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RESEARCH DIGEST 2019

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INTRODUCTION

Victims and Survivors of Crime Week 2019 will run from May 26, 2019 to June 1, 2019. The theme this year is "The Power of Collaboration." This theme runs through all the research that we are showcasing in this year's *Research Digest*. Collaboration is key to effective responses to victims' needs and to ensuring that they participate and are protected at all stages of the criminal justice system.

The first article is by McGill University law professor Marie Manikis. She reviews recent case law on victim impact statements and on community impact statements. Natacha Bourgon's article follows, describing the findings on the use of restorative justice from a 2018 survey of criminal justice professionals. In the third article, Susan McDonald examines access to justice for victims and describes the national legal problems survey currently being developed, and what data it might collect. Shanna Hickey then documents the results of a short survey of participants attending a symposium on testimonial aids in March 2018. In Issue No. 12, we have also included a catalogue of all the articles included in the past Digests, Nos. 1–12. Readers have asked for this in the past and we hope that they find it a useful resource. Conferences in 2019 related to victims of crime are also listed as usual.

As always, we welcome your feedback.

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TABLE OF CONTENTS

Recent Developments in Victim and Community Participation in Criminal Justice – Marie Manikis	5
2018 Criminal Justice Professionals Survey: A Spotlight on Restorative Justice – Natacha Bourgon	13
Access to Justice for Victims of Crime – Susan McDonald	19
Testimonial Aids Knowledge Exchange: Successes, Challenges and Recommendations – Shanna Hickey and Susan McDonald	27
A catalogue of <i>Victims of Crime Research Digest</i> articles, Issues 1–12	33
Victim-related conferences in 2019	39

RECENT DEVELOPMENTS IN VICTIM AND COMMUNITY PARTICIPATION IN CRIMINAL JUSTICE

By Marie Manikis¹

INTRODUCTION

Victims' rights and the laws on victim impact statements (VIS) have evolved considerably since the last update in the 2012 *Victims of Crime Research Digest* (Manikis 2012). In 2015, the *Victims Bill of Rights Act* (VBR) was revised to the stand-alone *Canadian Victims Bill of Rights* (CVBR),² which entrenched victims' rights in federal legislation for the first time. These rights include:

- the right to information about the criminal justice system, the status of the case, and the services available to victims;
- the right to protection, including security and privacy;
- the right to participation, as a way to have victims' views considered;
- the right to request restitution to compensate victims for loss; and
- the right to remedies, by lodging complaints if victims feel their rights have been violated.

The VBR also amended the *Criminal Code of Canada*³ (CC) to introduce community impact statements (CIS), additional provisions on VIS, and forms to specify what these statements should say. This article discusses key cases that are implementing VIS, CIS, and the CVBR, as well as international developments in this area of the law.

¹ The author is most grateful to Vincent Marquis and Jess De Santi for their invaluable research assistance.

² *Canadian Victims Bill of Rights*, S.C. 2015, c. 13, s. 2.

³ *Criminal Code*, R.S.C. 1985, c. C-46.

1.0 VICTIM IMPACT STATEMENTS: RECENT GUIDANCE FROM THE COURTS OF APPEAL

1.0 Framework

Since 2012, Canadian Appeal Courts have provided additional guidance on VIS.

The 2013 *Berner*⁴ decision sets out some of VIS's key guiding principles and limitations. First, the British Columbia Court of Appeal emphasized that VIS must further the purpose of determining a just sentence by keeping in mind the objectives of sentencing under section 718 of the *Criminal Code* to:

- denounce illegal conduct,
- deter offenders from committing crimes,
- separate offenders from society if necessary,
- help to rehabilitate offenders,
- make amends for harm done, and
- acknowledge the harm offenders have done.

Second, VIS must not contain material that

- distracts the court from what it properly needs to consider at sentencing,
- appears to place value on the life of the victim over that of the offender, or
- seeks to compensate the grief of the victim(s) by imposing a harsh sentence.

⁴ *R v Berner*, 2013 BCCA 188. Although this decision predates the CVBR, it is frequently cited in subsequent decisions.

