



Government of Canada

Office of the Federal Ombudsman
for Victims of Crime

Gouvernement du Canada

Bureau de l'ombudsman fédéral
des victimes d'actes criminels

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Administration of justice offences

Getting fair outcomes for victims in Canada's criminal justice system

PUBLIC ENGAGEMENT ON THE FEDERAL GOVERNMENT'S
CRIMINAL JUSTICE SYSTEM REVIEW

OFFICE OF THE FEDERAL OMBUDSMAN FOR VICTIMS OF CRIME
NOVEMBER 2017

Context

In August 2017 the Office of the Federal Ombudsman for Victims of Crime launched a national engagement process to hear from those with lived experiences of victimization, victim service providers, victim advocacy organizations, and other victims' issues experts about how Canada could better support victims and survivors of crime.

The engagement was undertaken in response to the Government of Canada's commitment to reviewing the criminal justice system, with the intention of providing timely, relevant and informed options to the Minister of Justice and Attorney General of Canada for how to transform federal laws, legislation, services and policies. The engagement focused on areas of interest to the Government, such as: bail reform, administration of justice issues and restorative justice; as well as on the *Canadian Victims Bill of Rights (An Act for the Recognition of Victims Rights)*.

The following document is one in the series of *Getting fair outcomes for victims and survivors* papers that present what was heard, along with research, best practices and options for change. The papers focus on:

- > Bail reform
- > Administration of justice offences
- > Restorative justice
- > The *Canadian Victims Bill of Rights*
- > Canada's criminal justice system

The full suite of documents can be found on the Office's website (victimsfirst.gc.ca). The Office would like to thank all of those who contributed to this project.

OFFICE OF THE FEDERAL OMBUDSMAN FOR VICTIMS OF CRIME

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ADMINISTRATION OF JUSTICE OFFENCES



What are administration of justice offences?

Administration of justice offences are a specific type of violation of the law, mostly committed when pre-trial conditions or sentences from a previous conviction are disobeyed. This includes failures such as not complying with conditions of release, not appearing in court, and disobeying a court order.

It is important to acknowledge that there is a distinction between conditions relating to the accused specifically and conditions meant to address safety and security of a victim or society in general.

Much of the public discussion on administration of justice offences has focused on the offender, looking at the accumulation of the types of breaches of conditions that do not – or do not *seem* – to impact the victim, such as failure to appear in court. However, it is important in any discussion about administration of justice offences to remember that victims can also be impacted by breaches of conditions, and that their well-being must be considered. While certainly breaching no contact orders and other forms of protection conditions will impact victims, we must also be cognizant of the fact that other types of breaches, such as not showing up for court, can impact victims too. Preparing for court takes a toll on victims, emotionally and otherwise. They must revisit the crime and spend time preparing, which may mean time off work and lost wages. Preparing and taking time off for nothing causes disruption and emotional distress in their lives, and burdens an already taxed criminal justice system.

In cases where conditions meant to address the safety and security of a victim are violated, there must be decisive action. When such breaches occur and a person is charged and convicted of an administration of justice offence, this may be used to put necessary conditions in place to ensure the security and safety of victims, or alternatively, to justify their detention.

Considerations

- > In 2014-15, there were almost 75,000 administration of justice cases in adult criminal court, representing 23 percent of all cases.¹
- > Costings prepared by the Department of Justice Canada in 2009 estimated the total annual system costs of these violations to be approximately \$730 million.
 - This estimate includes the costs of policing, prosecution, legal aid, courts, and corrections, however does not account for costs to victims (e.g. health care, productivity losses, legal counsel, support services).²
- > Some administration of justice violations can be linked to issues faced by marginalized or vulnerable populations in the criminal justice system. For example, Indigenous peoples in remote communities may be unable to get to a distant town where the court is located, and may therefore face a disproportionate number of failure to appear breaches.³ As these types of charges significantly add to a person's criminal record, some research concludes that these kinds of violations can be considered a factor linked to the over-representation of Indigenous peoples in the criminal justice system.⁴
- > A high proportion of court time is being used to deal with administration of justice charges.
- > Some argue that certain standard conditions can place an unrealistic burden without adequate supports in place (e.g.: a condition for the person to avoid substance use when the person is known to have issues related to addiction).
- > Some advocate that administration of justice offences should allow for diversion into supportive programs instead of being introduced as new criminal charges before the court.⁵

PARTICIPANT PERSPECTIVES



The Participant Perspectives section provides an overview of what we heard from those who contributed either in person, in writing or by phone.

APPROPRIATE CONDITION ASSIGNMENT

- The victims and stakeholders we spoke with expressed an understanding that administration of justice offences disproportionately impact marginalized people – those already facing several intersecting social and economic barriers related to poverty, disability, and mental health.
- While conditions can function to protect people and keep the general public safe, there was a strong sense that our system should not be one in which the root causes of crime, such as substance abuse and mental health issues, are unaddressed and amplified by a revolving door of charges for breaching conditions. That same revolving door results in further charges to process and push through the already backlogged court system.
- The criminal justice system needs to be better equipped to consider *why* breaches have occurred. For example, is it the case the person who breached lacked the money or transportation needed to uphold an obligation or did the person breach in an attempt to try to continue their harmful behaviour?

