victim was a private company, the offender paid the order in full in 43% of the cases, and did not pay in 57% of the cases.

Chart 14: Restitution payment status for private citizens and private companies for stand-alone orders, 2005/06-2007/08



n=12

Source: Saskatchewan Adult Restitution Program files, 2005-2008

The sample is too small to draw any conclusions about payment to private citizens in comparison to private businesses. There is an interesting contrast between the two recipients, however, in that businesses appeared to be paid in full or not at all. Slightly more citizens, on the other hand, seem to be receiving some payment. This manual file review provided the only data on stand-alone orders. While extremely limited, it does highlight what information would be useful in the future. Perhaps most important is the quality of the information that is collected.

Substance Use and Addictions

Interviews with probation officers indicated that restitution competed with other issues for priority in their case management of offenders. They consistently gave the example of addictions (drug, alcohol and gambling) as one issue that would take precedence over ensuring compliance with a restitution order. As a result, an “addictions services” variable was created to reflect offenders who were ordered to attend assessment for addictions services, substance abuse programs and alcohol and drug counselling³⁶. Among the offenders who were given a stand-alone order, one third ($n=12$) of these offenders also had this concurrent addictions order.

As shown in Table 12, two of the men who were ordered to attend addictions treatment paid a partial amount of their order, while one paid their order in full and one did not pay their order.

Table 12: Status of payment by addictions treatment order for offenders with stand-alone ordered, 2005/06-2007/08

	Paid in Full	Partial Payment	No Payment	Total
No Assessment Ordered	4	0	4	8
Assessment Ordered	1	2	1	4
Total	5	2	5	12

$n=12$

Source: Saskatchewan Adult Restitution Program files, 2005-2008

4.7 Orders attached to other dispositions (manual file review)

Analyses were also conducted with regard to offenders who received dispositions other than stand alone orders ($n=121$).³⁷ These dispositions included suspended sentences, conditional discharge, fines, incarceration and other.

Offenders given a disposition other than a stand-alone order were convicted of several different offences. As with those convicted with a stand alone order, the most common offences for which other offenders were convicted included Mischief (s.430) $n=47$, Theft (s. 344) $n=18$, Failure to comply with probation order (s.733.1) $n=7$, Fraud (s.380) $n=6$, Assault (s.266) $n=5$, and Escape (s.145) $n=4$.

In looking at the sample of these files for which there was payment status information with relation to type of victim ($n=103$), Table 13 shows that when the victim was a private citizen, 38 offenders paid their restitution order in full, 3 partially paid their order, 11 had not paid and the offender was in default for 6 of the orders. When the victim was a private company, the offender paid the order in full in 18 of the cases, 6 partially paid their order, 6 had not paid and the offender was in default for 2 of the orders.

³⁶ Along with their current disposition, some offenders were also ordered by the judge to attend assessment for drug and alcohol addictions.

³⁷ These 121 files would also be captured in the provincial corrections database, CMIS.

Table 13: Payment status of restitution orders attached to other dispositions by victim type, 2005/06-2007/08

	Paid in Full	Partial Payment	No Payment	In Default	Other	Total
Private Citizen	38	3	11	6	0	58
Government	3	1	1	0	0	5
Private Company	18	6	6	2	1	33
Non-Profit Organization	0	0	1	0	0	1
Other	5	0	1	0	0	6
Total	64	10	20	8	1	103

n=103

Source: Saskatchewan Adult Restitution Program files, 2005/06-2007/08

Table 14 shows the relation between payment type and the status of the order for offenders. The most common type of order was a one-time payment (48%), followed by a payment schedule (38%). No details were provided for 12% of the offenders and the order was filed through the Court of Queen's Bench for 2% of the offenders.

Among those who were ordered a one-time payment, 59% paid in full, 2% provided a partial payment, and 23% did not pay. Among those who were given a payment schedule, 61% paid in full, while 20% provided a partial payment and 12% did not pay.

Table 14: Type of payment of restitution orders attached to other dispositions by payment status, 2005/06-2007/08

	Paid in Full (% of payment type)	Partial Payment (% of payment type)	No Payment (% of payment type)	In Default (% of payment type)	Other (% of payment type)	Total
One time Payment	30 (59%)	1 (2%)	12 (23%)	8 (16%)	0 (0%)	51
No detail	11 (84%)	1 (8%)	1 (8%)	0 (0%)	0 (0%)	13
Filed through Court of Queen's Bench	0 (0%)	0 (0%)	2 (100%)	0 (0%)	0 (0%)	2
Payment Schedule	25 (61%)	8 (20%)	5 (12%)	2 (5%)	1 (2%)	41
Total	66 (62%)	10 (9%)	20 (19%)	10 (9%)	1 (1%)	107

n=107

Source: Saskatchewan Adult Restitution Program files, 2005/06-2007/08

Substance Use and Addictions

Among the offenders who were given a disposition other than a stand-alone order, one third (*n*=38 or 31%) of these offenders were ordered to attend assessment of addiction treatment or counselling.

Payment status was only available in 12 of these cases. As shown in Table 15, 61% of the men who were ordered to partake in treatment paid their order in full, while 11% partially paid their order and 11% had not paid their order as of summer 2008.

Table 15: Status of Payment of restitution orders attached to other dispositions by addictions treatment order for all other orders, 2005/06-2007/08

	Paid in Full (%)	Partial Payment (%)	No Payment (%)	In Default (%)	Other (%)	Total (%)
No Assessment Ordered	44 (62%)	6 (8%)	16 (23%)	5 (7%)	0 (0%)	71
Assessment Ordered	22 (61%)	4 (11%)	4 (11%)	5 (14%)	1 (3%)	36
Total	66 (62%)	10 (9%)	20 (19%)	10 (9%)	1(1%)	107

n=107

Source: Saskatchewan Adult Restitution Program files, 2005-2008

The manual file review, while limited, illustrates again the importance of complete information. One interesting finding was that there were not huge disparities in payment status between types of payment (one time payment vs. a payment schedule for either stand-alones or other orders), types of victims (citizens vs. businesses for stand-alones), and for those with addictions treatment orders. This may speak to the value of the Adult Restitution Program, and the work of the restitution coordinator in monitoring stand-alone orders and those orders attached to other dispositions where a breach has occurred.

4.8 Summary

The data from the CMIS and the manual files kept by the Restitution Coordinator presented several challenges in terms of developing a clear picture of which offenders receive restitution orders and what factors influence compliance with the order. As evidenced by the preceding analyses, the picture that emerges is piecemeal. We know that the majority of offenders are young, single men, which is the same as for the general, provincial offender population overall. The majority of offences which receive restitution orders are property crimes in Saskatchewan, which is the same in the rest of Canada. The statistical analyses that were conducted reinforced the following:

- offenders who are employed are more likely to pay their restitution orders than those who are not;
- offenders who have fewer dependents are more likely to pay their restitution orders than those who have many;
- unmarried offenders are more likely to pay their restitution orders than married offenders;
- offenders are more likely to pay their orders when they have post-secondary or grade 12 education than when they have less than a grade 12 education; and
- offenders are more likely to pay their orders when they are “skilled” than when they are “unskilled.”

What is evident from the interviews with offenders is that restitution can be a very important aspect of sentencing for offenders. They understand its purpose and it appears to help them accept

responsibility for their actions and make amends. The interviews also highlighted the importance of an offender's ability to pay as a criteria for making the Restitution Order, although this must be balanced with the rights and needs of the victim for restitution.

4.9 Victims' Data

The data presented in this section are from the mail-in questionnaires (one was received on-line) and the 23 interviews that were completed over the telephone with individual victims. Overall, despite some positive stories and successful outcomes, both questionnaires and interviews conveyed fairly negative experiences with the overall criminal justice system. This was due primarily to not receiving full payment of the restitution ordered by the court within the timeframe stipulated.

As noted in the Methodology Section, a total of 50 questionnaires were received, out of a possible sample of 295 private citizens in the four sites in fiscal year 2007/08 who received a restitution order, for a response rate of approximately 17%. While not a high response rate, those who did respond represent a diverse group of individuals. A total of 23 victims volunteered for interviews; 18 volunteered via the questionnaire and the other 5 were recruited through the restitution coordinator.

Demographics

As with the offenders, this research sought to determine the profile of private citizen victims who receive restitution orders. Half of those who responded to the questionnaire were men (52%) and the other half were women (48%). More than four fifths (86%) were over 30 years of age; 43% were between the ages of 31 and 50 and another 43% were older than 51 years. Three quarters of the victims (76%) did not provide their ethno-cultural background. Only 6% self-identified as a member of a visible minority group; 6% identified as First Nations and 2% identified as Métis.

The demographic information of the victims described above is quite consistent with the general demographics of the province of Saskatchewan in 2006. The percentage of males (49%) and females (51%) in the province at this time was almost equal. The median age of the residents of Saskatchewan in 2006 was 38.7 years old, with 81% of the population 30 years or older. The largest difference seen between the victims in this group and the general population of Saskatchewan is seen in ethnographic make-up³⁸; 15% of the population of Saskatchewan identify as Aboriginal, which is much higher than those who responded to the questionnaire. Further, 3.5% of the population of Saskatchewan self-identified as a visible minority in 2006, in comparison to 6% in the questionnaire respondents.

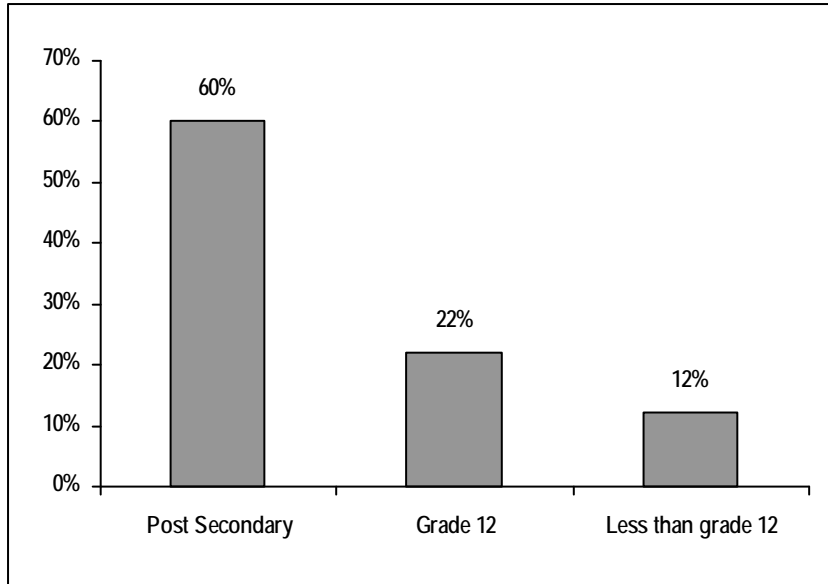
Almost half of the questionnaire respondents (45%) reported being married or in a common law relationship while the rest were either single (29%) or divorced/separated or widowed (25%) ($n=48$). A third (32%) had no children (under 18) living full-time in their home, followed by two children (27%) and one or three children (both at 18%). Only a small proportion had four children (5%) ($n=2$).

It is interesting to note that the level of education of the questionnaire respondents are the exact opposite of those of the offenders (as shown in Chart 15). In this instance, three fifths (60%) of

³⁸ Because of the large % of individuals who did not identify an ethno-cultural background, it is not possible to make comparisons on ethno-cultural identity.

victims had a post secondary education, followed by one fifth (22%) who had a Grade 12 and a smaller proportion (12%) who had less than Grade 12 education.

Chart 15: Education level of Victim Questionnaire respondents, 2008

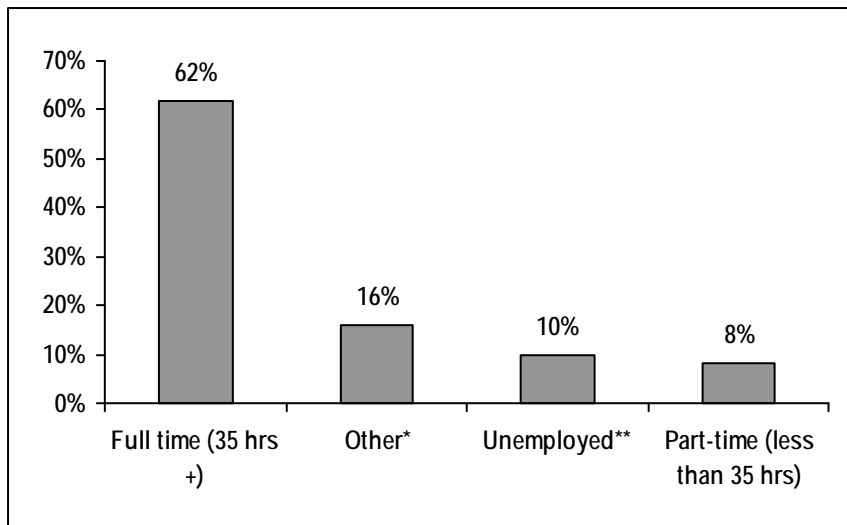


n=47

Source: Department of Justice Canada Victims and Restitution Orders Survey, 2008

Chart 16 shows the employment status of the questionnaire respondents. Three fifths (62%) were employed full-time.

Chart 16: Employment status of Victim Questionnaire respondents, 2008



*Other includes: student, individual at home with children, etc.

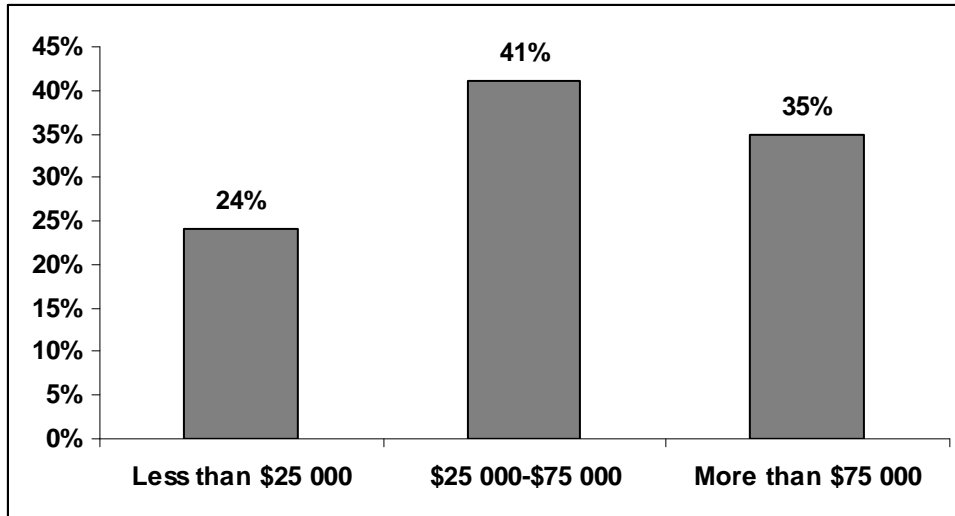
**Unemployed includes: retired individual, individual on unemployment assistance

n=48

Source: Department of Justice Canada Victims and Restitution Orders Survey, 2008

Chart 17 below represents the gross household income as reported by the questionnaire respondents.

