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Gouvernement du Canada

Office of the Federal Ombudsman
for Victims of Crime

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

Heard. Respected. **Victims First.**
Écoutées. Respectées. **Les victimes d'abord.**

VICTIM RIGHTS

RIGHT TO PARTICIPATION
Every victim has the right to convey their views about decisions to be made by appropriate authorities in the criminal justice system that affect the victim's rights under this Act and to have those views considered.

RIGHT TO RESTITUTION
Every victim has the right to have the court consider making a restitution order against the offender.
Every victim in whose favour a restitution order is made has the right, if they are not paid, to have the order entered as a civil court judgment that is enforceable against the offender.

RIGHT TO PROTECTION
Every victim has the right to have security considered by the appropriate authorities in the criminal justice system to protect the victim from intimidation and retaliation.

Canadian Victims Bill of Rights

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.

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CANADIAN VICTIMS BILL OF RIGHTS



What is the Canadian Victims Bill of Rights?

The *Victims Bill of Rights Act*¹ (federal VBR Act) was passed by Parliament on April 23, 2015, creating the *Canadian Victims Bill of Rights*² (CVBR) and amending other existing federal laws – specifically the *Criminal Code*, the *Corrections and Conditional Release Act* (CCRA), the *Canada Evidence Act* (CEA), and the *Employment Insurance Act*.

The legislation came into force on July 23, 2015. While the majority of technical amendments came into force the same day, some amendments to the CCRA³ came into force on June 1, 2016.

The CVBR sets out the definition of a “victim” as “an individual who has suffered physical or emotional harm, property damage or economic loss as a result of the commission or alleged commission of an offence”. For the CVBR to apply, the victim has to be present in Canada, or be a Canadian citizen, or permanent resident.

The CVBR provides that where the victim is deceased or incapable of acting on their own behalf (i.e., the victim is a child, ill or otherwise incapacitated), certain individuals, such as a spouse or common-law partner, a relative or a dependant, or someone responsible for the care or support of that person or of their dependant, by law or custody, may exercise the victim’s rights on their behalf.

What rights do victims currently have under the CVBR?

The CVBR provides rights for victims of crime at the federal level⁴, which include the right to information, protection, participation, and to seek restitution. Under the CVBR, victims also have the right to make a complaint to a federal department or agency if they believe that their rights have not been respected.

The following provides an overview of some of the rights provided for in the CVBR, however it is not exhaustive. More information on victims’ rights provided for by the

CVBR, and its application, is available at the end of this document.

Right to information

Every victim has the right to general information, *on request*, about:

- > the criminal justice system and the role of victims;
- > the services and programs available to victims, including restorative justice programs; and
- > their right to file a complaint for any infringement or denial of their rights under the CVBR.

As well, every victim has the right to case-specific information, *on request*, about:

- > the status and outcome of the investigation;
- > the location of the proceedings, when they will occur, and their progress and outcome;
- > reviews related to conditional release of the offender, and the timing and conditions of release; and
- > reviews or release of accused who are found not criminally responsible or unfit to stand trial on account of a mental disorder.

Right to protection

Every victim has the right to:

- > have “their security considered by the appropriate authorities in the criminal justice system”;
- > have “reasonable and necessary measures” taken to protect them from intimidation and retaliation;
- > request that their privacy be considered;
- > request their identity be protected when appearing as a witness; and
- > request testimonial aids when appearing as a witness in proceedings.

Right to participation

Every victim has the right to:

- > convey their views about decisions in the criminal justice system that affect their rights under the CVBR and to have their views considered; and
- > present a victim impact statement and have it considered in the criminal justice system.

Right to restitution

Every victim has the right to:

- > have the court consider making a restitution order against the offender; and
- > have the order entered as a civil court judgment that is enforceable against the offender, if a restitution order is made and but not paid.

These two rights are operationalized through specific sections of the *Criminal Code*, including the requirement that courts must consider making a restitution order when an offender is convicted or granted a conditional or absolute discharge.

Remedies

In addition to these four types of rights, the Act created a requirement for every federal department, agency or body in the criminal justice system with responsibilities under the CVBR to have a complaints mechanism in place. Mechanisms have been implemented to receive complaints from victims, review the complaints, take steps to resolve them, and make recommendations to correct any violation or denial of victims' rights, and inform victims about the results of the review, including any recommendations that were made.

If the victim is not satisfied with the response to their complaint, they can seek a review by "any authority that has jurisdiction to review complaints in relation to that department, agency or body".

Limitations

The CVBR sets out a number of limitations related to all of the above rights. For instance:

- > The rights are to be interpreted and applied in a manner that is reasonable in the circumstances and not likely to interfere with the proper administration

of justice (for example, by causing excessive delay in, or compromising or hindering, the investigation or prosecution, or by interfering with police, ministerial, prosecutorial discretion).

- > The Act is also not to be interpreted in a manner that could endanger an individual's life or safety or cause injury to international relations, national defence, or national security.
- > The CVBR does not grant victims or those acting on their behalf any "standing" or party status.
- > It does not apply to service offences and therefore excludes application in the military justice system.