VICTIM SAFETY AND PUBLIC CONFIDENCE

- *"Just because it's an administration of justice offence doesn't mean that it's not serious."*
- We heard that in cases of serious crimes against the person, victims would like to be able to provide input on conditions (bail, parole, etc.) and be given the ability to apply to the court for changes to conditions necessary to ensure their safety and security.
- Victims and stakeholders felt that conditions can play an important role in keeping victims and the public safe, and that breaches of those conditions must be addressed, especially in cases of serious personal violence. Without reliable enforcement, it was felt that confidence in the justice system, and motivation to report breaches or further criminal wrongdoing, would be jeopardized.
- *"Unless the system provides real understanding and protection, many victims are hesitant to report repeated breaches because [the person that harmed them] is aware that the victim must have an overwhelming amount of proof, which may not be possible at the spur of the moment."*
- We must be mindful about conditions set in relation to child victimization. In monitoring case law and cases before court, conditions and outcomes, what is seen is that when people are re-charged because of a violation of conditions in such cases, it is a warning sign and an important indicator of potential further risk (for example, in cases where the person has breached by being in parks and near schools because they are again attempting to be near kids).

PARTICIPANT PERSPECTIVES



INFORMING VICTIMS

- *"...a provable and significant breach (occurred post-conviction while the offender was awaiting sentencing).... Despite what I'd felt was very threatening to me, a Crown prosecutor made the baffling decision not to proceed with the breach regardless of all this evidence. To further the Crown's insensitivity, I was not even informed beforehand as to: A) what the Crown's decision was to be regarding this breach and why, and B) its trial date. I only heard what the results were from a friend who had read it in the (newspaper)."*
- We heard a clear message that the system needs to more proactively notify victims in cases where information is critical and relevant to their safety, such as:
 - breaches of protective orders (e.g., peace bonds, civil protection orders)
 - breaches of bail conditions that contain provisions to protect victims
 - breaches of probation orders that contain provisions to protect victims
- In particular, in cases of domestic and sexual violence, breaches must be understood as involving a high degree of risk requiring enforcement responses.
- Victims should also be proactively notified of any changes to conditions placed on an accused or sentenced person.

TRANSFORMING THE SYSTEM

- There was a strong sense of feeling that the system lacked the flexibility and consistency to address victim safety.
 - In cases of domestic violence, we heard that often victims felt the justice system was unpredictable and inconsistent. When women really wanted charges laid for violations of administrative conditions, it didn't happen. On the flip side, when women did not want the offender to go to jail, courts were actively pursuing the offender for breaches of contact.
- Victims have no one to represent their particular interests.
- *"Since the Crown takes the position of public interest only and is not a victim's personal lawyer, the victim is instead treated as a mere witness...The Crown relies solely on the statement given to them by the police and no more...There needs to be a legal entity with equal power to the Crown that can stand up for the safety and defence of victims, rather than leaving it to the police, Crown or Justice of the Peace to determine what is safe or not safe for the victims regarding condition restrictions and violations."*

RECOMMENDATIONS AND OPTIONS



This section suggests options and makes recommendations to the federal government with respect to administration of justice offences. The recommendations provided were developed after carefully considering a variety of source material, such as: participant perspectives, the Office's past work and experience, research, literature reviews and more.

INFORM VICTIMS AND PROVIDE EDUCATION

- ☐ Ensure that victims are informed of conditions placed on an accused or sentenced person, and if and when conditions are modified.
- ☐ Make it mandatory that victims be informed of all breaches of release conditions meant to address their safety and security.
- ☐ Provide funding for public education and training around protection orders and breaches, including education on the coordination between civil and criminal orders, how to obtain and serve ex parte protection orders, and education on the process to obtain emergency protection orders on reserves.

ENABLE ALTERNATIVES IN APPROPRIATE CIRCUMSTANCES

- ☐ Give victims the ability to apply to the court and parole board for changes to conditions necessary to ensure their safety and security.
- ☐ Enable police to bring those breaching bail conditions or probation orders directly back to court to determine why the breach occurred. If there's a reasonable explanation for not complying (e.g. a change in employment keeping the released person from reporting to a peace officer at required times), the court could review and amend conditions to ensure that they are appropriate and reasonable.
- ☐ Consider alternatives for youth and some adults – especially those belonging to vulnerable populations – in terms of directing some offences away from the courts and towards support services better suited to address situations involving addictions, mental health, and other socioeconomic factors. For example, explore options to expand models such as mental health courts to be able to connect people with the supports that they need.
- ☐ Involve communities in crafting conditions.

ENSURE THAT PROBATION CONDITIONS TAKE INTO ACCOUNT THE SAFETY AND SECURITY OF VICTIMS

- ☐ Provisions of the *Criminal Code* with respect to conditions of probation could specifically address the issue of safety and security of victims. A requirement that a sentencing judge take into account the safety and security of a victim, and to indicate that these conditions are meant for such safety and security, could assist in determining which conditions should be considered further criminal offences, if they are breached.

COLLECT AND SHARE DATA

- A coordinated national Protection Order Registry, to which police, criminal justice and child welfare agencies would have access, in order to ensure awareness of specific protective conditions Canada-wide and to enforce breaches.
- Undertake more coordinated data collection on the number of protection orders issued in domestic violence cases and their efficacy in preventing further violence.

¹ Statistics Canada, *Jordan: Statistics Related to Delay in the Criminal Justice System*, April 2017, consulted July 2017, <http://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/apr01.html>.

² Department of Justice Canada, *The Justice System Costs of Administration of Justice Offences in Canada, 2009*, Research and Statistics Division, January 2013.

³ Canada, *Panel on the Trends*, p. 8.

⁴ Mylène Magrinelli Orsi and Sébastien April, *Administration of Justice Offences Among Aboriginal People: Court officials' perspective*, Department of Justice Canada, 2013.

⁵ Standing Senate Committee on Legal and Constitutional Affairs, Senate of Canada, *Delaying Justice is Denying Justice: An urgent need to address lengthy court delays in Canada (Final report)*, June 2017, pp. 138-141.