Chart 17: Gross household income of Victim Questionnaire respondents, 2008



n=34

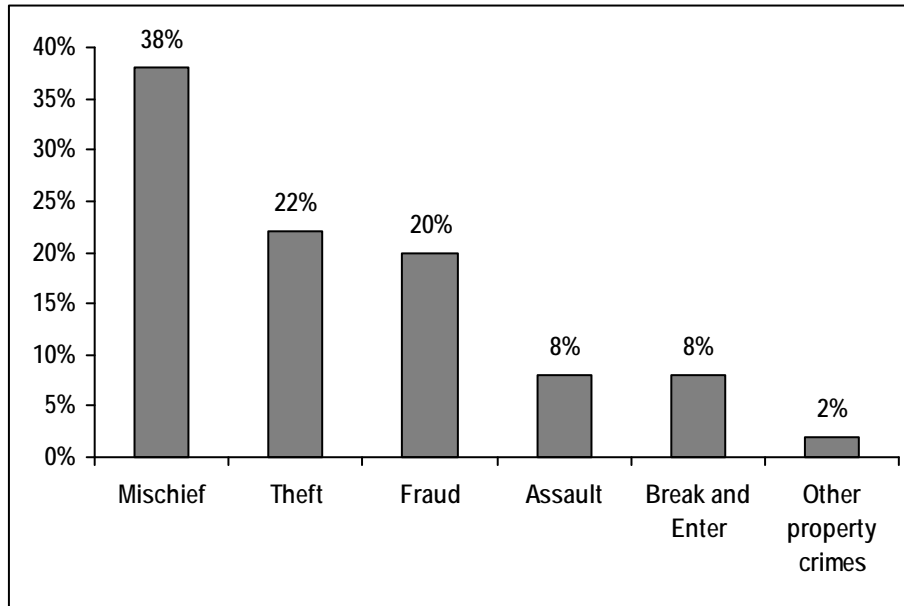
Source: Department of Justice Canada Victims and Restitution Orders Survey, 2008

The victims who responded to the questionnaire were equally men and women. The majority of the respondents were employed (70% full time and part time), almost half were married or common law (45%). Further, the majority of the respondents were older (66% were 31 years and older) and relatively well off financially (76% reporting more than \$25,000 in gross annual income).

In addition to these demographics, respondents were asked to name the offence for which a restitution order was made. Chart 18 shows that mischief was the most common offence (38%), followed by theft (22%) and fraud (20%). Assault and break and enter were named in 8% of cases respectively and other property offences made up the remaining cases (12%). In fraud cases, where the amount of money lost and the amounts ordered were often quite large, respondents may have had very strong opinions that they wanted to express by returning the questionnaire.

Overall, the top three offences which received a restitution order in Saskatchewan in 2006/07 included Mischief (23%), Fraud (22%) and Theft (20%). The percentages of fraud and theft are similar to those reported in the questionnaire sample.

Chart 18: Types of offences for restitution orders as reported by Victim Questionnaire respondents, 2008



n=49

Source: Department of Justice Canada Victims and Restitution Orders Survey, 2008

Length of the process

Respondents were also asked for the date the offence occurred, and the date the court made the order for the offender to pay restitution. On average, the time between these two dates was 546 days or approximately one and a half years. The shortest time recorded was 13 days while the longest was 3,041 days or approximately 9 years.

In the interviews, many victims commented on how long the process was. Given that this time does not include actually receiving a payment, this comment would appear justifiable.

If they deal with things in a better way I think it would work better. They need to deal with matters right up front and in the court on the same day—none of this dragging things out and doing it on different days and stuff. Do the restitution order and the court and sentencing all together so that people can understand what is going on.

A person would hope that the process would work quicker. The problem is the offender keeps getting breaks—too often there is a delay in court and they are given the benefit of the doubt. That is not fair, these punishments are not severe enough.

It was way too long and way too drawn out. You can't get your money quick at all. I have never gotten my apology. I mean woopidy-doo, the second one gets to pay me \$16 a month for the next 18 months.

Order amounts and payment status

According to the questionnaire respondents, the lowest amount ordered was \$24, which was for a break and enter conviction, while the highest amount was \$343,000 which was for a fraud conviction. More than half (54%) of the respondents confirmed they had received some payment (either full or partial) to date, while a little more than a third (38%) had not received anything and 8% of respondents did not know how much they received. It is important to note again that for all respondents, orders were made in the fiscal year 2007/08. At the time of answering the questionnaire, late summer 2008, many of the orders were still in their first year.

Table 16 provides a breakdown of the payment status of restitution according to the questionnaire respondents.

Table 16: Payment status as reported by Victim Questionnaire respondents, 2008

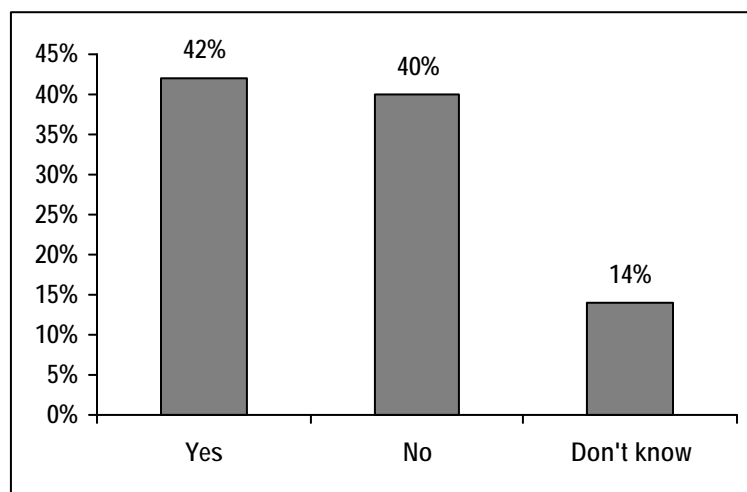
Paid in Full	11 (22%)
Partial Payment	16 (32%)
No Payment	19 (38%)
Did not know	4 (8%)
TOTAL	50 (100%)

n=50

Source: Department of Justice Canada Victims and Restitution Orders Survey, 2008

All questionnaire respondents were also asked whether they expected to receive the total amount ordered. Responses to this question were roughly equal; 42% said yes and 40% said no, with the remainder (14%) saying they did not know or did not answer the question (4%).

Chart 19: Expectation of receiving total restitution by Victim Questionnaire respondents



n=48

Source: Department of Justice Canada Victims and Restitution Orders Survey, 2008

When asked why they thought this, the reasons provided were all related to why they would not receive full payment. For example:

He has no money and is currently in jail.

It has been over 1 year and I have received nothing

I have limited faith in the accused person's ability/willingness to obey the terms of the restitution agreement.

They don't know where she is.

We can suppose that this last individual likely was given a stand-alone order. Without any supervision, the court, nor corrections, has any way in which to keep track of the offender. Tracking the offender is the first step in enforcement of an order. The next reason illustrates several of the challenges of enforcement, which seem to be obvious to this victim.

He is incarcerated for 2 years and I don't see how he could secure a job with his history. In addition, his monies have to be divided amongst 7 or 8 persons.

Overall Impressions of Restitution

We turn now to examine some of the overall impressions victims have about restitution and the criminal justice system overall.

One striking finding from the interviews and questionnaires was that with few exceptions, victims focused on the final result, that is, whether or not they received the full payment in the end. This focus was evident regardless of any help they received along the way, or whether they were positive about the process itself. If they were paid the total amount ordered in the timeframe stipulated by the court, they were more positive about restitution and the criminal justice system overall.

This makes sense as expectations are usually connected to levels of satisfaction. When one receives a letter from the court with an order for restitution and one is told that the court has ordered that the offender must pay a certain amount by a certain time, full payment in that timeframe would be a reasonable expectation.

I think it is headed on the right path, but it has definitely not gone far enough. I think it is a meaningful consequence and it can help out victims as long as these guys pay up, you know.

The focus on results for victims underscores the importance for the court to accurately assess an offender's ability and willingness to pay restitution before sentencing. As evidenced by these positive comments, the final results are what counted for these victims.

Well I'm pretty confident in things. ... Well it's nice to see that things are actually working in the justice system. There's a lot of time involved and paperwork to get things done but it got done in the end and that's what is important. I'm happy, it was good for me.

I phoned because my first payment wasn't made on time. I then had to wait another two months. I did end up getting the full amount so that was good.

On the other hand, these comments illustrate how confidence in the justice system can be eroded by not seeing the expected result, or by not fully understanding what restitution is for.

Generally it's good. I had another restitution order a while back for something else and I got the money. But this one is not good. I'm not too happy with it because I know he won't pay it. It would be nice to find a different way to reimburse victims.

It's pretty bad. I think it is bullshit that I got nothing for three months of missed work. No one told me how to get the money either. I don't think it is meaningful at all because he didn't pay anything. It sure don't help victims, no.

In the case below, this victim received cheques of \$9, \$11, and \$38, and then nothing else. Note the focus is on the “system” – an entire system.

I think that the system is flawed at its core. You can't squeeze money out of these guys that break windows for change. For minor crimes, yes, I think restitution is meaningful and it can be enforced; however, I can't say for me that it's been any good. I'm more irritated by the small cheques than anything.

These sentiments highlight the disjuncture that victims see when an order is imposed and then there is not full compliance.

It made me bitter about the process and the offender. There needs to be stricter policies in making sure that money is going to the victim. In my case there was no follow-up and the sentence was weak. I don't think it was a meaningful sentence for offenders at all. I could see why they do it, but at the same time if they don't enforce it then it is no good.

For one individual who was defrauded \$100,000, this comment, short, but poignant stresses the painful impact that can be inflicted through crimes such as fraud.

It really hurt, and most of all I felt I was really stupid in this.

Feeling “really stupid” is something that is difficult to measure, but it can drain one’s self-confidence in a debilitating way. This victim also talked about “falling into a depression” that she felt was a direct result of the humiliation she felt and the loss of such significant savings.³⁹

The emotional and psychological impact of any crime can be compounded by the response of the justice system (Hill 2007). A response that meets expectations will enable a victim to feel positive about society and the system, while the opposite may also occur (Roberts 2006; Sacco 2006). Many victims expressed frustration and resentment when the expected results – full payment of the restitution order – did not occur. Victims obviously felt “let down” by the lack of compliance and as such, their confidence in the entire justice system was negatively impacted.

Information and Assistance

The victims who responded to the questionnaire received an explanation of the restitution process from different criminal justice professionals such as police, Crown, Victim Services, the Restitution Coordinator, court staff, their own lawyer, as well as family and friends. More than one third (36%) of victims indicated that the police services provided an oral explanation of restitution and three fifths (61%) of these victims indicated that they were very helpful. Table 17 below shows who provided an oral explanation of the restitution process to the victims.

Table 17: Oral explanation of the restitution process to Victim Questionnaire respondents, 2008

Source of oral explanation	Very helpful	Somewhat helpful	Not at all helpful	*Various (neutral or not available)
Police 18/50 (36%)	11/18 (61%)	6/18 (33%)	1/18 (6%)	---
Crown 7/50 (14%)	2/7 (29%)	1/7 (14%)	4/7 (57%)	---
Victims Services 7/50 (14%)	5/7 (71%)	2/7 (29%)	---	---
Restitution Coordinator 5/50 (10%)	4/5 (80%)	1/5 (20%)	---	---
Court Staff 8/50 (16%)	4/8 (50%)	3/8 (38%)	1/8 (12%)	---
Family/Friend 6/50 (12%)	4/6 (66%)	1/6 (17%)	1/6 (17%)	---
Other* 10/50 (20%)	---	1/10 (10%)	---	1/10 (10%)

Source: Q.5, Department of Justice Canada Victims and Restitution Orders Survey, 2008
Respondents could select as many sources as appropriate so totals are more than 100%.

*Other includes: Trustee and lawyers, probation officer, letter, court papers

³⁹ Most research on the psycho-social impacts of victimization is derived from work with victims of personal injury or sexual offences or family members of homicide (see Hill 2007). The General Social Survey on Victimization considers eight crime categories, including different property crimes, but not fraud.

Questionnaire respondents were then asked about receiving a written explanation of restitution and the process. In this scenario, victims responded that court staff provided a written explanation in one fifth of cases (n=10). Four fifths of victims found this explanation very or somewhat helpful (a total of 80%). The same proportion of victims found explanations provided by Victims Services very or somewhat helpful (80%).

Table 18: Written explanation of the restitution process to Victim Questionnaire respondents, 2008

	Very helpful	Somewhat helpful	Not at all helpful	*Various (neutral or not available)
Police 7/50 (14%)	4/7 (58%)	1/7 (14%)	1/7 (14%)	1/7 (14%)
Crown 2/50 (4%)	---	1/2 (50%)	1/2 (50%)	---
Victims Services 5/50 (10%)	2/5 (40%)	2/5 (40%)	1/5 (20%)	---
Restitution Coordinator 5/50 (10%)	1/5 (20%)	3/5 (60%)	1/5 (20%)	---
Court Staff 10/50 (20%)	3/10 (30%)	5/10 (50%)	2/10 (20%)	---
Family/Friend 1/50 (2%)	---	---	1/1 (100%)	---
Other* 3/50 (6%)	1/3 (34%)	1/3 (33%)	1/3 (33%)	---

Source: Q.6, Department of Justice Canada Victims and Restitution Orders Survey, 2008

*For other, nothing specific was indicated.

One tenth of questionnaire respondents added comments on the written information they received:

Full write out of procedure sent to victims... stating their right to follow up, and the actions they may take.

It should be put in easier to understand with less legal jargon that your average person does not understand.

The comments illustrate how important it can be to test all public legal information with the intended audience.

Police were definitely an important source of information and the information was rated as very helpful in a majority of instances. The responses showed that sources of oral and written information were inconsistent for victims of crime with a restitution order.

What came out clearly was that more than half the victims interviewed and surveyed received little, if any assistance from the criminal justice system. It must be noted, however, that as the majority of cases are property crimes or fraud, these individuals would often not receive assistance from victim services. This is because victim services are generally prioritized for personal injury and sexual offences. The restitution coordinator's role is limited to providing information **when contacted by victims** and helping them help themselves.

All victims interviewed noted that they had received a letter from the court with the restitution order.⁴⁰ In the comments below, these individuals only became aware of the restitution order when they received a letter from Saskatchewan Justice about this study.

No one told me anything about getting evidence until the case was over. No one ever told me about the restitution order. I found out about it when I got a letter from you guys. Otherwise before that I never heard about it, I never went to court, nothing. ... Well, OK, I guess the police asked me how much I paid. I gave them a bill of sale and everything.