Considerations

- > The CVBR provides victims with rights to specific types of information, *on request*. With some exceptions, it does not create an obligation for the criminal justice system to proactively provide information to victims. As well, no clear authorities or responsibilities have been assigned with regard to who is responsible for providing information to victims and at what point in the criminal justice continuum.
- > The CVBR does not include a training strategy to ensure that criminal justice system personnel likely to come into contact with victims – for example, police, Crown, corrections and court staff, as well as victim services personnel – receive either general or specialist training on their obligations under the CVBR.
- > The CVBR specifies that victims should receive information but does not require agencies to provide victims with explanations about *why* decisions have been made throughout the process. For example, absent from the CVBR is the right to review a decision by police or the Crown not to lay charges, or a right to review a Crown decision not to prosecute.
- > The CVBR does not create any right to a civil cause of action or to damages in relation to any infringement or denial of a CVBR right. Nor does it create a right to appeal an order or judgment.

Practically speaking, this means that victims are unable to initiate court action or seek damages if their rights under the CVBR are infringed or denied. Likewise, victims are unable to formally appeal any decision or order based on an alleged violation of their rights.

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.

AWARENESS

- We heard clearly that on-the-ground awareness of the CVBR remains limited and that action should be taken to make the legislation better known.
- As many of the rights contained within the CVBR are “on request” it is imperative that victims be made aware of their rights. Without this awareness, they cannot effectively exercise certain rights.
- Increased awareness will require a proactive approach to ensure that victims know what their rights are in all areas (i.e., information, protection, participation, restitution, remedies). At the same time, careful thought must be given to *how* to inform victims in a way that is safe, respectful, and avoids further harm.
- Outreach on the CVBR must take a cross cutting, grassroots and intersectional approach. It should be done with an understanding that those who are vulnerable and marginalized will likely have never heard of the CVBR. As well, their experiences may have fostered a feeling of being outside of the justice system and lack of trust of government and the criminal justice system.
- *“In recent immigrant communities, the idea of victims’ rights is so far from peoples’ realities...in these communities, there is much preliminary work that must be done.”*
- *“Oftentimes, people with disabilities are victimized many times and they do not realize that what is happening is even a crime...People with disabilities do not know this Bill, they don’t know their own rights.”*
- *“I can’t say with certainty if any people – in leadership positions even – in Indigenous communities, would even know what the CVBR is.”*
- Information about victims’ rights should be readily available on the Internet as well as through other channels, in such a way as to be accessible, including to marginalized and vulnerable people.

ROLES AND RESPONSIBILITIES

- In order to ensure that victims receive the information they will be entitled to, it is important that the key players in the criminal justice process understand their specific responsibilities. Currently, there is a lack of clarity about who is responsible for delivering on, and upholding, the rights and at what point in the process. No clear authorities or responsibilities have been assigned.
- *“Whenever we see the word ‘rights’, we must also consider responsibilities and how people are fulfilling them.”*

PARTICIPANT PERSPECTIVES



TRAINING

- In addition to having clearly defined roles in relation to the CVBR, criminal justice system personnel who are likely to come into contact with victims – for example, police, Crown, corrections and court staff, as well as victim services personnel – should receive either general or specialist training on their obligations under the CVBR.
- *“We need a clear requirement – enshrined in the CVBR itself – to put rights into practice, through mandatory training for all – police, prosecutors, judges.”*
- In addition to training on the CVBR, more broadly, there is a need for training to ensure that criminal justice system personnel receive education on applying a victim-centred and trauma-informed approach to their work.
- It was also noted that the general public should receive education on victims’ rights and victims’ issues – and that such education should begin as early as appropriate.
- *“Everyone should grow up knowing their rights and understanding the justice system – in the event they are a victim of crime one day, they will then have a backbone of knowledge to lean back on, when in their traumatized state.”*

ACTING ON BEHALF OF A VICTIM

- It was felt that the ability of others to act on behalf of victims is quite limited. The CVBR limits the opportunity to act on behalf of a victim to relatives, dependants, or an individual who has custody or is responsible for the care or support of a victim. It was suggested that the CVBR could be opened up to provide that other individuals, as well as organizations, can be delegated by a victim or by those currently able to act on the victim’s behalf, to act for them (i.e., take any action that a victim is entitled to take under the CVBR).

UNADDRESSED AREAS

- Specific recognition of the unique nature of interpersonal and gender-based violence and power-based crimes should be embedded in the CVBR. These were seen as unique forms of violence that require tailored approaches, responses and rights and, as such, a dedicated space in the CVBR.
- The CVBR should better recognize the reality of Internet-based forms of victimization by including dedicated content.
- The CVBR should give space to discussing the particular rights of Indigenous victims and survivors.
- Participants from various organizations raised that they felt the CVBR rights were aimed at a very general population and did not necessarily provide for the unique needs of certain groups, such as older adults, those with disabilities and children. It was felt that the CVBR needed to be adapted to better address the needs of these populations.