The sentencing judge must be wary of the risk of valuing victims based on the strength of feelings expressed in the VIS. When such information is present, judges can either ignore it or have it deleted if both Crown and defence consent.⁵ Further, since retribution (just deserts) is an important rationale for sentencing in Canada, VIS and CIS are important tools for assessing the offender's moral blameworthiness and the seriousness of the offence in the process of crafting a just sentence.⁶

1.1 A flexible approach to delivering VIS

Before the VBR, the courts did not specify how VIS was to be delivered. As a result, courts' decisions on VIS varied. For instance, in *MB*,⁷ an email was accepted as a VIS, on the basis that the *Criminal Code* allowed the form of the VIS to be flexible if no party objected. In *Berner*, however, the British Columbia Court of Appeal concluded that the sentencing court and Crown erred in allowing a photograph of the child victim and a video of a school performance to be shown. The Court stated that this material heightened emotions, carried the risk of unjust sentencing, and raised the victims' expectations that the tribute would influence the length of the sentence.

The 2015 CC amendments allow a flexible approach to reading⁸ VIS and various methods of presenting them.⁹ In *Morgan*,¹⁰ however, the judge made clear that anything beyond reading the VIS, such as the use of photographs and video presentations, requires victims to apply to do so, and to give adequate notice to defence and the court. The VIS form itself instructs victims that their VIS may include a drawing, poem, or letter if this helps them express how the crime affected them. Courts have been receptive to these different means of delivery, which also include

⁵ See *R v Denny*, 2016 NSSC 76.

⁶ See *R v Vienneau*, 2015 ONCA 898; *Denny*.

⁷ *R v MB*, 2013 ONCA 493.

⁸ The *Criminal Code* allows victims to deliver the statement by reading aloud, in the presence of a support person, reading outside the courtroom by CCTV or behind a screen, or in any other way the court deems appropriate.

⁹ See *Criminal Code*, Form 34.2.

¹⁰ *R v Morgan*, 2016 CanLII 60965 (NL PC).

photographs.¹¹ For instance, in *Bains*,¹² the mother of a murder victim included a poem that the sentencing judge alluded to and responded to positively.

Whether viewing videos as a way of delivering VIS is acceptable has yet to be clarified. As seen in *Berner*, judges have been reluctant to permit videos due to the heightened emotions involved. However, as will be seen in *Denny* in the context of CIS, a judge, exceptionally, allowed the presentation of videos when necessary "to properly place before the court a window into the community and the impact of the crime on that community."¹³ In the context of VIS, courts may benefit from the limited empirical research on videos in the United States to determine the potential risks involved in the great emotional appeal of this method.¹⁴

1.2 VIS as aggravating and mitigating evidence?

Most appeal and trial courts across the country have recognized that VIS evidence can be aggravating at sentencing, that is, it could support a stiffer sentence. Appeal courts have either used VIS evidence as an aggravating factor,¹⁵ or determined that it is not an error in principle for a sentencing judge to determine that the impact of a crime on the victim, as described in the VIS,

¹¹ Cases where judges have allowed letters include: *FD c R*, 2016 QCCA 173; *R c Roussy*, 2017 QCCQ 1318; *R v Braun*, 2018 BCPC 169; drawings: *R v Chol*, 2017 BCSC 1709; *R v DSA*, 2017 NWTSC 22; poems: *R v Dillon*, 2017 BCSC 1185; *R v Andrews*, 2017 ONCJ 178; *R v DL*, 2018 ONSC 3409; photographs: *R v Morgan*, 2016 CanLII 60965 (NL PC).

¹² *R v Bains*, 2015 BCSC 2145.

¹³ *Denny* at para 120.

¹⁴ For further discussion on this issue see Marie Manikis, "Victim Impact Statements at Sentencing: Towards a Clearer Understanding of their Aims," *University of Toronto Law Journal* 65, no. 2 (2015). To date, research on this issue is scarce and has focused on VIS with mock jurors in death penalty cases in the United States. See Christine M. Kennedy, "Victim Impact Videos: The New-Wave of Evidence in Capital Sentencing Hearings" *Quinnipiac Law Review* 26 (2008). It suggests that in that context, videos and music probably have a greater emotional impact on the process than prosecutors reading statements.