One has to bear in mind, however, that it is possible that victims did receive letters and the information pamphlets about restitution with the 1-800 number for the Restitution Coordinator and do not remember. Research has shown that trauma has an impact on memory and cognitive functioning (see McDonald 2000; Hill 2007; Miller 2007).

When it comes to help, where do you turn to in a small town? All I had was a 1-800 number where they had no clue who I was or when I was gonna get my money.

The same toll-free number is used for Victims Services, Compensation and the Adult Restitution Program; callers are prompted to select if they are calling or Restitution, Compensation, or the Victims Services general office. The comment demonstrates the need for all agencies involved to communicate.

This victim found out about restitution just because he happened to be in court to watch the case unfold.

I heard about it in court. I was only going to watch and nothing else. I do that you know. I go down and watch the cases. There's nothing else to do in town.

This particular victim saw information about his case as fundamental and had ideas for the government:

I believe I should be informed of what is going on with the process, like who was caught and charged. The Justice Department should give me a password to a computer system where I can take a look at what's going on. I don't

⁴⁰ There were three individuals who, upon receiving the questionnaire and explanatory letter, called either Justice Canada or Saskatchewan Justice. They claimed they knew nothing at all about a restitution order and had never received anything from the court. In at least one instance, it was determined that a letter had not been sent out when the order was imposed.

No, I didn't know when the court cases were or anything. I got something in the mail from Susan McDonald and phoned her up to ask what the survey was all about and she said I was supposed to have received a restitution order and I said I've never received one. Then I phoned the court house and they said they had the original copy and that they never mailed me one. So, I never knew nothing about nothing. They said they'd send me a copy and that was about it. The order was for \$8500.

think they need to spend the money mailing me information on every single court date he has; but if I had a way to look myself as a victim that would be better.

How information is presented appears to be very important as well. Even when police, as the first responders, provided some information, many of those who were interviewed noted that they did not clearly understand. There is no way of knowing whether the information presented was confusing, or whether it was due to the individual not understanding due perhaps to the level of education or literacy or the impact of trauma on learning, or most likely, a combination of all of these factors.

I didn't get any information at all, no. The police mentioned it early on and said he should pay it. I didn't understand it all that well and just kind of ignored it. They didn't say that he'd pay me but that the court would pay me. I didn't really understand what restitution was. I took it as the government would pay me and go after him, but that's obviously not the case. I don't know all the details of it.

The confusion expressed above over who would pay – the offender or the government – is perhaps understandable. There is a Victims Compensation Program in Saskatchewan, but personal property damage is not eligible for compensation.⁴¹ Furthermore, to a victim, it does not really matter who pays, just that he or she is paid, particularly when the court has made an order.

I learned about the restitution order in court. No one ever talked to me about anything. I never got any information or any calls or letter from nobody.

The police didn't tell me much. All they said was something about a surcharge and that I could get money from that because I was a victim. The court told me about restitution at court. During the case they said he was supposed to pay for my deductible because he smashed my car.

Despite the negative tone of these comments, there were many victims who did get information and often some additional assistance. With that assistance comes an expectation of good, professional service; how people are treated during the process is very important to their overall impressions of a process or a system. In the following comment, note how the first individual remembered the “rudeness” of court staff.

They're quite rude to me at QB. I have to go around fighting to get money and the government doesn't help me at all.

I'm not happy with the situation. We got hit'n'miss information with no timeline or helpful information at all. Sending the guy to jail is not good either. It really hasn't helped us in anyway.

⁴¹ See the Saskatchewan Ministry of Justice and Attorney General website at: <http://www.justice.gov.sk.ca/VS-Compensation>

But just as people remember rudeness or getting no help, they also remember and appreciate assistance and courtesy.

Yes, I got help from the police; they were very helpful. And also the prosecuting attorney was very good to me. There wasn't too much trouble, the money is starting to be paid on time.

Yes, I got help from court and the parole officer (sic) was especially nice.⁴²

There were a few cases, in particular personal injury or violent crimes, that did receive assistance and in those cases, the victims received really good, useful help and noted it. The tone of these experiences was quite positive.

Restitution process

Almost all those interviewed found the initial part of the process itself - that is making an application for restitution to the court to be relatively easy and not much of a burden. They provided a bill, or an estimate, of the damages, to the police or another person and that was all that was required.

It was easy, because the probation officer asked how many days of work I missed and they accepted that.

No, I didn't go to court. Like I said I got a letter. I was asked for an estimate and gave them the quote from the body shop. It was pretty easy. I was pleasantly surprised.

This individual found proving her losses difficult.

It is difficult to prove my losses because so much was stolen. Most of it was old stuff that was expensive but that I didn't have receipts for. A lot of running around to the insurance folks was required of me.

Only a few of those interviewed spoke about the civil enforcement option and all discovered challenges.

Because he is in jail it is hard for me to serve a restitution order to him and his bank.

I know that I can go to court—to the QB—and pay more money, and then go to the Sheriff's Office and pay even more money but I think that's a lost cause because I will never see my money. I'll be out even more money than I am already. That's my feeling towards it anyway.

This individual noted other challenges that face victims when trying to enforce restitution orders through the civil courts, such as tracing the offender's location and assets. Similar to this individual,

⁴² This would have been a probation officer, not a parole officer.

there were a small number of other victims who were interested in undertaking the effort necessary to understand the restitution process and their options for enforcement.

I'm finding out that an attempt to see if money has been paid on a restitution order is a big challenge. ... It is very frustrating that QB tells me to go after restitution but I'm not allowed to access the information that I need because of confidentiality laws. A big help.

I did some checking to see what was involved in this eh, and what maybe I could do on my part. I found that there was not much I could do. The only thing was that a bit later I went to the courthouse and I learned that I could go collect from him on my own even after his time frame in probation expires. The Queen's Bench court people helped me out in letting me know how I can go after him in private. I guess I can also register with land claims and take his money or assets and stuff- hey.

This victim expressed frustration with the challenges of civil enforcement:

I should also be able to take a writ of a restitution order into a financial institution and take the money from an offender's account. I need to be able to get their GST credit when it arrives and other assets...

Suggestions

All of those interviewed had suggestions for improvement. This can be seen as very positive in that they want the system to work better for others.

Almost all believed that there should be more consistent, direct assistance for victims who are trying to get information and help with their restitution orders.

When someone gets a restitution order the courts should be more helpful. The government should help on the enforcement side rather than let the victim spend their time and money chasing after the restitution money.

Overall, I'd like to see some sort of fund or helping agency to assist victims minimize the costs of chasing after offenders through civil procedures. It's not fair for victims to lose twice—but they should be given help without the extra costs.

The payments are sporadic and do not seem to be logical. What would be nice would be a statement showing: amount paid to date and amount remaining to be paid.

Good, coordinated communication was seen as a critical element of that assistance.

We need more communication from the restitution coordinator. I need to know how to get hold of people on my own. They need someone to take care of the victims.

Well I think there is definitely a lack of communication over this. It was supposed to be August but now it is October and I still don't have the full amount.

I think there needs to be a better job keeping the victim informed of what is going on instead of leaving us clueless all the time.

I called the restitution office to follow up. ... I tried calling again but it was impossible for me to get a hold of them. It's hard for the general public who works or goes to school to be able to call them because they close when I'm just getting home.

Victims really felt that a work program would make a big difference, not just in terms of paying the restitution order, but in terms of the importance of work in general

They should give him supervised employment in jail so that he can pay me. I guess to be honest it's only really helpful to victims if they get the money. And it really depends on the offender and his attitude if it ends up being a meaningful consequence for him—of course only if he pays.

We need a work-to-pay restitution program, otherwise the victim is not paid and the cycle continues.

These final comments reflect a range of suggestions.

The offender should be made to apologize face to face. That would make it more meaningful. Also, this under age thing has to change. These kids are getting away with way too much and no one is paying for it but the victims.

I think we should find a way to get stolen property returned rather than them just paying for the replacement.

The government should pay me out in full, then go after the criminal (laugh). No that probably wouldn't work but it would be good for me. I'm not sure what to think.

Depending upon the sentencing values of the victim, answers to the question about further comments or suggestions really varied. For example, this victim felt strongly about the need to provide rehabilitation to young offenders, of which restitution would not be her priority.

Well, when I read the order I thought the \$400 should go to the justice system to do something with the man to fix him. He's got no help and is not getting the necessary counseling, support or education he needs to stay out of crime.

4.10 Summary of Victims' Data

Data from the questionnaires and the interviews have provided a rich source of contextual information to understand the experiences and perspectives of victims who had received a restitution order in the fiscal year of 2007/08. There were some positive and many negative experiences and these all provide an opportunity to learn. Officials can benefit from an awareness of the very real impact the system and its players can have on the public's overall confidence in the justice system.

Two key elements stand out from analysis of these data. The first is the importance of victims receiving full payment within the timeframe stipulated. The second is the importance of good, coordinated and timely information and assistance for victims.

4.11 Perspectives from Criminal Justice Professionals

Interviews were also conducted with criminal justice professionals from the four sites: Regina, Saskatoon, Yorkton, and Meadow Lake. Included in the interviews were Crown prosecutors ($n=4$), defence counsel, including both Legal Aid and the private bar ($n=8$), court staff ($n=8$), and program officials from the Saskatchewan government ($n=2$). A larger number of interviews ($n=16$) were conducted with probation officers due to the key role they have in offender supervision and in writing Restitution Assessment Reports (RARs) and Pre-Sentence Reports (PSRs). The data are presented thematically, noting the respondent category, and include: the importance of restitution, understanding restitution, information before the court, stand-alone orders, enforcement, the restitution program, civil enforcement, data management and challenges.

The Importance of Restitution

Through the interviews, we sought to gain a sense of how important restitution is seen and the degree of understanding of the different criminal justice professionals. These elements can affect how restitution plays out in sentencing or as a condition of probation or a conditional sentence.

All those interviewed believed that restitution has an important role in the criminal justice system. Comments from Crown prosecutors highlighted this:

I think it should be one of the top priorities.

I personally feel that I am professionally negligent where I don't bring up restitution in cases where there is room for restitution.

Victims have very few rights in the process. They feel unsatisfied by the criminal justice system. Restitution is one small way to allow them a measure of...uh...satisfaction from the criminal justice system if a restitution order is in place and more so if it is paid. The victim doesn't care how many hours the offender gets they just want to get paid.

Almost all the probation officers acknowledged that restitution is important.

I think it is important in terms of restorative justice. Victims need to know that they have been acknowledged in the court and considered. Offenders need to have that avenue to make restitution back to them. Restitution should always be considered before a fine. I do think that offenders who pay restitution prior to sentencing have a higher rate of success in meeting certain conditions that they are given. It shows a sense of responsibility and that they are taking this seriously.

This officer noted the different perspectives of victims and offenders when it comes to compliance:

It's a priority for the victim. For them to feel like they are valuable and that they are considered in the process, restitution is paramount. However when it comes to the offender it is one of many factors that are supervised on the same level.

Probation officers generally were able to distinguish those offenders who did not demonstrate willingness to pay.

People need financial stability and discussing not just the importance of the restitution to the victim, but helping the offender feel that they can get rid of their own guilt is a good thing. When they don't have remorse, that is when they are going to be a problem.

The officers also acknowledged that restitution is likely not the top priority for them in terms of their case management. There was significant consensus on this and many were frank in noting that in terms of competing priorities, restitution would not win out.

I think that risk management and community safety are number one priorities.

No, it's really at the bottom of the list actually. ... It's kind of a nuisance.

We have an offender who is a cocaine user and meth-head, but unless their addiction issues are dealt with, they will continue to be a problem and have no control over anything. Until we can get that under control it will be difficult to get a meth-head to pay restitution. They won't be concentrating on employment or victim issues.

Understanding

All the criminal justice professionals interviewed had a good understanding of restitution, but their perceptions of how well understood it is amongst victims and offenders varied somewhat. As this defence counsel commented,

I've never really had problems with people understanding why restitution is needed. If anything, the amount of restitution is often difficult. There is sometimes

discrepancy between the victim's quote and what the offender wants to pay. Also, is it replacement value or is it the value of the item that was damaged at the time.

These defence counsel had a different opinion.

I think that there is a fair degree of understanding by offenders. I don't think that victims understand the process though. Not very well anyway.

If victims are not getting the full amount they are owed, they become upset and confused. I do think that offenders get it—they know why they are paying, but the victims don't understand; especially when the offender ends up getting incarcerated. They don't understand why they can't get their money.

Most victims don't understand how long it takes to get restitution. They expect it right away as if the offender has the money. There's quite a misunderstanding between what the judge decides and what victims interpret the judgment to mean.

This assessment of victims' understanding was echoed by two Crown prosecutors.

Most don't understand it all. Most can't understand the concept of inability to pay. They know they've suffered damages and they want someone to pay. ... Victims in many cases don't care who pays—they don't think they should have to pay the deductible just because the accused has the inability to pay.

I think the victim expects more than what is given. For example on car theft or break and enter, victims expect restitution to cover deductibles or increases to insurance premiums or loss of wages to take time off work to fix damages, loss of revenue to close of business. They are expecting larger amounts of restitution than what is ordered. They expect offenders to have ability to pay, or the system to have the ability to collect from individuals who don't have a lot of money.

It is interesting to note that neither Crown commented on his/her role in explaining restitution to the victims. We might well have asked whose responsibility it is to explain restitution to the victims. It is a good question as victims of property crime will often not have access to Victim Services.

Information before the Court

Having information before the Court at the time of sentencing is not always as straightforward as these Crown prosecutors noted,

There's a lot of trouble. The main one is getting the information to the court—that is the responsibility of the Crown to get it to court and the RCMP to get it from victims and to the Crown. Some are helpful and some aren't.

One (challenge) is that the police reports on smaller damage claims like a break and enter or vandalism provide very brief and quick estimates that may not always

be accurate. (sic) Another issue is that at the time of an incident, the victims are upset or scared and just want the police to take the offender away. They put little thought into trying to let the officer know the exact amount of damage caused.

Obviously, the victim, police and Crown prosecutors all must share the responsibility of getting information before the court. But at least one respondent (a court officer), noted that more could be done to raise victim awareness of restitution.

They could be made aware of the fact that the court can order restitution. Lots of victims don't know how they can get money back for the damage an offender causes. In many cases they find out about restitution too late—after sentencing. I think in a lot of cases the victim needs to talk to the prosecutor and provide proof of how much the damage was so that the court can at least consider it.

However, this issue of lack of victim awareness was not noted by others interviewed. What was noted was the lack of a more thorough understanding of restitution and the process and outcomes. This was also evident from the victim data. Again, we raise the question as to whose responsibility it is to assist victims with correct information and expectations of restitution.

In terms of information before the court, this defence counsel noted,

Obviously a lot of it has to do with ability to pay; but if there are no proper invoices or receipts I will challenge it.