PARTICIPANT PERSPECTIVES



RIGHT TO INFORMATION

- While victims have a right under the CVBR to be provided information, on request, they are frequently not getting that information. There are ongoing problems with respect to victims not being informed of bail decisions, convictions, and sentencing. Where they are being informed, it is often happening last minute.
- Clear lines of accountability and frameworks to facilitate information sharing must be put in place to address the informational void.
- *"When someone experiences victimization, it's an overwhelming time. It has to be framed that it's the responsibility of the system to provide information to victims."*
- Information sharing across sectors is critical in terms of keeping people (not only victims but potential victims) safe. There needs to be a dialogue to find ways within privacy frameworks to ensure that information is appropriately shared where safety is at stake.
- *"Life trumps privacy."*
- Particular concerns were raised with respect to informational gaps in the context of domestic and sexual violence. It was suggested that certain types of information that should be readily provided to the victim (or potential victim, where there is a significant risk of a crime being committed). This includes, for example, information on the offender's past convictions or charges relating to domestic or sexual violence, and information on release conditions. The information should be available at all stages of the criminal justice system.
- Some felt strongly that the CVBR should also contain a proactive referral mechanism to victim services and programs. Given that many victims do not report to the police, the mechanism should ensure referral to community-based supports located outside of police services.
- *"When we hear from victims, they have no idea about the court case, sometimes don't even know someone has been charged. We want a more proactive system where someone is obligated to provide that information."*
- Victims often struggle when a decision is made not to pursue prosecution for a crime committed against them. Currently, victims of crime in Canada do not have the opportunity to review a decision not to prosecute a case. In contrast, the European Union (EU) Victims' Rights Directive provides victims in the EU the right to such a review. Victims should be provided with information about why decisions are made throughout the criminal justice system, including decisions by the police or the Crown not to lay charges, and a Crown decision not to prosecute.

PARTICIPANT PERSPECTIVES

RIGHT TO INFORMATION (CONTINUED)

- Central to information is the ability to be able to review records. Examples were raised where victims are having to pay \$1,000 for transcripts even though such documents result from a public forum and should therefore be accessible.

RIGHT TO PROTECTION

- Victims' safety and security would be better supported if current gaps in information sharing (i.e., amongst agencies and to the victim) were addressed.
- While the CVBR states that "Every victim has the right to have their security considered by the appropriate authorities in the criminal justice system," it doesn't define "appropriate authorities." There is a need to clarify roles and responsibilities related to security across the stages of the criminal justice process.
- In small and remote communities, the threat of intimidation and retaliation often more acutely felt, yet victims sometimes cannot access, or are intimidated into dropping their requests for, reasonable measures to protect them (e.g., testifying by closed circuit television, use of a screen, having a court room cleared for a victim to testify).
- Some recounted instances where basic strategies to protect victims – such as ensuring that they are kept separate from accused and offenders in facilities and institutions of the criminal justice system – are not being used.
- While the importance of rights related to publication bans was acknowledged, it was also emphasized that the current process of going back to court in order to waive a publication ban is too arduous. Although publication bans involve complex considerations, particularly when there is more than one victim involved or where there are competing interests, such as witness protection versus victim privacy, there should be options so that victims do not have to go through an onerous process to have a publication ban lifted.

RIGHT TO PARTICIPATION

- A common message heard was that, because Crown Attorneys act in the public interest and are not counsel for the victim, the CVBR should clearly affirm the right of the victim to obtain their own legal counsel at any stage in the criminal process (including before making a report to police).
- Victims of serious crimes against the person should have access to free, independent legal representation, and to timely compensation for costs associated with participating in the criminal justice system.

PARTICIPANT PERSPECTIVES

RIGHT TO PARTICIPATION (CONTINUED)

- We need a more nuanced understanding of participation. The current emphasis is felt to be too strongly on society's interest in encouraging the participation of victims in the criminal justice process, without regard to impacts on the victim. There were serious concerns raised with respect to cases, for example, in which victims – particularly those who are vulnerable or marginalized – are being compelled to participate in the criminal justice system and are remanded in custody if they don't. The CVBR speaks to right to participate in the criminal justice system but is silent on the right not to participate. A desire was expressed for greater oversight to be provided over how we compel and enforce victim participation in criminal trials.
- *"Victims need to be able to choose to participate in the criminal justice system or not. It's a lot of work for victims to have to push their own rights forward. Many women don't want to go to court, don't want to charge the offender, and yet find themselves having to participate in the system."*
- We heard that both victim impact statements and victim statements can be experienced by some victims as legally, emotionally and potentially physically unsafe, given that they are accessed by the person who harmed them. There was a desire to explore options for victims to be able to set out the impacts in a way that prioritizes their safety, while offering more concrete support to victims around any concerns they may have.
- *"The statement must be sent in weeks ahead of time, and the offender gets a copy. They study and use that statement to make their statement and develop their own position, yet the victim has no opportunity to respond to what is said. The victim doesn't in fact get to ask a question until the next hearing, which could be years away."*
- There was also a desire expressed for a broader range of individuals to be able to act on behalf of victims. A specific example was to explore options for non-governmental organizations delegated or appointed by a victim or by a person acting on the victim's behalf, the ability to present the victim impact statement.
- Certain aspects of the *Criminal Code* give witnesses or victims the right to make submissions. For example, the *Criminal Code* provides the complainant (victim) with the right to make submissions as to whether records containing personal information should be disclosed to the accused. The CVBR should enshrine the right of the victim to have the opportunity to make submissions at key points in the case where their safety is at risk (i.e., when the accused is released on bail, on application for bail variance, and upon release).