¹⁵ In Saskatchewan: *R v Leroux*; in British Columbia: *R v Ahnert*, 2014 BCCA 212; in Manitoba: *R v LLP*, 2016 MBCA 79; in Nunavut: *R v Lyta*, 2013 NUCA 10; in Ontario: *R v Vienneau*, 2015 ONCA 898; in Quebec: *R v Ramia*, 2016 QCCA 2084.

is an aggravating factor.¹⁶ Indeed, an appeal court has highlighted that if it were otherwise, VIS would have limited use, thus rendering the mandate to consider VIS as part of the sentencing process¹⁷ meaningless.¹⁸ Most judgments at the trial and appeal levels have relied on newly enacted *Criminal Code* provisions to justify using VIS evidence as an aggravating factor.¹⁹ Furthermore, courts in several provinces have expanded the factors that can aggravate the offender's sentence to include ancillary, or secondary, harm²⁰ suffered by family members (or people who were close to the victim) even in some non-homicide cases.²¹

In Alberta, the question remains unsettled. In *Deer*,²² the Court of Appeal found that the trial judge erred in treating VIS evidence suffered by family members as an aggravating factor after the murder of a victim. It remains unclear whether the Court of Appeal also rejects all use of VIS evidence as aggravating or whether this rejection only relates to secondary harm. This lack of guidance is felt at the trial level. Some trial judges have found that when the harm (direct or indirect) described in the VIS is not disputed, the facts in the VIS can be relied upon as

aggravating circumstances.²³ By contrast, in *Krahn*,²⁴ the judge interpreted *Deer* expansively, as prohibiting the general use of VIS evidence as aggravating. In *Firingstoney*, the judge interpreted *Deer* more narrowly to prohibit only ancillary harm, suggesting that "a family's loss, conveyed through [VIS], cannot be treated as an aggravating factor at sentencing"²⁵ while specifying that this reasoning does not ignore the aggravating factor at s. 718.2(a)(iii.1).

Courts have also confirmed that the Crown must prove contested aggravating factors beyond a reasonable doubt. Indeed, when a party relies on a contested aspect of the VIS to aggravate the sentence, they must prove that aspect beyond a reasonable doubt. In *Racco*,²⁶ VIS information, containing medical diagnoses and records, was contested and then rejected on the grounds that it had not been proven beyond a reasonable doubt. Similarly, in *BMS*, the court required more evidence than a VIS to conclude that the level of psychological harm suffered by the victim amounted to a "violent offence" so that a jail sentence could be imposed on a young offender.²⁷

Trial courts have not addressed the question of whether a VIS can be used as a relevant mitigating factor. Appeal cases, however, have considered victims' views that support mitigation. In *Guerrero Silva*,²⁸ the offender's wife, who was the victim of domestic violence, wished that her abusive spouse not be separated from their child. The Quebec Court of Appeal interpreted this as a form of forgiveness and recognized that case law considers it to be a relevant factor in mitigation. The court nevertheless

¹⁶ *R v AG*, 2015 ONCA 159.

¹⁷ As per *Criminal Code*, s. 722.

¹⁸ *R v AG*, 2015 ONCA 159.

¹⁹ The *Criminal Code* was amended in 2012 to include an additional aggravating factor of sentencing. Section 718.2(a)(iii.1) recognizes that "evidence that the offence has had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation" is a relevant aggravating factor.

²⁰ See *R c Cook*, 2009 QCCA 2423 (Quebec); *Vienneau*; *R v Stubbs*, 2013 ONCA 514 (Ontario); *R v Bourque*, 2014 NBQB 237 (NB); *R v George*, 2016 BCSC 291 (BC); *Denny* (Nova Scotia); *R v MacRoberts*, 2018 PESC 7 (PEI). This type of harm is referred to as "ancillary harm" and is discussed in greater depth in Julian V Roberts and Marie Manikis, "Victim Impact Statements at Sentencing: The Relevance of Ancillary Harm," *Canadian Criminal Law Review* 15, no.1 (2010).

²¹ Although ancillary harm was generally restricted to the context of homicides, courts have recently recognized ancillary harm in the context of attempted murder (*Vienneau*; *Stubbs*) and sexual assault (*MacRoberts*).

²² *R v Deer*, 2014 ABCA 88.

²³ See *R v Klok*, 2014 ABPC 102.

²⁴ *R v Krahn*, 2018 ABQC 587.

²⁵ *R v Firingstoney*, 2017 ABQC 343 at para 35.

²⁶ *R v Racco*, 2013 ONSC 1517.