The Court can request a Restitution Assessment Report or Pre-Sentence Report. Probation officers would be responsible for preparing assessments of victims' losses and of offenders' ability to pay when required, or in one officer's words:

When preparing Pre-Sentence reports we give information on ability to pay. Then we are asked to fill out Restitution Assessment Reports quite often—this is done before the sentence is given though. Our Pre-Sentence Reports address all criminogenic factors and the Restitution Assessment Report is just on what the victim says their financial losses are and how much money the offender has to pay them back.

Many officers felt that more could be done in terms of assessing ability and willingness to pay.

There needs to be something in place. Sometimes the court issues a Restitution Assessment Report whereby we fill it out and let the judge know their monthly budget and debts. It lets the court know whether restitution is feasible or not. We need to do something to figure out how poor offenders can give back to the victim somehow.

Several probation officers noted the importance of **truly** assessing ability to pay before an order is actually made in each case.

I'd actually like to see assessments done on each person to see if they actually can pay. I get so many calls from victims but these guys have no ability to pay any way.

I think we need to really look more into each offender's scenario and determine their ability and willingness to pay. In lieu of restitution, perhaps employment work or community service could be used to pay back the victim.

There would likely be resource implications if reports were completed for each case where restitution could be ordered, but these might be resources well spent if it improved the likelihood of compliance with less monitoring, and perhaps fewer breaches.

Well, at the risk of creating additional work for probation officers I think that sometimes there are more realistic restitution plans that could be developed with more input used in advance of the restitution orders being made.

From a victim's perspective, more accurate information at the time of sentencing could perhaps lead to orders with a realistic prospect of being paid.

Imposition

The importance of the offender's ability to pay was highlighted by all those interviewed. Indeed, it was seen as the key factor that should be taken into consideration at the time of sentencing. As these Crown prosecutors noted,

You can't order them to pay when they don't have the ability to pay—you're just setting them up for failure. So that's a problem in the system. Then there is no way to compensate the victim.

If it is the Royal Bank that has been defrauded out of a pile of money, I am not as vigilant as I am with cases where, for example a woman gets scammed half the inheritance she got from her mom. Those are the cases you want to make sure you get not just a stand alone order but you get court ordered restitution as well. So to some extent the nature of the victim and the nature of the crime is going to make a difference, but invariably the key component is the ability to pay of the accused.

Another one is the client's ability to pay or their willingness to pay. It is frustrating when unemployed people are accepted as "they can't pay".

Or as this defence counsel noted,

The biggest challenge is simply the fact that in our system the accused generally do not have a great deal of money.

Another defence commented on the positive impact of restitution.

I actually encourage clients to pay restitution—it shows an understanding of behaviour and a willingness to fix it.

This defence, however, cautioned about restitution in situations where there is no ability to pay.

One should never agree to a restitution order if the client cannot pay it back. For example, welfare fraud usually involves cases where the offender will probably never be able to pay it back.

From these comments, it is clear that defence counsel are fully aware that the inability to pay where it is a condition of probation or a conditional sentence will result in a breach and their client will be back in court. This was also clearly recognized by the probation officers who have the advantage of seeing how the restitution orders play out in terms of payment. As this probation officer noted,

I think the restitution program is good in trying to repay victims, however the court needs to look more deeply into the offender's ability to pay. We're setting these people up for failure—they really have no means. Lots of the time I ask, why was this even ordered? He has nothing.

Stand-alone orders (s.738, 739) vs. other orders

In asking respondents whether a stand-alone order or one that is part of another sentence should be imposed, these comments from two Crown prosecutors show a disjuncture between imposition and understanding the challenges of enforcement.

Generally, if restitution is the issue, there is no difference between stand alone orders and those with probation. Now, I will ask for a stand alone order if I think the accused does not have the present means to pay. If they have the present means to pay then I ask to make it part of a probation term.

It is difficult to put a condition in an order for an offender that will not have the ability to pay. I would not put it in a probation order but I would ask for a stand alone restitution order.

This Legal Aid lawyer noted the positive aspect of a stand-alone order for his clients, but in the particular context when it is paid before sentencing or the day of the sentencing hearing.

In stand alone orders I tell clients that if they pay restitution on the day of the court order that really seems to make well. Another thing about a stand alone by itself is that often times a prosecutor will agree to adjourn the sentence—or as part of alternative measures—give them time to pay the restitution before the judge's order. I find that to work very well, probably better than a probation order.

Several probation officers commented directly on stand-alone orders.

I don't think that the pay-to-victim orders are effective. In these cases the victim has to then try to get the money from the offender themselves and that's not fair. I don't think they are effective at all to be honest.

Note that this probation officer is looking at the effectiveness of stand-alone orders from the perspective of victims and how unfair it can be for them when they have to enforce the orders themselves. This unfairness for victims was clearly delineated by the court in the case of *R. v. Bullen*.⁴³

On the issue of compliance, all the court staff were aware of different strategies for ensuring payment of the orders.

We had a judge that would hold off on sentencing until after the restitution was paid. This tended to increase the chances of the offender paying restitution, but I can't give you any statistics on that.

I know sometimes what the judges do if the restitution is requested by the victim what they'll do is ask the person if they can have that money paid in two months or so. They then are asked to bring money to court at sentencing and then they get a discharge or are put on probation instead of going to jail. I think this is a good way of dealing with it because then the court is more involved that way. They say, show us you will pay this restitution and you'll get a lighter sentence.

Enforcement

The ideal factors for full and timely payment were noted by almost every probation officer and include:

- i) Orders that are tied to probation or conditional sentences.
- ii) Orders that require reporting/supervision - One issue that was noted by several different respondents who deal with enforcement was the challenge in locating an offender, when there is no requirement to report to anyone. This challenge is also there for victims who try to enforce the orders in civil court. An address, as well as other personal information is required.
- iii) Orders that are fulfilled through reasonable monthly payments - Offenders may not consider making smaller payments towards their lump sum payment and may not realize they can go to the Court at anytime and start payments. Budgeting skills may be limited with some offenders.

⁴³ *Supra* note 8.

As noted by one probation officer,

I think that restitution (as part of probation or a conditional sentence) is more effective than a pay to victim order (a stand-alone) —especially if they don't know who the victim is. Monthly payments are more likely to set the tone in the offender that restitution must be paid. Each month they face a breach if they don't pay—as such it is always on their mind.

But another probation officer pointed out the challenges with increasing the likelihood of breaches:

There are problems with both of them really. It all depends on the size of the restitution order. When they are larger in size the offenders tend to hold off and attempt to liquidate their assets at the end—that doesn't always work. If they end up being put on a monthly payment plan there is more opportunity for them to get breached and that undermines their ability to pay (because in jail). I guess there are pros and cons for each. With monthly payments they'll more likely pay it off than save up their money. So this may have some advantage.

This probation officer's comments seem to highlight the lack of confidence in the courts.

To me it doesn't seem like the courts expect people to pay when they issue a stand alone order or a community-based sentence. There is no way for the restitution to be enforced.

This Crown prosecutor noted,

We don't have much power over enforcing restitution. The only thing the courts can really do is not sentence an individual until restitution is paid. That to me is the most positive and best way to handle restitution and make sure it is paid. We had a judge that used to do that all the time—I wish we had more judges like that. Across the board though, enforcement of restitution is lacking.

An additional challenge was noted regarding the “pay-to-victim” orders. There were little to no data available about the status of these. What is known is in the files of the restitution coordinator. These are often stand alone orders without community supervision. If the stand alone restitution order is payable through Court, the Clerk of the Court will accept payment. If it is paid through the Court, the payment will be recorded in JAIN. However, where the order directs that payment is to be made directly to the victim, the money will not be accepted by the Clerk and the offender must find a way to pay the victim directly, which is difficult and not victim-friendly. This situation is particularly problematic if there has been any abuse in the relationship between victim and offender, or in a case of criminal harassment.

These probation officers summed up their thoughts on enforcement and compliance:

I can't ensure compliance, I can encourage it and promote it but in the end it is up to the individual to decide whether or not they are going to meet that responsibility.

Essentially it's up to the offender to pay along the way and ask me for help along the process.

As much as I try to enforce it, I really cannot make them pay.

Despite the Restitution Program and the good work of probation officers, it would seem that the ultimate responsibility for payment lies with the offenders. If this does not occur, it is the victims who are responsible for civil enforcement.

The Restitution Program

Research Question: What are the benefits of the current structural organization of the Adult Restitution Program? What challenges remain?

Questions about the Restitution Program were not intended to be evaluative in nature. By asking questions about the Program, the study sought to understand the benefits and the challenges as to how the Program functions in practice for the other players, such as probation officers, and where improvements could be made.

All probation officers interviewed were very positive about the good communication that currently exists and the importance of the Program overall.

I think there is good communication. I think it has been kind of a work in progress certainly because it is very different from what it was when I started working in probation. I think the communication right now in terms of who is doing what has definitely improved. So it's really good actually.

It's really good now because they got someone from probation who has an understanding the nature of the job—so that's good.

In several instances, comments by probation officers about the role of the restitution coordinator were inaccurate and demonstrated a need for additional training and clearer communication about the Adult Restitution Program.⁴⁴

⁴⁴ Below are some examples of the comments that demonstrate an incomplete understanding of the Adult Restitution Program and more particularly, the role of the restitution coordinator:

She's the one who ultimately breaches them and we're just the go-betweens.

They monitor it and we monitor it; and they tell us when there should be a breach and that we need to contact the offender.

A lot of people think that the court or the restitution coordinator will monitor restitution. They don't.

One area of concern was around the centralization of the restitution coordinator in the current structuring of the Restitution Program.

We need to go back to the days when the restitution coordinator was fully responsible for monitoring the orders and enforcing them.

Under the old system we had more communication between the coordinators and probation because there were regional coordinators that were closer to the communities. Overall, I don't think the current system is a good setup. There needs to be more communication between the restitution coordinator and offenders.

This may be a question of resourcing as restitution is now part of probation officers' workload whereas previously it was someone else's responsibility.

Civil Enforcement

Different court staff summarized the situation:

The victims must enforce the orders on their own—usually through QB. This is tough because they have to find out when the offender works and where. The process again is really expensive and dependent upon short windows of time. They must serve the offender and the bank. Most of the time the accused has no money anyway.

What happens is that people who get these orders go register these at QB and get nothing anyway. We've only been notified of 2 or 3 victims that have actually done this.

Overall, enforcement should be made easier for these victims—I don't know how but it needs to be; they're doing it all on their own. That's not right, they're always going to be out some money.

This last comment addresses some of the logistics that could be easily addressed.

I would think that it would be difficult to file in a QB because ours is in Battleford. I would think that that would be a definite barrier and so people wouldn't probably bother doing it.

Data Management

While data management could easily be noted as one of the challenges in the next section, it deserves its own section. Throughout the analysis of the quantitative data from CMIS and JAIN, it was quite obvious that the data available, particularly regarding stand-alones, were inadequate to assist criminal justice professionals in understanding how restitution is working. Court staff and programs officials had the most to say about data management.

Our Restitution Program is now keeping a manual tally of stand-alone orders.

We don't file the restitution orders separately so it is tough to figure out. Once we send them to QB or to the individuals, they go into our general filing system. I don't know if there is a way to track that. If there was numbers you wanted from now on I think we could give it to you, but I don't think we can go back and do it. You'd be better off asking the QB how many restitution orders they have.

We do have a restitution book that shows all the endings to a restitution order, but I don't know if I put a notation in there as to whether it is registered at QB...I don't believe so.

Challenges

Those interviewed were asked about particular challenges. In addition to those that have already been highlighted, defence counsel noted the following:

- *Dividing the restitution order when there are many offenders;*
- *Quantification; and,*
- *Ability to pay—the means of the client.*

At least the first two issues are those which the court would rather leave to the civil courts. The intersection of insurance claims and restitution is also seen with some frequency, as these defence counsel noted:

With vehicles and insurance claims, often the people are only paying the deductible—which is the direct victim part. The court then suggests that if the insurance company wants more they can sue. But the uncertainty as to whether that will happen is troubling. It would be nice to have some policies or guidelines to follow instead of negotiating these things each time.

Recently, the court has been taking notice of deductions on insurance—which I think is incorrect. There should be something in black and white. It should be the cost to the victim, not the crown standing up and saying that the deduction for this type of insurance is blah!

Probation officers also noted these additional challenges:

Offenders tend to take seriously but some say they don't care about the victim because they have their own issues to deal with—like children, addiction issues or groceries. When problems do occur, we can do three things: (1) breach them; (2) revisit the issue and see if the order was realistic; and (3) discuss with the offender what is going on.

Transportation is an issue. We need to get them bus tickets or pick-up points and get these guys to work on a work truck so there are no excuses.

There also remain some communication issues at the courts. As noted by this probation officer,

One thing that has happened is that when the court clerks are taking money, the information number is really important. In a couple of cases, there was an information number on the offender's money order but they applied the money to a fine that was in 2004. So the client says "but I paid the restitution" and here they did but the money went elsewhere.

Suggestions

At the end of the interview, criminal justice professionals were asked if they had any further comments or suggestions for the restitution process in Saskatchewan. Many had additional thoughts.

As this Crown noted,

You know the child maintenance office will actually help single parents collect the maintenance from their ex-partners. We should have something like this for restitution. Maybe they could be a restitution enforcement officer or something. Whether that is feasible I'm not sure, but it may be needed. Victims would definitely benefit from this.

This probation officer supported the idea of community service.

They should also put some hours into community service or something that benefits the community. Some victims would be pleased to see these guys actually doing something good for society instead of out causing more trouble.

I don't know what else can be done. Maybe garnish their wages, but that doesn't mean they're going to continue to work either.

There were numerous respondents – Crown, defence, probation officers, and program staff - who noted the effectiveness of adjourning sentencing until restitution is paid, or ordering payment of the restitution forthwith at sentencing.

The most effective that I have seen is when judges insist that sentencing be adjourned until restitution is paid. When there is no risk of the offender, they are capable of paying it off, and they are trying to avoid a jail sentence, holding off until sentencing until restitution is paid in full is very effective—then it's done.

The second best plan is to make restitution forthright on sentence day. In other words, make the offender pay the restitution upfront on sentencing day. One of the difficulties in enforcing restitution is that without the fear of some sort of retribution, non-payment doesn't seem like a big deal. The court doesn't seize assets from offenders.

I would insist on restitution be made prior to sentencing. Sometimes this is a lengthy process, but this is the best way to ensure that victims get their money. Now if it means that the offender borrows the money, then so be it.

You know some judges will put off sentencing to see if they can go through treatment – Once they pay restitution they get their sentence. This makes things work better, and gets them going, you know.

Either make the monthly payments within 3 to 4 months of the sentencing or have the order paid prior to sentencing—that's the only way it's going to work. You know, a person can't get a loan for a car and make the payments at the end of the loan period; and yet the courts allow offenders to do this to victims all the time.

In terms of effectiveness, the different ideas reflect a different sense as to the main objective of restitution. From a victim's perspective, and for many probation officers, the main objective is to ensure full payment of the order in a timely manner.