PARTICIPANT PERSPECTIVES



RIGHT TO RESTITUTION

- Many victims are still unaware of their right to restitution. For victims to be able to meaningfully exercise their right to seek restitution, they must first receive information regarding restitution and the restitution process in general, and with respect to their situation in particular. This information should be provided to help victims better understand the objectives of restitution and its limitations.
- Restitution is an integral part of victim reparation, and its necessity is recognized both internationally and under the CVBR. Despite this, the use of restitution orders has not increased with respect to sentences imposed by criminal courts in Canada.
 - Statistics from 2014-2015 reveal that only 2.3 percent of completed adult criminal court cases with a finding of guilt (207,528) included restitution as part of the sentence.⁵ Of the 38,020 guilty cases where crimes against the person were categorized as the most serious offence, just 1.2 percent of cases (484) included restitution. For the 45,071 guilty cases where property crimes were the most serious offence, restitution was only ordered in 8.4 percent of cases (3,817).⁶
 - Furthermore, data show that the number of restitution orders in Canada has been declining over the past 20 years.⁷
- Even when ordered, restitution can remain unpaid for a number of reasons, such as the offender refusing to pay and the victim lacking the money or resources to seek enforcement in civil court.⁸
- Under the current approach, the victim can have a restitution order entered as a civil court judgment that is enforceable against the offender if the amount owing is not paid. Practically speaking, this is problematic for a number of reasons. It's cost prohibitive, requires victims to spend time and energy fighting to obtain money that has been ordered by a judge to be paid to them, and also means that victims continue to bear costs of the crimes committed against them. For victims of crime who have already experienced loss and trauma, the additional legal and financial burden of having to track down money owed to them can simply be overwhelming and re-victimizing. This is a burden that should not fall to victims.
- *"The CVBR has a complete disregard for challenges faced by victims with respect to the enforcement of restitution orders."*
- *"The current system that makes victims solely responsible for enforcement is not victim-friendly."*

PARTICIPANT PERSPECTIVES

RIGHT TO RESTITUTION (CONTINUED)

- Efforts should be taken to educate and work with offenders on their obligations, better inform victims about restitution, and enhance enforcement mechanisms. It was noted that the federal government should look at practices in jurisdictions such as:

Saskatchewan:

Pursuant to *Criminal Code* provisions, the province of Saskatchewan established its Adult Restitution Program in 2009, responsible for monitoring and helping to enforce restitution orders for adult offenders, for advising victims of available enforcement measures and processes, and for training criminal justice system professionals. In 2015-2016, the program monitored 1,150 new orders on behalf of 1,347 victims.⁹ Also in 2009, Saskatchewan launched its Restitution Civil Enforcement Program, providing a voluntary program enabling victims to register their restitution orders with the Saskatchewan Ministry of Justice at no cost. Collection officers act on the behalf of victims to collect unpaid restitution from offenders. In 2015-2016, the program helped victims collect \$58,160 in restitution.¹⁰

Vermont:

Some in Canada have pointed to exemplary restitution models in other places such as the one in Vermont, where fines on offenders are placed in a dedicated fund used to pay court-ordered restitution to victims of crime.¹¹ In 2002, Vermont enacted legislation to create a restitution fund and a centralized restitution unit attached to the Vermont Center for Crime Victim Services.¹² Using money generated from a 15 percent surcharge added to all criminal and traffic fines, the restitution unit can advance restitution payments of up to \$10,000 from the fund to individual crime victims after verifying an order.¹³ Vermont's restitution unit is structured and operates as a collection agency. In its operations, the unit has found the state tax offset program and interception of lottery winnings to be its two most useful collection tools. Between 2004 and 2011, Vermont's restitution unit advanced \$6,038,267 from the fund to 5,648 victims of crime.

The Netherlands:

In the Netherlands, restitution orders are a penal measure and the responsibility for collecting the money falls to the state. By functioning like a fine, restitution is collected by the same organization responsible for collecting fines.¹⁴

In 2001, law reforms made it possible for the state to advance money to victims, up to a maximum of €5,000, if the offender is late in paying. The Netherlands has also put government services in place to help victims complete restitution request forms, while also providing access to free legal aid to victims of serious violent crimes and sexual assault.

PARTICIPANT PERSPECTIVES



REMEDIES

- There is a lack of mechanisms for enforcing the CVBR. The CVBR does not create any right to a civil cause of action or to damages with respect to infringed CVBR rights, nor does it create a right to appeal. This has fostered a perception that the CVBR is legislation that “lacks teeth” – both in the sense that there is little in the way of meaningful recourse for victims and that there are no checks and balances in place to ensure accountability amongst those working in the criminal justice system.
- *“It’s hard to feel that rights are meaningful unless you can meaningfully stand up for them.”*
- *“The CVBR provides rights but not obligations. There is no formal obligation on actors in the system (police, prosecutors, and others) to ensure those rights are taken into account. In court, every day, we see those rights are very little respected or that it depends on the willingness of individual prosecutors and others. We need to clearly identify in each province and territory who is responsible for upholding the rights.”*
- *“It’s about recognizing rights and making them binding – and that would change everything.”*

EVALUATION AND MONITORING

- We lack concrete measures to know what impact the CVBR is having and to assess victims’ experiences.