²⁷ *R v BMS*, 2016 NSCA 35. The Court of Appeal relied on the VIS, which spoke of shame, regret and occasional anxiety, but "no indication of any turbulent emotion or continued distress," as well as the short length of these statements (short bullet form and less than half a page), to conclude that they do not suggest any impairment of function or serious consequence upon which an inference of psychological harm or serious psychological harm could be founded.

²⁸ *R v Guerrero Silva*, 2015 QCCA 1334.

highlighted the special care needed in domestic violence cases to ensure that forgiveness is expressed without undue pressure. The court also highlighted that forgiveness is inversely proportionate to the gravity of the offence, and that sentencing also has a dimension of social denunciation – the offence encroaches on our society's basic code of values – which goes beyond the interests of the offender and the victim. Ultimately, the court concluded that although the victim's compassion towards the offender did not stem from external pressure, the sentencing judge placed too much emphasis on the victim's wishes and underestimated the evidence of a risk of future violence towards the victim.²⁹ Interestingly, the court did not perceive the victim's wishes as a sentence recommendation. It also underscored that the victim's opinion as to the appropriate sentence is irrelevant and should not be solicited or considered by the sentencing judge.

Victims expressed their wishes for mitigation in another recent case, *HE*.³⁰ In this case, the victims of sexual assaults, namely the respondent's wife and their two children, stated in their VIS that they hoped the respondent would get counselling for his anger and become a better person. They did not want him jailed, and the wife was surprised that there were potentially serious consequences to the respondent's conduct. Despite this recommendation, the court did not rely on the victim's opinion to craft the sentence. Instead, it retained the need for denunciation to justify several years of imprisonment.

These decisions highlight that although courts sometimes consider victims' wishes and perceptions relevant, those wishes are not determining factors when the evidence supports a greater need for denunciation. This is difficult to reconcile with the view that the victim's opinion about the appropriate sentence is irrelevant and that the judge should not solicit or consider it.³¹ Indeed, separating the victim's wishes about the future of the relationship from

her wishes about the sentence to be imposed can be an artificial distinction for the judge, particularly when the victim's wishes about the relationship would result in the offender not spending time in prison. The VBR and the *Criminal Code* amendments codify existing case law, which includes where, in exceptional cases, the court has allowed victims to provide their reviews on sentencing. However, the law does not specify these exceptional circumstances. That makes it difficult to know which situations may warrant victims' opinions.

Despite the VBR recognizing that the victim's opinion can occasionally be relevant at sentencing, some judges have resisted the idea of allowing recommendations from victims, particularly when they involve sentences that are disproportionately severe.³² This issue was addressed in *BP*:³³ the judge highlighted that the VBR does not create a *right* for victims to recommend sentences, but it does allow their recommendations to be admissible if permitted by the court. It remains to be seen whether judges will grant permission when they want to hear the victim's wishes for the relationship, or whether VBR will also expand in other contexts. The latter approach was supported in *Bard*, where the victim's opinion was heard on the issue of how long the prison sentence should be before the offender could become eligible for conditional release.³⁴

²⁹ The court highlighted that around 30 infractions related to domestic violence occurred between July 2012 and August 2013.

³⁰ *R v HE*, 2015 ONCA 531.

³¹ *Guerrero Silva*.

³² *Guerrero Silva*.

³³ *R v BP*, 2015 NSPC 34.

³⁴ *R v Bard*, 2016 NBBR 160.

2.0 COMMUNITY IMPACT STATEMENTS

The 2015 amendments to the *Criminal Code* in the *Victims Bill of Rights Act* included a new CIS provision. This formally recognized the use of CIS at sentencing. Since 2015, approximately 25 reported decisions – all from trial courts – have dealt with CIS.³⁵

2.1 What is a recognized community?

Although courts have not explained how to define a community or identify a community's representative when submitting a CIS, discernible communities can be found in the case law. They generally fall into one of four categories:

- the community of a particular neighbourhood, town, or geographic area³⁶ whose representatives are often mayors;³⁷
- the community of the victim's work colleagues,³⁸ typically represented by supervisors and company representatives;³⁹
- Indigenous nations, whose representatives are often Chiefs or managers;⁴⁰ and

- the community as a group with a particular identity marker, such as the Muslim community or the LGBT community.⁴¹

Representatives of those communities seem to be either individuals⁴² or organizations⁴³ with those identity markers who are activists within the community.⁴⁴

2.2 CIS framework

Very few court decisions expand on the role, content, or form of CIS. Courts have relied on the VIS framework to interpret the CIS regime, particularly since both VIS and CIS forms in the CC are similarly drafted. Indeed, as is the case with VIS, CIS must not contain assertions of fact about the offence or offender, and cannot contain comments on the offender's character or make recommendations about the sentence. CIS are meant to convey the impact of the crime on a community, as told by one person's words.⁴⁵ While some courts allow the mode of delivery to be flexible, this is not always the case.