4.12 Summary of Interviews with Criminal Justice Professionals

The preceding analysis has set out a number of key areas following restitution from coming before the court through to enforcement, and including programming issues. Overall, there was considerable consistency in terms of identifying the problems and some of the aspects that were working very well across all respondent groups. This was, in and of itself, a striking finding given the different perspectives and interests that the different respondents represented.

For example, there was unanimity amongst Crown, defence, probation officers and even some court staff that adjourning sentencing until restitution is paid, or ordering restitution forthwith at sentencing was, where practicable, an excellent approach. There was also clear unanimity amongst all respondents that the offender's ability to pay had to be the key factor considered at sentencing. Ensuring that the judge had accurate information about the ability to pay was suggested by many as a way to assist the restitution process at all stages. These ideas will be further discussed in the following section.

5. Discussion

5.1 Key Learnings

In Section 4, we presented the findings from the different sources of data. In this final section, we will discuss the key learnings from these data. As noted in the review of empirical social science research in Section 2, Sims (2000) articulates four components of successful restitution programs in the United States. To provide an organizational framework for discussion of these key learnings, we draw upon three of these components and include a fourth that was evident from the data.

Restitution is most successful for victims and offenders when there is/are:

- 1) At imposition, a consideration of offenders' ability and willingness to pay;
- 2) A formal program for the administration of restitution orders;
- 3) Communication among all agencies involved in the ordering and collecting of restitution;
- 4) Different ways to address the information and assistance needs of victims.

These components overlap in many aspects. In the following sections, each of these components will be elaborated upon in terms of how they currently contribute to success for restitution in Saskatchewan and where challenges remain.

5.2 Imposition: Ability and Willingness to Pay and Full Information before the Court

Imposition involves all that must occur up until the judge makes the restitution order at sentencing – from victims knowing about restitution, to getting thorough information before the court to making an appropriate restitution order. As such, there were several key learnings to consider.

First, Crown, defence and probation officers supported the importance of the ability to pay when imposing a restitution order. There were also several victims who noted that if the offender did not have a job, adequate assets such as the means to pay, it was unlikely that they would receive their payments. Caselaw also supports the consideration of an offender's ability to pay as a key factor in the imposition of restitution orders. In 1978, the Supreme Court noted in *R. v. Zelinsky* that:

*... an offender's ability to pay is a key factor when considering the imposition of restitution.*⁴⁵

And in *R. v. Fitzgibbon*, another Supreme Court decision,

⁴⁵ *Supra* note 2

*Further the courts have noted that when the court orders restitution as a term of probation, it must first ensure that the offender may reasonably make the payment during the term of probation as non-payment will result in a breach of the probation order.*⁴⁶

While we were not able to interview judges for this study, in the Multi-Site Study, when judges were asked what factors they consider in imposing a restitution order, 61% stated the offender's ability to pay (PRA 2004). Corrections data clearly supported the operationalization of "ability to pay" wherein those offenders who were employed were more likely to make full payment. The empirical research out of the United States is also clear on this. Davis et al. (1991) found that when the courts considered ability to pay, 71% of offenders were in full compliance, whereas only 55% were in full compliance when this factor was not considered (see Sims 2000, 257).

Second, "willingness" to pay is a more difficult concept to operationalize, but it is closely linked to the restorative element of restitution as a sentencing option. One might well ask, how does one assess "willingness" at the time of sentencing? This "willingness" might be sensed in discussions with defence and presented in submissions or in a pre-sentence report (PSR). Assessing this before imposition could imply that the court should not impose restitution if the offender is not "willing" to pay. Obviously, that would not be good from a victim's perspective. According to the Saskatchewan Restitution Program staff, however, if an offender is not willing to pay, he or she would choose jail time as an alternative – and some do prefer this over paying restitution.

Regarding the Saskatchewan case law on restitution that was reviewed earlier, it is also interesting to note that three of the five cases dealt with breach of probation for non-payment of a restitution order.⁴⁷ From the data provided, we were not able to determine how many offenders are breached for non-payment of a restitution order while on probation or a conditional sentence. It does occur, however, and such breaches result in costs to the justice system, as well as frustrations for the victim. Without consideration being given to the offender's ability and willingness to pay, criminal justice professionals all strongly argued that the system was setting the offender up to fail, and setting the victim up to feeling disappointed and resentful towards a system that promised restitution, but ultimately let them down.

It is clear that "willingness to pay" goes hand in hand with the "ability to pay." It is suggested that greater consideration of this factor is needed by all criminal justice professionals and where possible, full information about "willingness," like "ability" should be clearly communicated to the court.

Third, it is also important to ensure that full information about the restitution being sought is before the court in a timely fashion. Almost all judges (87%) noted in the Multi-Site Study that having a quantifiable amount for the restitution order was a key factor they considered when imposing a restitution order (PRA 2004). From a victim's perspective, there were differing views offered on the importance of victim awareness of restitution. It was evident from the questionnaires and interviews with victims and with the different criminal justice professionals that the police are often the first people who raise restitution with victims, often at the scene of the crime. Many victims vaguely remembered this occurring, but it was also noted that additional and more detailed follow-up would

⁴⁶ *Supra* note 3

⁴⁷ See *supra* notes 11, 14-17

be beneficial – for the victims and for the court at sentencing. We did not ask whose responsibility this should be, rather it is being noted that there appear to be gaps in the information and how it is communicated at this early “imposition” stage of the restitution process. As one victim noted,

No one told me anything about getting evidence until the case was over. No one ever told me about the restitution order. I found out about it when I got a letter from you guys. Otherwise before that I never heard about it, I never went to court, nothing. ... Well, OK, I guess the police asked me how much I paid. I gave them a bill of sale and everything.

Interview data from other criminal justice professionals supported the importance of ensuring the Court has thorough and accurate information about the amount of restitution being claimed, with appropriate documentation. Victims themselves did not find the requirements to provide receipts unduly burdensome, but as one noted on his questionnaire:

Pictures were not at court. Police had to go find them at the last minute after court had started.

So how does the victim get his or her information before the court? And how is the information about the offender’s ability and willingness communicated clearly to the court?

Probation officers noted the importance of the judge having the relevant information before him or her at the time of sentencing, whether through a PSR or the very specific Restitution Assessment Report. It was the probation officers themselves that called for more of these reports to be completed. They clearly saw the time and effort that would go into the preparation of these reports to be beneficial as they could result in greater enforcement and a reduction of breaches.

I’d actually like to see assessments done on each person to see if they actually can pay. I get so many calls from victims but these guys have no ability to pay any way.-

The majority of probation officers interviewed felt strongly that the consistent inclusion of such a report would only assist at sentencing. Implications from a resource perspective (e.g. time required to complete one or the potential delay in sentencing) were not analyzed.

As such, the study findings support the following two suggestions:

- ✓ **Additional and more detailed follow-up information and assistance would be hugely beneficial – for the victims and for the court at sentencing.**
- ✓ **The use of Pre-Sentence Reports or Restitution Assessment Reports would provide additional clarity and information on the offenders’ ability and willingness to pay.**

5.3 A Formal Program for the Administration of Restitution Orders

Saskatchewan has had an Adult Restitution Program since 1975. Other jurisdictions in Canada have not had formal programs, although they may have implemented particular measures to assist victims and/or offenders over the years. The Adult Restitution Program currently consists of a full-time Restitution Coordinator and full-time administration support. Three key points about the program surfaced from the data:

First of all, criminal justice players (primarily probation officers and court staff) indicate that the program is playing an important role in making restitution work better in the province. What surfaced was a lack of understanding about the role and responsibilities of the Restitution Coordinator⁴⁸.

Second, when victims received assistance from the Restitution Coordinator, they were very positive about the help; the Adult Restitution Program has limited staff and resources and as such, is not able to contact all victims. From the perspectives of other criminal justice players (Crown, defence, court staff), many respondents noted that having an individual dedicated to responding to concerns about restitution is valuable symbolically (ie. the government is making a statement that restitution is a priority) and because of the work that is completed. Probation officers, in contrast, must often deal with competing priorities for their clients.

Probation officers were honest and frank in acknowledging that in a list of competing priorities such as different addictions or risk, restitution will not be a top priority. As these officers noted,

Restitution is not really a priority. I think that risk management and community safety are number one priorities.

No, it's really at the bottom of the list actually. ... It's kind of a nuisance.

Galaway (1988) found a key element of compliance was the willingness of staff to monitor restitution as diligently as they did other matters. The penalty for non-payment, or the “stick,” appears to play an important role as well. Research in the United States showed that the threat of incarceration for non-payment was one of the most significant factors related to full payment of monetary penalties (Lurigio and Davis 1990; Weisburd et al. 2008). This research suggests that good enforcement is very important. The findings from this research indicate that probation officers may not give restitution top priority, particularly where there are competing issues. This is where the Adult Restitution Program, and the possible Restitution Civil Enforcement Program can work to ensure that enforcement remains a priority.

The third key point from the findings around the formal program was that there was considerable consistency in terms of identifying the problems (e.g. no data on stand-alones) and some of the aspects that were working very well across all respondent groups. For example, many of those interviewed noted the limitations in the data management tools. The JAIN and CMIS report the total ordered restitution amounts in a given period, and the total payments received in that same period. This will include, however, payments on orders that were made prior to that time period, resulting in

⁴⁸ This will be discussed further in section 5.4 on Communication.

an inaccurate report on the overall rate of payment. In addition, the systems show the total amount ordered, including stand-alone orders which are payable directly to victims. Payments made directly to victims cannot be tracked and therefore are not included in the payment totals. This results in an artificially low payment rate. Finally, the systems are unable to track payment of stand-alone orders. Since April 1, 2008, the Restitution Coordinator has been tracking all stand-alone orders. There were numerous suggestions as to how to improve the tracking of all orders through both data systems and simple wording changes to the actual orders.

Importantly, there is a strong willingness to continue to make improvements in how the system operates overall. Program and court staff clearly articulated simple changes such as those for imposition in the previous section. For example, if stand alone orders were payable to the Clerk of the Court, rather than directly to the victim, money transactions could occur through Court, establishing a more accurate tracking system and increased avenues for enforcement by the Restitution Coordinator. More importantly, victim information would be kept at the Court level, preventing the need for any direct contact between offender and victim.

Improvements in this area alone will assist those working in restitution in general to have a better understanding of what is working and what is not. Small, but strategic and consistent changes can make a significant difference in enforcement.

In terms of suggestions for next steps, the following can be noted:

- ✓ **Develop and maintain appropriate data tracking tools.**
- ✓ **Ensure willingness of probation staff to monitor restitution as diligently as they do other matters through increased awareness of impact of non-payment on victims.**
- ✓ **Ensure consistent and strategic approaches to enforcement throughout the province; learn from best practices in terms of strategic approaches.**

In particular, the following specific suggestions at imposition could be easily implemented:

- i) Where restitution is ordered without a condition to report to a Probation Officer, include a standard condition to report to the Restitution Coordinator. This would assist the Restitution Coordinator in locating offenders, as their contact information is frequently incomplete or out-of-date.
- ii) Include a payment schedule on orders, instead of lump sum payments due towards the end of the order. This was one suggestion that was unanimous amongst all respondents.
- iii) Consider all options prior to issuing only a stand-alone restitution order under s.738 and s.739. This would help address the issue that offenders may not be in a position to pay full restitution within a community-based sentence; however, designating a portion to be paid during community supervision (e.g. a nominal amount of \$20 per month) and the remaining portion under a separate s.738 and s.739 order could lead to greater likelihood for the offender to continue with the structured payment pattern

- after community supervision has ended. This would be applicable to both probation supervised and restitution-only orders.
- iv) Examine an offender's ability to pay through a Restitution Assessment Report (RAR). Where there is a question as to the offender's ability to pay, a RAR can be requested from probations staff. The question can also be explored through a Pre-Sentence Report.
 - v) Where there is a consideration to issue only a stand-alone order under s. 738 and s.739, it is preferable to have the order payable through the Clerk of the Court.

5.4 Communication amongst All Agencies

Following on the theme of the previous section, it is important to note that the Adult Restitution Program's success is also dependent upon strong communication and consistent approaches to enforcement throughout the province. Any system is only as strong as its parts and in that, probation officers and court staff all have roles to play.

Sims (2000) found in her review of empirical research that strong communication amongst all the players was absolutely critical. The lack of good communication ultimately had a very negative impact on victims. "This breakdown in communication often leads to poor service to victims" (Sims 2000, 253).

There were two prominent examples where improved communication amongst the various players could make a difference in outcomes. For example, court staff noted some basic gaps whereby an offender could make a restitution payment that might get applied to a fine by mistake. This issue obviously is not unique to that particular court centre in Saskatchewan for as Sims noted, "This lack of adequate communication creates a host of management problems, including funds that are collected but never distributed to victims" (2000, 255).

Another example is from the interviews with probation officers. Some comments from officers indicated the need for additional training and enhanced communication around roles and responsibilities of the Restitution Coordinator. Communication is an issue highlighted throughout this report- for those within the justice system, as well as victims trying to access information about payment status. It is hoped that this research will, at the very least, raise awareness that a commitment to strong communication is necessary for all those who contribute to making the system work.

When we think about the participation and commitment of all key players, we must consider that everyone is a key player: police, Crown, victims, victim services, judges, probation officers, and of course offenders. And the key players and their roles are interrelated. To this end, a mapping exercise that lays out roles and responsibilities might be useful to provide clarity and enhance communication. Such an exercise would also go a long way towards ensuring fair procedures for both victims and offenders.

In addition, simple strategies such as making it as easy as possible to make payments such as having the court open late one day a week or providing transportation or bus tickets for offenders to get to work. Many of the victims interviewed spoke about the need for offenders to have access to work programs. In theory, such ideas sound appealing, but such complex strategies to maximize collection

are extremely costly to set up and run. A cost-benefit analysis would certainly be required given the low dollar value of the restitution orders themselves before any further consideration of such approaches.

As such, the following suggested next steps can be noted:

- ✓ **A mapping exercise that lays out roles and responsibilities would provide clarity and enhance communication amongst all agencies and stakeholders.**
- ✓ **Site visits by the Adult Restitution Program to courts and probation offices are an ideal mechanism for formal training, as well as providing informal opportunities for all agencies/stakeholders to ask questions and learn about how different locations operate.**

5.5 Addressing Information and Assistance Needs of Victims

Victims were asked, on both the questionnaire and in the interview, about how, when and from whom they learned about restitution. The results show that more could be done to provide victims with appropriate and timely information and assistance at different points of entry in the criminal justice system.

For example, victims repeatedly noted problems that resulted in them not understanding what was happening, particularly around the payment of the order. The following quotations from victims aptly illustrates some of their frustrations:

Better communication with the victims. I feel extremely ripped off.

Explain please! I didn't understand the impact of filing an insurance claim.