LOOKING FORWARD

- Ultimately, it was felt that, while the CVBR is a progressive step forward for victims, in its current form, it is too limited. It was noted that a shift in focus is needed from looking at victims’ rights only in relation to the criminal justice system to developing legislation and approaches that more comprehensively address victimization by taking into account things like prevention, supports for victims, compensation, and national standards.
- *“The CVBR is limited to victims’ rights in relation to the criminal justice system – but needs to be expanded to a broader understanding of all of the resources necessary to support victims through the harm they’ve experienced. Someone ought to be able to walk into the health system with the CVBR in hand and get what they need -- yet they can’t.”*
- Strengthen the role and authorities of the OFOVC or else create an entity at the national level with greater investigative and enforcement powers.

RECOMMENDATIONS AND OPTIONS



This section suggests options and makes recommendations to the federal government with respect to the CVBR. 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.

ENHANCE AWARENESS

- Lead on the development of a national public education strategy so that people learn early about victims' issues and victims' rights.
- In consultation with victim-related and other key stakeholders, explore innovative options such as Apps, as well as non-Internet based options, to ensure that victims have better access to information, and can more readily learn about the system and available services.
- Provide grants to law schools to provide courses on victims' rights, covering what can be expected when working with victims of crime. To support this, letters could be sent to Deans of law schools across Canada articulating the kind of training that should be put in place.
- Certification could be made available through Bar associations for lawyers, via online training that could be approved by the Bar, specific to victims' issues.
- Increase public awareness by more extensively promoting the Victims Portal – a secure online portal that allows registered victims and/or their named representatives to access services and information to which they are entitled under the CCRA – and by undertaking more general public outreach to raise awareness of the CVBR and victims' rights.
- In order to ensure that information on victims' rights is as accessible as possible, the CVBR could include language that parallels the European Union Directive; its paragraph 21 provides that *"Information and advice provided by competent authorities, victim support services and restorative justice services should, as far as possible, be given by means of a range of media and in a manner which can be understood by the victim. Such information and advice should be provided in simple and accessible language."* In the Directive's general provisions, chapter 2, Article 2, states: *"Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood."*

RECOMMENDATIONS AND OPTIONS



CREATE GUIDELINES TO CLARIFY ROLES AND ENSURE TRAINING OF CRIMINAL JUSTICE SYSTEM PERSONNEL

- Streamline processes, information, guidelines, and protocols across all federal government departments and agencies providing services to victims, in order to increase clarity and accessibility for victims.
- The Canadian Bar Association has recommended that the CVBR establish national guidelines for the treatment of victims in the criminal justice process in accordance with provincial charge standards, best practices and Crown Counsel Policy Manuals.¹⁵
- Marie Manikis has observed that a uniform document describing each agency's role in informing victims at the various stages of the criminal justice system could help achieve increased compliance and accountability, reduce confusion among the various agencies and help to meet victims' expectations. Victims would be more readily able to identify the various agencies involved in breaching their rights. Specifically, Manikis notes that:
*"a possible way forward in Canada – supported by evidence of good practice in other jurisdictions – would be either to create more detailed and clear legislation or to have an accompanying guideline to [the] legislation with more detailed and comprehensive obligations regarding the different service rights, particularly the right to information."*¹⁶
- Enshrine within the CVBR a requirement for mandatory training for criminal justice system personnel. In tandem, provide a training strategy to accompany the CVBR to ensure that criminal justice system personnel are aware of their obligations under the CVBR and receive generalist and specialist training related to victims, including trauma-informed training. Such training should be developed and provided in collaboration with community-based organizations, take an intersectional approach to take into account the needs of marginalized and vulnerable groups, and be supported by funding.

ENSURE THAT VICTIMS HAVE ACCESS TO INFORMATION

- Enhance subsection 7(a) of the CVBR by specifically referencing the right to information regarding pleas and joint submissions with respect to sentencing, both before and after determinations are made.
- Strengthen section 8 of the CVBR to ensure that corrections workers proactively provide to the victim information relating to the offender's conditional release and the timing and conditions of the release (as opposed to stating only that the victim has a right to this information on request).
- Add a new subsection to section 8 of the CVBR to explicitly provide victims the right to information about bail proceedings and interim release conditions.

RECOMMENDATIONS AND OPTIONS



ENSURE THAT VICTIMS HAVE ACCESS TO INFORMATION (CONTINUED)

- Amend sections 6, 7 and 8 of the CVBR so that the onus is not on victims to request the information to which they have rights (i.e. general information, information about investigations and proceedings, and information about an offender or accused). Such a change could be complemented by the development of a federal/provincial/territorial framework for regulations or guidelines that could be implemented by various jurisdictions, providing nationally-uniform guidance on how rights to information are to be fulfilled (e.g. time standards, who conveys the information, how it is delivered, language and interpretive supports, opt-outs for victims, etc.).

PROACTIVELY COMMUNICATE AND MITIGATE RISKS

- Clearly enshrine within the CVBR the principle that “life trumps privacy”. Practically speaking, this means that the CVBR should clearly state that the safety of the victim should override privacy protections for the accused/offender in cases where risks are escalating or high. It should also include a provision stating that information relating to the victim’s safety shall be shared between agencies, with information provided to the victim, in such cases. Such an amendment would strengthen the information-sharing provisions of both the CVBR and the federal *Privacy Act* – s. 8(2)(b) – which allows personal information to be shared without consent in accordance with any Act of Parliament.
- Expand the “Application” provision in s. 18(1) of the CVBR to include “potential” victims where there is a significant risk of a crime being committed (e.g., where the victim is in a relationship with a person who has a history of domestic violence) prior to the reporting, investigation, or prosecution of an offence.
- Enshrine in the legislation the right of the victim to avoid contact with the accused/offender by specifying that reasonable steps be taken by the criminal justice system to enable avoidance of contact between victims and their family members, where necessary, and the accused/offender within premises where criminal justice proceedings are conducted, and parole hearings, unless the proceedings require such contact.