In *Denny*, two CIS were submitted – one by a member of the LGBT community, which included presenting a local community magazine and a YouTube video montage to illustrate a memorial tribute made by the local community. The defence objected to the admissibility of the magazine and video, saying they did not comply with the newly enacted CIS form. The judge accepted this mode of delivery, highlighting that CIS should be prepared and presented like VIS to the greatest extent possible, but that it might be difficult for one person to fully articulate the impact on the community or where it might be better to communicate this impact in an unorthodox way. Indeed,

³⁵ More specifically, between 1 and 4 CISs were submitted in 17 of those decisions. In 3 decisions, a statement not filed explicitly as a CIS by the Crown was accepted as *such* by the court. In 2 decisions, the court considered the impact of the offence on the community despite noting the absence of any CIS filed. In 1 decision, a document purportedly submitted as a CIS was rejected as *such* by the court but admitted on a different basis. Finally, in 2 decisions, statements were admitted as "Community Victim Impact Statements."

³⁶ For instance, Hamilton's East End (*R v Nicholls*, 2015 ONSC 8136), Brampton (*R v Muzzo*, 2016 ONSC 2068), Pitt Meadows (*R v Hecimovic*, 2017 BCSC 1433), Savary Island (*R v Ferreira*, 2018 BCPC 142), and the Resort Municipality of Whistler (*R v Price*, 2016 BCPC 0216) were recognized as communities.

³⁷ See *Muzzo*; *Hecimovic*; *Price*.

³⁸ See *Muzzo*; *R v Kakakaway*, 2017 BCPC 342; *R v SK*, 2015 ONSC 7649.

³⁹ For supervisors, see *Muzzo*; for company representatives, see *Kakakaway*.

⁴⁰ See *R v Jongbloets*, 2018 BCSC 403; *R v EJB*, 2018 BCSC 739.

⁴¹ For an example of the Muslim community, see *R v Brazau*, 2017 ONSC 2975; for the LGBT community, see *Denny*.

⁴² See *Denny*.

⁴³ See *Brazau*.

⁴⁴ For instance, in *Denny*, the court noted that the individual representing the LGBTI community had advocated for this community in many capacities, had done so for a long time, and thus was recognized publicly as a flag bearer for that community.

⁴⁵ *Denny* at para 115.

the judge highlighted that form 34.3 of the *Criminal Code* recognizes flexibility by allowing drawings, poems, or letters to describe the harm suffered.

In *Ali*,⁴⁶ a document purportedly filed as a CIS by the Crown was rejected as such by the court (although it was accepted on different grounds). The court explained that the document said nothing about the harm or loss suffered by the community, only gave general information about the frequency of a class of offences, did not refer to a specific offence, and failed to conform to the required form, 34.3.

3.0 IMPLEMENTATION OF LEGISLATIVE CHANGES INTRODUCED BY THE VICTIMS BILL OF RIGHTS ACT

This section examines cases that relied on the legislative changes under the VBR to enforce victims' rights, including the right to

- information,
- the use of testimonial aids,
- restitution, and
- participation.

3.1 Rights to information and the use of testimonial aids

The right to information⁴⁷ applies to different stages of the criminal process. It has most frequently been used to provide victims with information about decisions to release the accused. More specifically, the provision was invoked by administrative tribunals⁴⁸ in the context of non-criminally-responsible-related decisions under *Criminal Code* section 672.38. Its purpose was to provide victims with information about the decision to conditionally release the accused, the specific conditions of release, as well as notices of future

⁴⁶ *R v Ali*, 2015 BCSC 2539.

⁴⁷ Under section 8 of the CVBR.