To talk with someone that knows it

When it comes to help, where do you turn to in a small town? All I had was a 1-800 number where they had no clue who I was or when I was gonna get my money.

I believe I should be informed of what is going on with the process, like who was caught and charged. The Justice Department should give me a password to a computer system where I can take a look at what's going on. I don't think they need to spend the money mailing me information on every single court date he has; but if I had a way to look myself as a victim that would be better.

It is important to note again that victims who received specific help from Victims Services or the Restitution Coordinator were very positive about this help and the difference that it made. The police have a key role to play in terms of raising awareness of restitution, but other players such as Crown prosecutors, court staff and Victim Services (when involved) also have roles to play. Additional

materials and resources need to be developed for victims, keeping in mind the impact of trauma on learning. Expectations are also linked to public confidence in the justice system.

This component was perhaps the clearest area of need for victims of crime. While seemingly simple, appropriate information and assistance for victims can be quite complex given the different demographics (literacy, language, access to the Internet, etc) and different needs of victims. Due to the nature of the offences, victims who receive a restitution order are frequently not proactively offered personal assistance from Victim Services in the province (however, this assistance would generally be available to these victims upon request). This is also true in many parts of Canada. Given that, it would be worth the effort to provide well-tested and thorough materials and assess what levels of assistance could be made available.

Victims indicated that they need information throughout the system – at the time of the offence, at sentencing, during probation, and afterwards for civil enforcement. They need information about their personal case, but they also need information about restitution in general and to really be able to understand the legislation and what restitution can provide and what it cannot. While restitution may improve feelings in citizens about the quality of the justice system in their country (Geiss 1977, 162), the reverse could also be said to be true. It was quite evident from the victim data that if they were not paid in full, within the promised timeframe, many victims held quite negative perceptions of the justice system overall. Empirical research in the United States found that delayed and partial payments are not of sufficient value to victims to justify restitution programs (Sims 2000, 256). As such, it is absolutely critical that victims have a full understanding of restitution and that their expectations are realistic. Appropriate information and assistance can go a long way towards achieving these objectives.

An example of one simple strategy would be having access to a person by telephone after regular work hours. Other ideas that would have broader resource implications could include having a victim-dedicated restitution coordinator or working with law schools to set up a restitution assistance program as part of a student legal clinic. One victim actually asked for an on-line resource similar to that which is currently being tested in British Columbia – www.victiminfo.ca – where a victim can access updated information about his or her case with a secure password provided by the Crown.

Of importance, the Saskatchewan Ministry of Justice and Attorney General is exploring the feasibility of establishing a Restitution Civil Enforcement Program (RCEP). This program would assist victims in collecting restitution in cases where the restitution order does not include any supervision requirement, or when the offender has failed to pay restitution within the timeframe of a community-based sentence. This program would be established within the Fine Collection Branch.

Under a RCEP model, victims would be able to voluntarily register their restitution orders and receive assistance from Collections Officers to effect collection. Once registered with the program, the Collection Officers would take steps to register the Orders with the Court of Queen's Bench, investigate the offender's ability to pay, and effect collection through various methods including collection letters, garnishment of wages and bank accounts, and seizure of personal property. The Collection Officers would engage the services of the Court of Queen's Bench Sheriff Offices in situations where service of documents and seizure of personal property are necessary and/or contract fee bailiffs for assistance.

Changes to Saskatchewan's *Summary Offence Procedures Act (SOPA)*, to help collect monies for victims, were passed in May 2009. The changes to *SOPA* include:

- The ability for victims to register restitution orders with the Fine Collection Branch;
- Improved mechanisms for tracing offenders that owe restitution to victims; and
- The ability to report unpaid restitution to credit bureaus, which will impact the offender's credit rating.

Because this program would utilize an already existing program through the Fine Collection Branch, there are numerous cost savings. This represents a realistic possibility for improved assistance for victims. If the project comes to fruition, it will be important that a comprehensive evaluation is undertaken to ensure that all jurisdictions can benefit from what is learned.

In summary, it is important to recognize that information and assistance both play important roles to ensure that victim expectations are realistic and that those victims, who wish to, are able to participate fully in the justice system. Four key areas can be identified from the study findings where greater information and assistance would make a difference for victims:

- i) Raising awareness to foster understanding of restitution at different stages of the criminal justice system through targeted information and education;
- ii) Providing more assistance with making an application for restitution;
- iii) Timely up-dates and information on payment status; and
- iv) More assistance with collection through the civil courts.

The following are the suggested next steps in order to address the information and assistance needs for victims:

- ✓ **Through research and evaluation, provide well-tested and thorough materials and assess what levels of assistance could be made available.**
- ✓ **Examine possibilities to adapt the now developed pilot project in BC, www.victiminfo.ca, which utilizes a secure, private site for victims to access information about their own case, as well as provide information on the criminal justice system on a public site through reading, audio and video. See the link for information on restitution - <http://www.victiminfo.ca/en/about-court/going-to-trial/how-trial-will-proceed/sentencing/restitution>.**
- ✓ **It is important that a comprehensive evaluation of new programs, such as the RCEP, is undertaken to ensure that all jurisdictions can benefit from the learnings.**

5.6 In Conclusion

This study collected data from multiple sources in an effort to better understand the application of restitution orders as part of the sentencing process, including their impact on the system, victims and offenders. Key learnings were identified in the following four areas:

- 1) At imposition, a consideration of offenders' ability and willingness to pay;
- 2) A formal program for the administration of restitution orders;
- 3) Communication among all agencies involved in the ordering and collecting of restitution;
- 4) Different ways to address the information and assistance needs of victims.

If any programming changes are implemented, they should be accompanied by rigorous evaluation. It must also be emphasized that in order to undertake such evaluation, there is a need for improved data tracking mechanisms. These are warranted in any case in order to better monitor the different types of restitution orders and payments. In addition, new and practical insights about minimizing further harm for victims of crime from thoughtful evaluations of theoretically and empirically informed programs are most needed.

There are a number of research questions that were not answered by this exploratory study, due to data limitations or because the scope of the study did not include the issues. Some examples of these questions include:

- 1) To what extent is restitution a part of the alternative measures process?
- 2) How often do offenders breach on probation or conditional sentences for non-payment of restitution orders?
- 3) What legal information and assistance on restitution would respond best to victims with different needs (for example, literacy and language challenges, disabilities, or different learning needs)?
- 4) What combination of supervision, support and penalties works best for adult offenders to ensure compliance with restitution orders?

The last research question in particular, would require an experimental research study, similar to that undertaken in New Jersey by Weisburd et al. (2008). Such undertakings are complicated and lengthy, but ultimately may provide the best evaluation of programs.

In terms of final thoughts, it is hoped that further research and understanding of promising practices will ultimately assist victims in the area of restitution. When restitution works, it can be a positive outcome for both offender and victim. In the words of this Legal Aid counsel,

I think it is one of the best aspects of the justice system; that offenders are given a chance to do restitution. ... It has a positive effect on people ... It helps them realize that "I cost this person that money", and now it is costing themselves that. They realize that victims are people too. I don't think jail or probation has an impact on offenders like restitution does.

References

- Canadian Institutes of Health Research, Natural Sciences and Engineering Research Council of Canada, Social Sciences and Humanities Research Council of Canada. 1998. *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*. With 2000, 2002, and 2005 amendments. Accessed March 13, 2009 at: <http://pre.ethics.gc.ca/english/policystatement/policystatement.cfm>
- Davis, R., B. Smith and S. Hillenbrand. 1991. Increasing Offender Compliance with Restitution Orders. *Judicature* 74(5): 245-248.
- Frank, L. 1992. The Collection of Restitution: An Often Overlooked Service to Crime Victims. *St. John's Journal of Legal Commentary* 8(Fall):107-134.
- Galaway, B. 1988. Community Corrections: Its Presumed Characteristics and an Argument for a New Approach. In David Duffee and E. McGarrell (eds). *Community Corrections: A Community Field Approach* (pp.1-37) Cincinnati, OH: Anderson Publishing.
- Geis, G. 1977. Restitution by Criminal Offenders: A Summary and Overview. In J. Hudson and B. Galaway (eds.) *Restitution in Criminal Justice*. Lexington: D.C. Heath.
- Hildebrand, S. 1990. Restitution and Victim Rights in the 1980s. In Lurigio, A., W. Skogan and R. Davis (eds.) *Victims of Crime: Problems, Politics and Programs* (pp180-204). Newbury Park, CA: Sage.
- Hill, J. 2007. *Victim's Response to Trauma and Implications for Interventions: A Selected Review and Synthesis of the Literature*. Ottawa: Department of Justice.
- Jenkins, A. 2006. Shame, Realization and Restitution: The Ethics of Restorative Practice. *Australian and New Zealand Journal of Family Therapy* 27(3): 153-162.
- Karmen, A. 1995. *Crime Victims: An Introduction to Victimology*. 3rd edition. New York: Wadsworth Publishing Company.
- Lurigio, A., and Davis, R. C. 1990. Does a Threatening Letter Increase Compliance with Restitution Orders? : A Field Experiment. *Crime & Delinquency* 36(4): 537-548.
- Martell Consulting Services. 2002. *Report on Restitution in Nova Scotia*. Unpublished report for the Department of Justice: Ottawa.
- McDonald, S. 2002. Learning About the Law. *The Canadian Journal for Studies in Adult Education* 16 (2): 73-94.
- Miller, K. 2007. *Empowering Victims through the Use of Victim Impact Statements in Cases of Sexual Assault in Nova Scotia*. Policy Centre for Victim Issues, Department of Justice Canada.
- Ministry of the Attorney General. 2007. A History of Criminal Prosecution in Ontario. Accessed August 26, 2008 at: <http://www.attorneygeneral.jus.gov.on.ca/english/news/2007/20070824-150th-bg.asp>
- Prairie Research Associates. 2004. *Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada*. Ottawa: Department of Justice.

- Roberts, J.V. 2005. Measuring Public Confidence in the Criminal Justice System. A paper prepared for the Department of Justice.
- Ruback, R. B., and Shaffer, J. N. 2005. The Role of Victim-Related Factors in Victim Restitution: A Multi-Method Analysis of Restitution in Pennsylvania. *Law and Human Behavior* 29(6): 657-681.
- Sacco, V. 2005. Public Confidence in the Criminal Justice System. Paper prepared for the Department of Justice.
- Sims, B. 2000. Victim Restitution: A Review of the Literature. *The Justice Professional* 13(3): 247-269.
- Smith, H. P. 2006. Violent Crime and Victim Compensation: Implications for Social Justice. *Violence and Victims* 21(3): 307-322.
- Statistics Canada. Crime Statistics. *The Daily*. July 17, 2008. Accessed on September 15, 2008 at: <http://www.statcan.ca/Daily/English/080717/d080717b.htm>
- Weisburd, D., T. Einat, and M. Kowalski. 2008. The Miracle of the Cells: An Experimental Study of Interventions to Increase Payment of Court-Ordered Financial Obligations. *Criminology & Public Policy* 7(1): 9-36.
- Young, A. 2008. The Rise and Fall of Victims' Rights. Paper submitted to the Department of Justice.
- Young, A. *The Role of the Victim in the Criminal Process: A Literature Review - 1989 to 1999*. Department of Justice: Ottawa.

Appendix A

Methodological Note

This methodological note explains the two forms of regression analyses that were conducted in this study: bivariate regression analyses to determine how the specific variables predict payment of restitution orders and ordinal logistic regression analysis to determine the variables that form a model of best fit.

Bivariate analyses

Bivariate regression analyses were run to determine the specific factors that may predict an offender's restitution payment. Restitution payment was categorized into none, partial and full in these analyses. The following predictor variables were examined: age at discharge, number of dependents, marital status, employment, education, victim type and skill. The appendix below highlights the findings of each analyses and provides frequency tables for further clarification.

Age at discharge

Age at discharge was coded into 5 categories for the purpose of this particular analysis: 18-24, 25-30, 31-40, 41-50, and 51+. The overall test demonstrated that age category influences payment status, $\chi^2(4, N = 6289) = 52.55, p < .0001$.

Offenders are more likely to pay restitution in full when 18-24 years vs. 25-30 years ($\chi^2 = 25.58, p < .0001$) and when 41-50 years old vs. 31-40 years old ($\chi^2 = 13.51, p = .0002$).

Table 1: Age of offender by payment status

Count Total % Col % Row %	None	Partial	Full	Total
18-24	706 11.23 36.49 28.40	381 6.06 36.29 15.33	1399 22.25 42.34 56.28	2486 39.53
25-30	501 7.97 25.89 34.79	258 4.10 24.57 17.92	681 10.83 20.61 47.29	1440 22.90
31-40	483 7.68 24.96 34.43	243 3.86 23.14 17.32	677 10.76 20.49 48.25	1403 22.31
41-50	198 3.15 10.23 27.65	114 1.81 10.86 15.92	404 6.42 12.23 56.42	716 11.38

Count Total % Col % Row %	None	Partial	Full	Total
51+	47 0.75 2.43 19.26	54 0.86 5.14 22.13	143 2.27 4.33 58.61	244 3.88
Total	1935 30.77	1050 16.70	3304 52.54	6289

Source: Canadian Centre for Justice Statistics

/Missing=1

Age at discharge categorized into 18-30, 31-50 and 51+.

Age at discharge was further categorized into 18-30, 31-50 and 51+ years. Again, the overall test demonstrated that age influences payment status, $\chi^2(2, N = 6289) = 5.91, p = .05$.

Offenders are more likely to pay the restitution in full when they are 51+ vs. 18-30 years old ($\chi^2 = 6.47, p = .01$) and when they are 51+ vs. 31-50 ($\chi^2 = 9.23, p = .02$).

Table 2: Age of offender by payment status

Count Total % Col % Row %	None	Partial	Full	Total
18-30	1207 19.19 62.38 30.74	639 10.16 60.86 16.28	2080 33.07 62.95 52.98	3926 62.43
31-50	681 10.83 35.19 32.14	357 5.68 34.00 16.85	1081 17.19 32.72 51.01	2119 33.69
51+	47 0.75 2.43 19.26	54 0.86 5.14 22.13	143 2.27 4.33 58.61	244 3.88
Total	1935 30.77	1050 16.70	3304 52.54	6289

Source: Canadian Centre for Justice Statistics

/Missing=1

Number of dependents

Number of dependents was also assessed and the overall test showed that the number of dependents an offender has influences payment status, $\chi^2(10, N = 6289) = 77.99, p < .0001$.

Offenders are more likely to pay restitution in full when they have no dependents vs. one dependent ($\chi^2 = 23.19, p < .0001$). The general trend is that an offender less likely to pay in full as the number of dependents increases.