EXPAND THE CVBR TO ADDRESS NEEDS IN RELATION TO SPECIFIC OFFENCES AND POPULATIONS

- Amend the CVBR to include a specific section with dedicated rights with respect to gender-based and interpersonal violence given the unique nature of these types of crime.
- Modernize the CVBR by including a focus on cyber-based crime.
- Amend the CVBR to give recognition Indigenous peoples, and including content specific to rights for First Nations, Inuit and Métis peoples.

RECOMMENDATIONS AND OPTIONS

EXPAND THE CVBR (CONTINUED)

- Amend the CVBR to better address the unique needs of certain groups, such as older adults, those with disabilities and children.

PROTECT AND SUPPORT VICTIM PARTICIPATION

- Provide a safe mechanism for victims to express themselves, for example, by providing a registry where victims could submit letters to the Crown that would be stored in a safe place. This would give victims some choice with regard to how they participate in the criminal justice system, who can see their words and who cannot, as well as the ability to withdraw the statement at a later time.
- Provide that the court shall order a screen, cross examination by closed-circuit television (CCTV), and/or a cleared/empty court room in cases where the victim requests it in order to testify. This should not be limited to sexual assault victims but should more broadly apply, including to domestic violence cases and other offences. Measures should be taken to ensure that this is actioned, including in small communities.
- Victims of serious crimes against the person should have access to free, independent legal representation. One option proposed involved paying law students to help victims fill in forms and to help bridge the gap between the victim and the bureaucracy.
- A clause could be added to section 3 of the CVBR allowing for “any other individual or organization that the victim, or a person who has custody of, or is responsible for the care or support of, a victim, delegates or appoints to act on their behalf”. It would allow a delegated individual or organization to take any action that a victim is entitled to take under the CVBR, such as to provide the victim impact statement on the victim’s behalf.

ENHANCE VICTIMS’ AGENCY AND CHOICE

- Address the problem of victims being compelled to participate in the criminal justice system by empowering Attorney Generals to be required to authorize any such decision – and only in very limited circumstances.
- Simplify the process by which a victim can lift a publication ban.

ALLOW PARTICIPATION IN THE PLEA BARGAINING PROCESS

- Provide victims with a mechanism to provide input prior to a guilty plea. While the CVBR requires the court to inquire whether reasonable steps were taken to inform any victims of a plea bargain *after* the court has accepted the plea of guilty in cases of serious personal injury offences or murder, victims have clearly indicated a desire to be informed *before* a plea is entered and accepted in order to have the opportunity to have their views heard and considered.

RECOMMENDATIONS AND OPTIONS

ALLOW PARTICIPATION IN THE PLEA BARGAINING PROCESS (CONTINUED)

- The *Colorado Revised Statutes*, 24-4.1-302.5(1)(e) provide a right to consult prior to any disposition of a case.
- In the California Constitution, Article 1, relating to rights of victims, there is a right to reasonably confer, set out at Article 1, paragraph 28(6), as follows:

(6) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.

INTRODUCE RIGHT TO A REVIEW OF DECISIONS NOT TO RECOMMEND CHARGES, NOT TO LAY CHARGES, AND NOT TO PROSECUTE

- Include provisions in the CVBR which provide a process for victims to review decisions by police not to recommend charges, decisions by Crown not to lay charges, or Crown decisions not to prosecute.
 - Under the CVBR, victims do not have the opportunity to review a decision not to prosecute. The European Union Directive on Victims of Crime, which came into effect in 2015, addresses this point at general provision, Article 11, section 1, as follows:

1. "Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law."
 - The preamble of the EU Directive also addresses this issue at preamble paragraph 43, as follows:

"The right to a review of a decision not to prosecute should be understood as referring to decisions taken by prosecutors and investigative judges or law enforcement authorities such as police officers, but not to the decisions taken by courts. Any review of a decision not to prosecute should be carried out by a different person or authority to that which made the original decision, unless the initial decision not to prosecute was taken by the highest prosecuting authority, against whose decision no review can be made, in which case the review may be carried out by that same authority. The right to a review of a decision not to prosecute does not concern special procedures, such as proceedings against members of parliament or government, in relation to the exercise of their official position."
 - In the *Colorado Revised Statutes*, 24-4.1-302.5(1)(b), the victim has a right to be notified of a decision not to lay criminal charges, but does not have the right to be present with respect to these types of decisions.

RECOMMENDATIONS AND OPTIONS

PROVIDE VICTIMS THE RIGHT TO RECEIVE PRE-SENTENCE REPORTS

- Include in the CVBR provisions enabling victims to receive pre-sentence reports. Examples from other jurisdictions include:
 - The California Constitution, Article 1, paragraph 28, relating to rights of victims, section 11, provides as follows:

"(11) To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law."
 - The *Colorado Revised Statutes*, Article 24-4.1-302.5(1)(j.7) provides:

"(j.7) The right, at the discretion of the District Attorney, to view all or a portion of the pre-sentence report of the probation department."