Table 3: Number of dependents by payment status

Count Total % Col % Row %	None	Partial	Full	Total
0	1078 17.14 55.71 27.91	586 9.32 55.81 15.17	2198 34.95 66.53 56.91	3862 61.41
1	310 4.93 16.02 35.15	144 2.29 13.71 16.33	428 6.81 12.95 48.53	882 14.02
2	266 4.23 13.75 35.42	161 2.56 15.33 21.44	324 5.15 9.81 43.14	751 11.94
3	144 2.29 7.44 33.41	80 1.27 7.62 18.56	207 3.29 6.27 48.03	431 6.85
4	73 1.16 3.77 34.93	48 0.76 4.57 22.97	88 1.40 2.66 42.11	209 3.32
5	37 0.59 1.91 43.02	18 0.29 1.71 20.93	31 0.49 0.94 36.05	86 1.37
6	13 0.21 0.67 37.14	5 0.08 0.48 14.29	17 0.27 0.51 48.57	35 0.56
7	5 0.08 0.26 50.00	1 0.02 0.10 10.00	4 0.06 0.12 40.00	10 0.16
8	2 0.03 0.10 22.22	5 0.08 0.48 55.56	2 0.03 0.06 22.22	9 0.14
9	2 0.03 0.10 66.67	0 0.00 0.00 0.00	1 0.02 0.03 33.33	3 0.05
10	5 0.08 0.26 45.45	2 0.03 0.19 18.18	4 0.06 0.12 36.36	11 0.17
Total	1935 30.77	1050 16.70	3304 52.54	6289

Source: Canadian Centre for Justice Statistics
/Missing=1

Marital Status

The marital status of the offender was also explored. Here, marital status was categorized into Married/Common law and Not Married (single, divorced, separated, widowed, and other). The analysis indicated that marital status influences payment status and offenders more likely to pay when unmarried/single than when they are married/common law, $\chi^2(1, N = 5117) = 4.13, p = .04$.

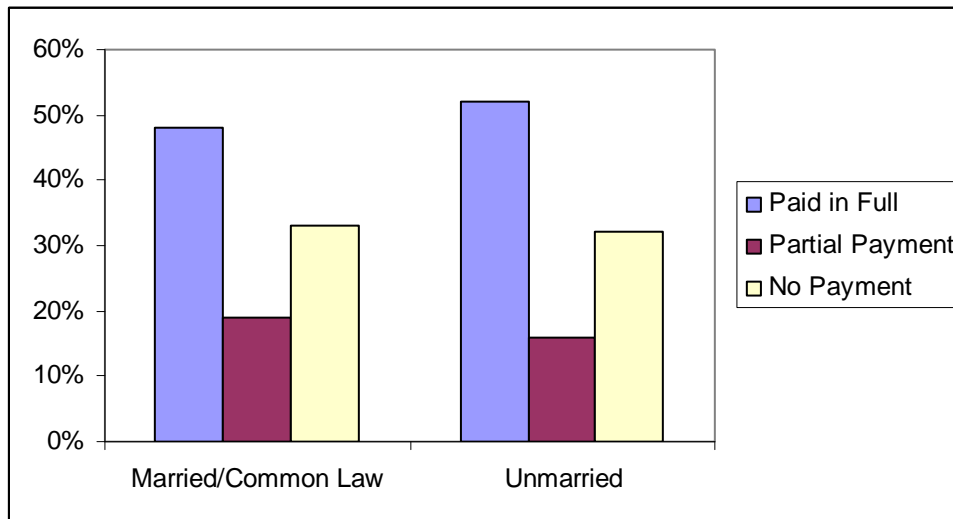
Table 4: Marital status by payment status

Count Total % Col % Row %	None	Partial	Full	Total
Married/Common Law	576 11.26 34.85 33.10	331 6.47 37.36 19.02	833 16.28 32.31 47.87	1740 34.00
Not married	1077 21.05 65.15 31.89	555 10.85 62.64 16.43	1745 34.10 67.69 51.67	3377 66.00
Total	1653 32.30	886 17.31	2578 50.38	5117

Source: Canadian Centre for Justice Statistics
N/Missing=1173

As shown in the graph below, 52% of unmarried offenders paid their restitution order in full in comparison to 48% of married/common law offenders.

Figure 1: Percentage of payment status by offender marital status



Source: Canadian Centre for Justice Statistics
n=5117

Marital status was also categorized into Married/Common Law, Single, Divorced/Separated and Widowed/Other. The analysis indicated that when marital status is coded into these four categories, there were no differences between all of the groups in the full model ($\chi^2 = 4.49$, $p = 0.21$). However, when analyzed separately, an offender who was single was more likely to make a full payment than an offender who was married/common law ($\chi^2 = 4.26$, $p = 0.039$).

Table 5: Marital status by payment status

Count Total % Col % Row %	None	Partial	Full	Total
Married/Common Law	576 11.26 34.85 33.10	331 6.47 37.36 19.02	833 16.28 32.31 47.87	1740 34.00
Single	913 17.84 55.23 31.96	460 8.99 51.92 16.10	1484 29.00 57.56 51.94	2857 55.83
Divorced/Separated	159 3.11 9.62 31.67	92 1.80 10.38 18.33	251 4.91 9.74 50.00	502 9.81
Widowed/Other	5 0.10 0.30 27.78	3 0.06 0.34 16.67	10 0.20 0.39 55.56	18 0.35
Total	1653 32.30	886 17.31	2578 50.38	5117

Source: Canadian Centre for Justice Statistics
N/Missing=1173

Employment

Employment was categorized into employed (full-time or part-time) and unemployed. The analysis demonstrated that employment also influences payment status ($\chi^2 = 200.84$, $p < .0001$) and that employed offenders are more likely to make a full payment versus those who are unemployed.

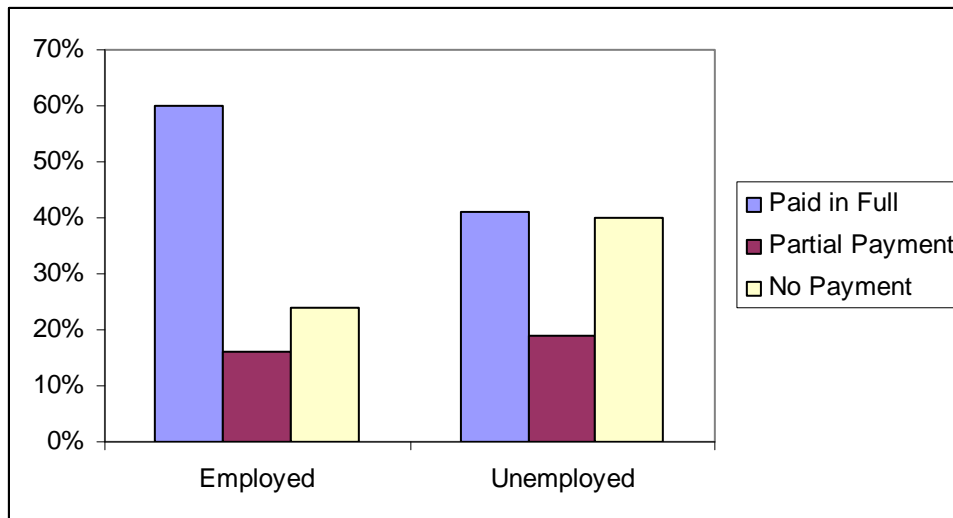
Table 6: Employment status by payment status

Count Total % Col % Row %	None	Partial	Full	
Unemployed	893 17.99 57.80 40.15	418 8.42 49.06 18.79	913 18.40 35.58 41.05	2224 44.81
Employed	652 13.14 42.20 23.80	434 8.74 50.94 15.85	1653 33.31 64.42 60.35	2739 55.19
Total	1545 31.13	852 17.17	2566 51.70	4963

Source: Canadian Centre for Justice Statistics
N/Missing=1327

As shown in the graph below, 60 % of employed offenders paid their restitution order in full in comparison to 41% of unemployed offenders.

Figure 2: Percentage of payment status by offender marital status



Source: Canadian Centre for Justice Statistics
n=4963

Education

The offender's level of education was explored and categorized into 3 categories: Less than Grade 12, Grade 12, Post-Secondary. The analysis indicated that an offender's level of education influences payment status ($\chi^2 = 90.78, p < .0001$).

An offender is more likely to pay the restitution order in full when they have a post-secondary education vs. a grade 12 education ($\chi^2 = 7.12, p = .008$) and less than a grade 12 education ($\chi^2 = 46.18, p < .0001$). Further, an offender is more likely to pay their

restitution in full when they have a grade 12 education vs. less than a grade 12 education ($\chi^2 = 56.37, p < .0001$)

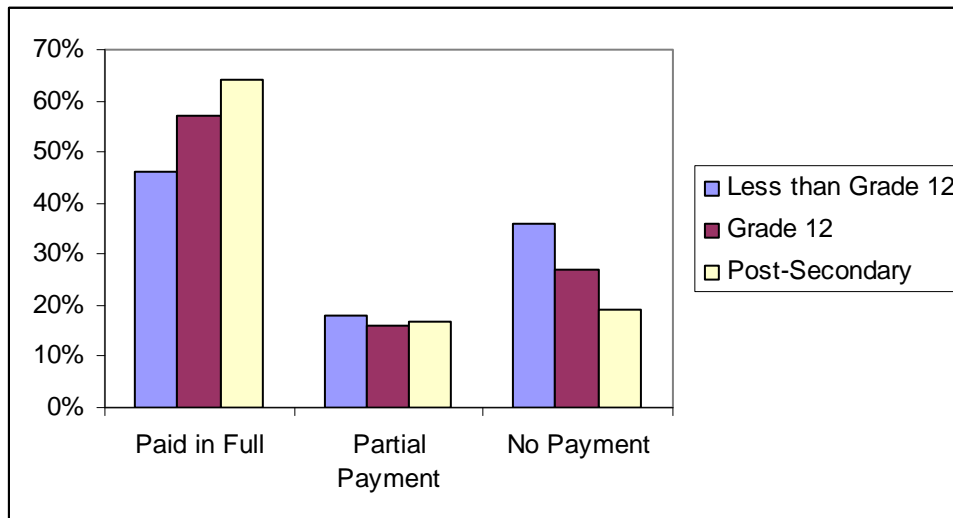
Table 7: Education level by payment status

Count Total % Col % Row %	None	Partial	Full	None
Less than Grade 12	1150 22.85 70.64 36.39	575 11.43 65.19 18.20	1435 28.52 56.90 45.41	3160 62.80
Grade 12	409 8.13 25.12 26.98	246 4.89 27.89 16.23	861 17.11 34.14 56.79	1516 30.13
Post-Secondary	69 1.37 4.24 19.38	61 1.21 6.92 17.13	226 4.49 8.96 63.48	356 7.07
Total	1628 32.35	882 17.53	2522 50.12	5032

Source: Canadian Centre for Justice Statistics
N Missing=1248

As shown in the graph below, 45% of offenders with less than a grade 12 education paid their restitution order in full in comparison to 57% of offenders with a grade 12 education and 63% with a post-secondary education.

Figure 3: Percentage of payment status by offender education level



Source: Canadian Centre for Justice Statistics
n=5032

Victim Type

When victim type is analysed with all victim categories included (private citizen, private business, community agency, general community, government and combination⁴⁹), the analysis demonstrated that victim type influences payment status ($\chi^2 = 16.76, p = .005$).

An offender is more likely to pay their restitution order in full when the victim is a private citizen ($\chi^2 = 7.52, p = .007$), a private business ($\chi^2 = 6.32, p = .01$) and a government agency ($\chi^2 = 8.59, p = .0034$) than when the victim is a combination of victims.

Table 8: Victim type by payment status

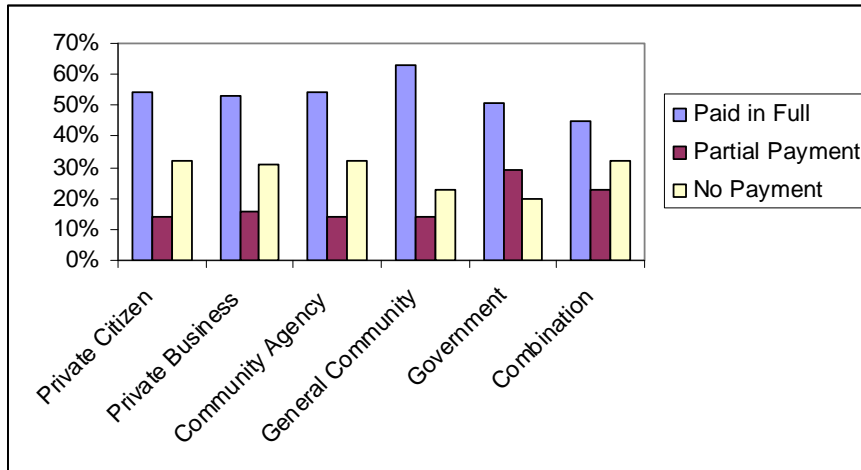
Count Total % Col % Row %	None	Partial	Full	Total
Private Citizen	705 15.03 48.65 32.43	297 6.33 37.59 13.66	1172 24.98 47.80 53.91	2174 46.34
Private Business	342 7.29 23.60 31.03	173 3.69 21.90 15.70	587 12.51 23.94 53.27	1102 23.49
Community Agency	54 1.15 3.73 32.14	24 0.51 3.04 14.29	90 1.92 3.67 53.57	168 3.58
General Community	25 0.53 1.73 23.36	15 0.32 1.90 14.02	67 1.43 2.73 62.62	107 2.28
Government	74 1.58 5.11 19.79	108 2.30 13.67 28.88	192 4.09 7.83 51.34	374 7.97
Combination	249 5.31 17.18 32.51	173 3.69 21.90 22.58	344 7.33 14.03 44.91	766 16.33
Total	1449 30.89	790 16.84	2452 52.27	4691

Source: Canadian Centre for Justice Statistics
/Missing=1599

⁴⁹ Note that combination refers to a combination of victim types, including multiple victims, or combination of business and private citizen or government agency.

As shown in the graph below, when the victim was a private citizen, 54% of the offenders paid their restitution order in full, 14% partially paid their restitution order, and 32% did not pay. When the victim was a private business, the offender paid the order in full in 53% of the cases, 16% partially paid their order, and 31% did not pay. When the victim was a government agency, 51% paid the order in full, 29% partially paid the order and 20% did not pay their order.

Figure 4: Percentage of payment status by victim type



Source: Canadian Centre for Justice Statistics
n=4691

Victim type was further categorized into private citizen vs. 'other'. When victim type was categorized in this way, there were no significant differences found

Table 9: Victim type by payment status

Count	None	Partial	Full	
Total %				
Col %				
Row %				
Private Citizen	705	297	1172	2174
	15.03	6.33	24.98	46.34
	48.65	37.59	47.80	
	32.43	13.66	53.91	
Other	744	493	1280	2517
	15.86	10.51	27.29	53.66
	51.35	62.41	52.20	
	29.56	19.59	50.85	
	1449	790	2452	4691
	30.89	16.84	52.27	

Source: Canadian Centre for Justice Statistics
N/Missing=1599

Skill

Skill was coded into three categories: Skilled (included the categories Skilled, Professional, Farmer, Auto Mechanic, Carpenter, Electrician, Teacher and Plumber), Unskilled (included the categories labourer, construction worker, homemaker, and

unskilled), and Student/Other (included the categories student and other). This analysis indicated that skill type influences payment status, $\chi^2 (5, N = 6290) = 38.62, p < .0001$.

An offender is more likely to pay the restitution order in full when they are skilled vs. unskilled ($\chi^2 = 24.23, p < .0001$), when they are considered 'other' vs. skilled ($\chi^2 = 26.63, p < .0001$) and other vs. unskilled ($\chi^2 = 24.23, p < .0001$).

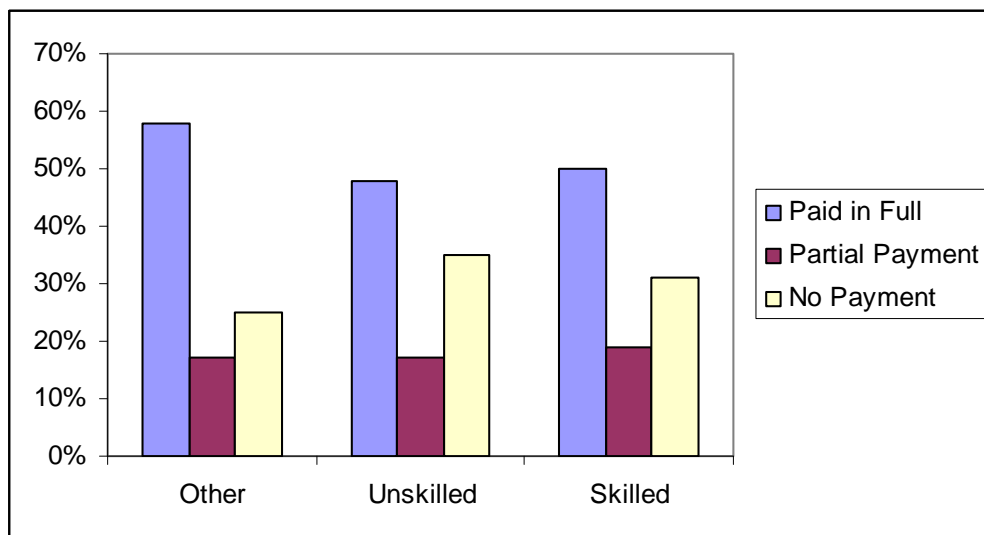
Table 10: Skill type by payment status

Count Total % Col % Row %	None	Partial	Full	None
other	246 5.13 15.95 25.10	162 3.38 19.33 16.53	572 11.93 23.69 58.37	980 20.44
unskilled	1048 21.86 67.96 34.83	521 10.87 62.17 17.31	1440 30.03 59.63 47.86	3009 62.75
skilled	248 5.17 16.08 30.77	155 3.23 18.50 19.23	403 8.40 16.69 50.00	806 16.81
Total	1542 32.16	838 17.48	2415 50.36	4795

Source: Canadian Centre for Justice Statistics
/Missing=1495

As shown in the graph below, 58% of "other" offender paid their restitution order in full in comparison to 48% of unskilled offenders and 50% of skilled offenders.

Figure 5: Percentage of payment status by skill



Source: Canadian Centre for Justice Statistics
n=4795

Multivariate Analysis-Factors Influencing Full Payment

Table 11 presents logistic regression coefficients for variables influencing full payment as well as odds-ratio results. For the purpose of this analysis, payment was dichotomized into none/partial payment and full payment. The model predicted full payment better than the null model, $\chi^2(4, N=4735) = 259.26, p < .0001$.

The results of the logistic regression show that the strongest predictor of full payment was employment, meaning that offenders who were employed were more likely to pay their restitution order in full than offenders who were unemployed. Education level was also a significant predictor of full payment: offenders were more likely to pay their restitution order in full when the offenders had at least completed high school in comparison to those who did not complete high school.

Furthermore, individuals with no dependents were more likely to pay their restitution order in full than offenders with one or more dependents. Victim type was also a significant predictor of full payment, in that offenders were more likely to pay their restitution order in full when the victim was considered a private citizen in comparison to an “other” type of victim. These findings are consistent with those found in the previously discussed bivariate analyses, with the exception of the non-significant difference with regard to full payment between private citizen and ‘other’ victim in the bivariate analysis⁵⁰.

Table 11: Logistic Regression for Factors Influencing Full Payment

	β	χ^2	Odds Ratio
Education Level (High school)	0.40	41.42	1.50**
Employment	0.72	142.37	2.06**
Victim Type (Private Citizen)	0.16	6.88	1.18*
Dependents (None)	0.36	36.44	1.44**

Source: Canadian Centre for Justice Statistics

Note: * $p < .001$, ** $p < .0001$

⁵⁰ Note that this is likely a function of collapsing the variables in the logistic regression, providing greater power to detect differences between the groups.

Appendix B

Interview Guide for Crown/Defence– Restitution and 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?

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-alone?
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 are 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?

Interview Guide for Offenders –

Restitution

1. What is a restitution order?
2. For which offence(s) was restitution ordered in your case?
3. Why do you think you were ordered to pay restitution?
4. What are the challenges of fulfilling this order in the time allotted?
5. How have you been assisted in complying with this order by your probation officer or by the Restitution Coordinator?
6. What more could be done to assist you?

These next questions are basic demographics. This information will not be presented in a way that could ever identify you in the research report. You do not have to answer any question you do not wish to.

5. Are you?

Male ☐
Female ☐

6. What is your date of birth _____ (yy-mm-dd)

7. What is your postal code? -

9. What is the language you speak most often at home?

9. Are you an Aboriginal person?

1) Yes ☐
2) No ☐
3) Unknown ☐

10. What is your employment status?

1) Employed ☐
1) Full-time (35 hours+) ☐
2) Part-time (34 hours or less) ☐
2) Unemployed ☐
3) Unknown ☐

11. What is the highest level of education that you have achieved?

- | | |
|--|--------------------------|
| 1) Some high school or less | <input type="checkbox"/> |
| 2) High school graduate | <input type="checkbox"/> |
| 3) Some post-secondary (college or university) | <input type="checkbox"/> |
| 4) Community or technical college graduate | <input type="checkbox"/> |
| 5) Trades apprenticeship | <input type="checkbox"/> |
| 6) Bachelors degree | <input type="checkbox"/> |
| 7) Graduate or professional degree | <input type="checkbox"/> |
| 8) Unknown | <input type="checkbox"/> |

12. What is your current marital status?

- | | |
|--------------------------|--------------------------|
| 1) Single | <input type="checkbox"/> |
| 2) Common-law or married | <input type="checkbox"/> |
| 3) Separated | <input type="checkbox"/> |
| 4) Divorced | <input type="checkbox"/> |
| 5) Widowed | <input type="checkbox"/> |
| 6) Unknown | <input type="checkbox"/> |

13. How many children under 18 are currently living full-time in the household? _____

14. Approximately, how much money does everyone in your house make combined before taxes? _____

15. Do you have any other comments about restitution?

Interview Guide for Victims

We would like to know more about your experience with the restitution process. By “restitution process”, we mean everything in the criminal and civil justice systems relating to restitution – from learning about restitution as a possibility in your case, to the court case, to actually receiving the money from the offender.

- 1) How did you first learn about restitution? (Victim Services, police, Crown, friends, family, other victims?)
- 2) What were the challenges for you in collecting “evidence” of your costs?
- 3) Did you attend court at any time? How did you learn that a restitution order had been made in this case?
- 4) What did you do when you learned about the restitution order?
- 5) Were you able to find information and assistance? Who/what helped you, if anyone? (Restitution Coordinator, Victim Services, probation officer, friends, information packages, my own lawyer, etc) What were/are your challenges in having the restitution order enforced?
- 6) Have you received any of the money owed to you? How much, if any, is still owed to you? Do you think you will receive this money?
- 7) How do you feel about restitution in light of your experiences? Is it a meaningful consequence for offenders? Does it assist victims?
- 8) How could the restitution process in Saskatchewan better meet your needs?

Appendix C

Restitution in Saskatchewan

Information Letter for Victims of Crime - Questionnaire

August 2008

(Sask Justice VS letterhead)

Dear Sir/Madame:

The Saskatchewan Ministry of Justice and Attorney General and the Research and Statistics Division of Justice Canada are working together on a research project to better understand how restitution is working in Saskatchewan. The results will be used to make improvements to the restitution process by identifying what is working well and what is not.

As part of this project, we are asking victims who received a restitution order between April 1, 2007 and March 31, 2008 to complete the enclosed questionnaire. It will take about 15 minutes of your time. Your responses will help us to better understand the needs of victims of crime in cases where restitution has been ordered by the Courts.

Please return the questionnaire to Justice Canada in the enclosed self-addressed envelope no later than September 15th. All information gathered from the questionnaires will be analyzed in group form so that it will not be possible to identify responses from any one individual. The questionnaires will be analyzed by Justice Canada researchers. They will be stored in a secure office at Justice Canada headquarters in Ottawa and destroyed by a bonded shredding company six months after the final report is complete. Only the key researchers involved with the study will have access to this information.

If you prefer, you can answer the survey on-line until September 15th. Please go to www.justice.gc.ca/. The password is: restitution.

If, in answering the questionnaire you feel you would like to speak with a victim services worker, or if you have questions about your specific restitution order, please contact the Victims Services Branch of the Saskatchewan Ministry of Justice at 1-888-286-6664 (toll-free) or at the TTY phone number: 1-866-445-8857. We will attempt to help you or refer you to a local victim services program.

As well, Dr. Chad Nilson has been contracted by Justice Canada to conduct phone or in-person interviews. If you would be willing to share your experience in a phone or in-person interview, please complete Section 3 of the questionnaire and return it ASAP in the self-addressed stamped envelope. You can also call or email the interviewer directly at .

If you have any concerns about this research project and wish to speak to someone other than the interviewer, please contact Dr. Susan McDonald, Justice Canada, at 613-957-9315 or by email at smcdonal@justice.gc.ca. To request a summary report for this project, contact Dr. McDonald.

Thank you in advance for your input into this important project.

Sincerely,

Pat Thiele
Director

Restitution Questionnaire Victims of Crime

Section 1 – Restitution Questions

1. What crime occurred that resulted in your restitution order?

2. When did this crime happen? _____ (yyyy-mm-dd)
3. How much money is the restitution order for? \$_____
4. When did the court order restitution? _____ (yyyy-mm-dd)
Don't know ☐
5. In the table below, please indicate who explained the restitution process to you. If no one explained the process to you, please skip to Question 9.

Person	Check if the person explained the process to you (check as many as required)	How helpful was the explanation?		
		Very helpful	Somewhat helpful	Not at all helpful
Police				
Crown				
Victim Services				
Restitution Coordinator				
Court staff				
Family/friend				
Other (please write down)				

6. Please indicate who gave you written information about the restitution process. If you were not given written information, please skip to Question 9.

Person	Check if the person gave you written information (check as many as required)	How helpful was this written information?		
		Very helpful	Somewhat helpful	Not at all helpful
Police				
Crown				
Victim Services				
Restitution Coordinator				
Court staff				
Family/friend				
Other (please write down)				

7. What changes would you suggest to improve the written information?

8. Did you have any problems getting all the necessary information in time for the sentencing date?

- i) Yes ☐ Go to Q8a.
ii) No ☐ Skip to Q9
iii) Don't know ☐ Skip to Q9

8a. Please describe those problems _____

9. Do you understand the restitution process?

- i) Yes ☐
ii) Somewhat ☐
iii) No ☐

10. Have you received any restitution payments to date?

- i) Yes ☐ 10a. How much? _____
ii) No ☐
iii) Don't know ☐

11. Do you expect to receive the total amount that has been ordered (Or, have you already received the total amount)?

- i) Yes ☐ Skip to Q13
ii) No ☐ Go to Q11a
iii) Don't know ☐ Skip to Q13

11a. Why don't you expect to receive the total amount? _____

12. If the offender failed to pay the restitution, did you file your restitution order through a Court of Queen's Bench?

- i) Yes ☐ Go to Q12a.
ii) No ☐ Skip to Q13.
iii) Did not know I could ☐ Skip to Q13.

12a. Did you request the services of the Sheriff's Office to assist you in obtaining your restitution, for example by seizing a vehicle?

- i) Yes ☐ Go to Q12b.
ii) No ☐ Skip to Q13.
iii) Did not know I could ☐ Skip to Q13.

12b. Were these "civil measures" (the filing of the order, the Sheriff) effective in having the restitution paid?

- i) Yes ☐
ii) No ☐
iii) Don't Know ☐

13. Did the restitution process meet your needs?

- i) Yes ☐
ii) No ☐
iii) Don't know ☐

14. What would you change (if anything) to make the restitution process better meet your needs?

Section 2 – The following information will not be used in a way that could identify you in the research report. You do not have to answer any question if you do not wish to.

15. Are you.....?

- Male ☐
Female ☐

16. Date of birth _____ (yyyy-mm-dd)

17. Are you a

- | | | |
|----------------------|------------------------------|-----------------------------|
| a. First Nations | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| b. Metis | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| c. Visible minority* | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

18. Do you have any challenges, conditions or impairments that may have affected your ability to participate in the criminal justice process such as loss in hearing, sight or mobility?

- i) Yes ☐
ii) No ☐

19. Postal code? -

20. Language you speak most often at home? _____

21. Are you currently?

- i) Employed ☐
a) Full-time (35 hours+) ☐
b) Part-time (less than 35 hours) ☐
ii) Unemployed ☐
iii) Other (student, at home with children, etc. – please write down)

22. Highest level of education that you have achieved?

- i) Some high school or less ☐
ii) High school graduate ☐
iii) Some post-secondary (college or university) ☐
iv) Community or technical college graduate ☐
v) Trades apprenticeship ☐
vi) Bachelors degree ☐
vii) Graduate or professional degree ☐

* Persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour

(Employment Equity Act)

23. Are you currently?

- | | | |
|------|-----------------------|--------------------------|
| i) | Single | <input type="checkbox"/> |
| ii) | Common-law or married | <input type="checkbox"/> |
| iii) | Separated | <input type="checkbox"/> |
| iv) | Divorced | <input type="checkbox"/> |
| v) | Widowed | <input type="checkbox"/> |

24. How many children under 18 are currently living full-time in your home? _____

25. Your approximate total gross household income? _____

Thank you for taking the time to fill out this questionnaire.

Section 3 – Interview Contact Information

If you would be willing to share your experience with restitution in an interview, please fill in your contact information below.

You can also call or email Dr. Chad Nilson directly at: XXXXXXXXXX or XXXXXX.

Name _____

The best way to contact me is:

Day phone _____

Is it OK to leave a message?

Yes ☐

No ☐

Evening phone _____

Is it OK to leave a message?

Yes ☐

No ☐

Email: _____