PROVIDE A MECHANISM FOR JUDICIAL REMEDY

- Use of a writ of mandamus (an extraordinary remedy that victims may apply for through counsel to seek enforcement of victims' rights) to allow victims to enforce their procedural rights in Canada.¹⁷
- Such a mechanism is provided in the U.S. *Crime Victims Rights Act* (CVRA). Under the CVRA, victims can apply to the district judge in the case that concerns them so that their rights are respected; if the judge refuses, the victim can go to a higher court via a writ of mandamus.

PROVIDE RIGHTS IN RELATION TO ACCUSED FOUND NOT CRIMINALLY RESPONSIBLE (NCR)

- Victims of accused found not criminally responsible (NCR) should have information about the date and conditions of release (as do victims in the corrections and conditional release system).
- Change the *Criminal Code* to include notification requirements with respect to any decision-making process in the context of NCR proceedings, such as:
 - restrictions of liberty hearings (section 672.56)
 - treatment dispositions (section 672.58)
 - high risk findings (section 672.64)
 - placement decisions (section 672.68(2))
 - notice of discharge (section 672.7(1))
 - appeals of dispositions (sections 672.72(1))
 - mandatory reviews (sections 672.81, 672.82)
 - inter-provincial transfers (section 672.86)
 - executions of warrants (section 672.9)
 - or other matters that may be helpful for a victim to be aware of.

RECOMMENDATIONS AND OPTIONS



PROVIDE SUPPORTS TO HELP VICTIMS ACCESS RESTITUTION

- Support the development of training about restitution and related obligations for criminal justice system professionals. Similarly, provide funding to appropriate jurisdictions and entities such as the Public Prosecution Service of Canada to support delivery of this training.
- In general, options should be explored to make the court responsible for the enforcement of a restitution order and/or for the state to pay the victim immediately after the judgment and then take responsibility for collecting from the offender. This would lift the considerable burden of doing so from the shoulders of the victim. Potential options include:
 - In collaboration with the provinces and territories, develop a national framework to establish and administer one or more restitution funds similar to the one in Vermont, capitalized by mechanisms such as criminal fines and the recovery of restitution payments by government entities.
 - If establishing a fund in each province and territory, it would be important to establish national standards in partnership with the provinces and territories to ensure consistent access and uniform availability for victims across the country, with mechanisms in place to facilitate restitution across provincial and territorial borders.
 - In collaboration with the provinces and territories, develop a national framework to establish and administer one or more restitution units similar to the one in Vermont, structured and operating:
 - (1) to collect restitution owed by offenders for deposit into the restitution fund(s);
 - (2) to receive orders and provide advance payment to individual victims so that they do not have to wait for payment and take on the burden and costs of pursuing enforcement on their own; and
 - (3) to provide victims with information and assistance in preparing and submitting restitution statements for consideration by the court.
 - For human trafficking offences, Canada could develop and legislate restitution requirements similar to those found in the United States (U.S.)' *Trafficking Victims Protection Act*, which requires U.S. federal courts to order restitution for the full amount of a victim's losses in accordance with a trafficking-specific formula to calculate restitution.

RECOMMENDATIONS AND OPTIONS



CREATE BETTER OVERSIGHT AND ACCOUNTABILITY FOR VICTIMS' RIGHTS

- Create a Victims Ombudsman position in every province/territory to enforce the CVBR and related victims' rights.
 - The CVBR should:
 - include stronger remedies for victims where their CVBR rights have been violated;
 - create for victims the right to a civil cause of action when their CVBR rights have been infringed or denied; and
 - create a right to appeal decisions or orders made based on alleged violations of their rights pursuant to the CVBR.
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CVBR: FURTHER INFORMATION ON VICTIMS' RIGHTS



Information

The federal VBR Act brought in technical amendments to federal laws that provide victims with other information rights. For example, amendments were made to the *Criminal Code* to allow victims to request a copy of the judicial interim release, and the probation or conditional sentence order. Amendments were also made to provide that the court shall ask the prosecutor if reasonable steps have been taken to inform victims of plea agreements for murder or serious personal injury offences; and, in cases involving an indictable offence with a maximum punishment of five years or more, if the victim asked to be informed of plea agreements and whether reasonable steps were taken to inform the victims of the agreement. Likewise, amendments to the CCRA included, for example, amendments to enable: registered victims to access a copy of Parole Board of Canada decisions; victims to receive information about an offender's correctional plan and progress made toward meeting its objectives; and the Correctional Service of Canada to inform victims whether a federal offender has been removed from Canada by the Canada Border Services Agency before the end of their sentence.

Protection

Technical amendments brought in by the federal VBR Act included amendments to the *Criminal Code*, for example, to: in relation to bail, require the court to consider the safety of every victim and note this consideration of victims in bail orders; expand offences where a self-represented accused cannot personally cross-examine a victim; and make publication bans for victims under the age of 18 mandatory on application and create an easier test for publication bans for adult victims. Amendments to the CCRA included, for example, an amendment permitting victims to access a current photo of the offender prior to certain releases or the end of the offender's sentence.

Participation

Technical amendments brought in by the federal VBR Act to the *Criminal Code* included an update to its sentencing principles to provide acknowledgment of the harm done to victims and the community as a sentencing objective, as well as the principle that harm to victims and society be taken into account in ordering any non-custodial sanctions. They also included several provisions regarding victim impact statements and community impact statements, for example, clarifying the provisions related to victim impact statements, providing for victims to bring a photo during presentation of a victim impact statement, and allowing for community impact statements to be considered for all offences (and not only fraud-related offences, as before).

Those brought in under the CCRA included, for example, provisions allowing a victim to designate a representative to receive information on their behalf, and the ability to waive one's right to receive information about the offender. Amendments to the CEA included, amendments to provide that no person is incompetent, or uncompellable, to testify for the prosecution by reason only that they are married to the accused, and to add a new subsection to govern the questioning of witnesses over the age of 14 years in certain circumstances.

Application

A victim first acquires rights at the moment that the offence is reported to the authorities; it doesn't matter if the accused has been prosecuted or not, as long as a complaint has been made to the police or the Crown. The legislation applies to victims of criminal offences throughout the criminal justice process, from the time of reporting, and through the investigation, prosecution, proceedings of courts and Review Boards (in respect of accused who are found not criminally responsible on account of mental disorder or unfit to stand trial), and the corrections and conditional release processes.

Weight

Sections 21 and 22 of the CVBR make clear that the Act has quasi-constitutional status. This means that the CVBR has primacy over general federal legislation, including key criminal justice statutes such as the *Criminal Code*, the CCRA, and the CEA, and all such federal Acts must be applied consistently with the CVBR. However, the CVBR is subordinate to the *Canadian Charter of Rights and Freedoms* (“the Charter”), which has constitutional status. As well, the CVBR is essentially on equal footing with other quasi-constitutional Acts, including the *Canadian Human Rights Act*, the *Official Languages Act*, the *Access to Information Act*, and the *Privacy Act*, and must therefore be applied consistently with those Acts.

¹ *Victims Bill of Rights Act* (S.C. 2015, c. 13), http://laws-lois.justice.gc.ca/eng/annualstatutes/2015_13/.

² *Canadian Victims Bill of Rights* (S.C. 2015, c. 13, s. 2), <http://laws-lois.justice.gc.ca/eng/acts/C-23.7/>.

³ These included the sharing of information related to an offender’s correctional plan, the sharing of the most recent photo of the offender, and the need to consider victims’ concerns prior to removing or varying a condition that was imposed on an offender in the community to protect the offender’s victims.

⁴ The majority of provinces and territories have also enacted their own legislation providing rights to victims of crime.

⁵ Maxwell, A., *Adult criminal court statistics in Canada, 2014/2015*, Statistics Canada, 2 February 2017, consulted September 2017, <http://www.statcan.gc.ca/pub/85-002-x/2017001/article/14699-eng.htm>.

⁶ Statistics Canada, Summary tables - Court, adult cases by type of sentence, total guilty cases, by province and territory (Canada), 13 October 2017, <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/legal22a-eng.htm>.

⁷ Wemmers, J.-A., Manikis, M. and Sitoianu, D., *Restitution in the context of criminal justice*, June 2017, p. 6.

⁸ Perrin, B., *Victim Law: The Law of Victims of Crime in Canada*, Toronto: Thomson Reuters Canada Ltd, 2017, p. 184-185.

⁹ Government of Saskatchewan, Ministry of Justice, *Annual Report for 2015-16*, p. 41.

¹⁰ Government of Saskatchewan, Ministry of Justice, *Annual Report for 2015-16*, p. 41.

¹¹ Waller, I., *Rights for victims of crime: Rebalancing justice*, Toronto: Rowman & Littlefield Publishers, 2011, p. 101.

¹² Rex, J. and Boyce, E., *The Vermont Model: A victim-centered approach to restitution*, 2011, <http://www.ccvv.vermont.gov/assets/documents/The%20Vermont%20Model%20-%20A%20Victim%20Centered%20Approach%20to%20Restitution.pdf>.

¹³ For business crime victims and any amounts above the \$10,000 cap, the restitution unit collects from the offender(s) and subsequently disburses that money to victims.

¹⁴ Wemmers, J.-A., Manikis, M. and Sitoianu, D., *Restitution in the context of criminal justice*, June 2017, p. 16-17.

¹⁵ Canadian Bar Association, *Victims’ Rights: Enhancing Criminal Law Responses to Better Meet the Needs of Victims of Crime in Canada*, October 2013, p.18, consulted July 2017, <https://www.cba.org/CMSPages/GetFile.aspx?guid=bc8dd1a6-7b99-4d82-aebd-6bb587f43fd5>.

¹⁶ Marie Manikis, “Imagining the Future of Victims’ Rights in Canada: A Comparative Perspective”, *Ohio State Journal of Criminal Law*, (Vol 13:1), 2015, 163-186, p.173.

¹⁷ See, e.g., Ending Violence Association of BC, *Consultation on the Victims’ Bill of Rights*, 28 August 2013, p. 8, consulted July 2017, http://endingviolence.org/files/uploads/Victim_Bill_of_Rights_Submission_Final.pdf