⁴⁸ See *S.A. et Responsable de l'hôpital A*, 2017 CanLII 143991 (QC TAQ); *D.B. et Responsable de l'hôpital A*, 2017 CanLII 93597 (QC TAQ); *A.I. et Centre hospitalier A (Hôpital A)*, 2018 CanLII 44066 (QC TAQ); *D.G. et Responsable du CIUSSS A*, 2018 CanLII 2506 (QC TAQ); *P.T. et Responsable du CIUSSS A*, 2017 CanLII 96797 (QC TAQ); *P.P. et Responsable de l'institut A*, 2017 CanLII 83798 (QC TAQ).

hearings. To protect the accused's privacy, tribunals have refused to provide the exact location of the accused's residence when the victim requested that information.

Under section 13 of the CVBR, which recognizes the victim's right to ask for a testimonial aid, courts have allowed complainants to testify with the assistance of a support dog⁴⁹ and outside the courtroom by video links.⁵⁰

3.2 Rights to seek restitution and participation

In a recent case of fraud, the court implemented the victim's right to seek restitution⁵¹ and ordered the offender to make full restitution to the victim(s).⁵² The CVBR is also frequently cited as a statutory authority for victims to be heard in court, with specific references to VIS at the sentencing stage.⁵³

4.0 DEVELOPMENTS ON VIS IN COMMON LAW JURISDICTIONS

4.1 England and Wales

In England and Wales, *Perkins*⁵⁴ clarified the framework and limitations of VIS,⁵⁵ including their purpose, form, and content. This decision has been authoritatively cited in many cases and contains similarities with the Canadian approach, that VIS constitute evidence and must be legally treated as such. Victims can decide whether to make these statements, but the responsibility for presenting admissible evidence remains with the prosecution. The VIS

⁴⁹ See *R v CW*, 2016 ONCJ 649, involving a vulnerable sexual assault victim.

⁵⁰ See *R v Belem*, 2017 ONSC 221, involving the victim of a home invasion robbery.

⁵¹ Under sections 16 and 17 of the CVBR.

⁵² *R v McLean*, 2016 BCSC 2191. The court ordered full restitution in the amount of \$225,000 for fraud.

⁵³ See *R v Cooper-Flaherty*, 2017 NUCJ 11; *R v Holland*, 2017 NUCJ 03; *R v Kippomee*, 2018 NUCJ 8; *R v Mikijuk*, 2017 NUCJ 02.

⁵⁴ *Perkins v R*, 2013 EWCA Crim 323.

⁵⁵ In England and Wales, VIS are referred to as Victim Personal Statements. Aspects of this framework can be found in the Crown Prosecution Service guidelines <https://www.cps.gov.uk/legal-guidance/victim-personal-statements>, the Practice Direction by the Lord Chief Justice, [2013] EWCA Crim 2328, as well as the Code of Practice for Victims of Crime (London 2015).

may be challenged in cross-examination and therefore the VIS regime – the content of the VIS and any supporting evidence – gives rise to disclosure obligations.⁵⁶

Although the victim's opinion of the sentence is not relevant under the Crown Prosecution Service guidelines,⁵⁷ some cases have considered victims' views as mitigating circumstances. In *Nunn*,⁵⁸ a case involving death by dangerous driving, members of the victim's family, who knew the offender and his suffering following the offence, pleaded that the sentence was too long and was making it difficult for them to cope with their trauma. Although the court highlighted that their opinion should play no role in sentencing, it relied on a merciful approach towards the victim's family to reduce the sentence. Similarly, in *Roche*, the Court of Appeal suggested that a court can never become an instrument of vengeance, but can "in appropriate circumstances, to some degree, become an instrument of compassion."⁵⁹ Finally, in *Perks*, the Court of Appeal stated that victims' opinions should not be considered, except

- (i) where the sentence passed on the offender is aggravating the victim's distress, and
- (ii) where the victim's forgiveness provides evidence that their psychological or mental suffering must be much less than would normally be the case.⁶⁰

4.2 Australia

In Australia, recent case law has also addressed evidentiary issues related to aggravation, the distinct language of VIS, and the consideration of ancillary harm.

As in Canada, Australian courts require proof beyond a reasonable doubt when the VIS contains contested aggravating evidence.⁶¹ When the defence does not contest that evidence, there is generally no difficulty when the court relies on VIS information that is confirmed by other sources. Problems arise when the defence does not contest, but evidence is cited that can significantly aggravate the sentence. In those situations, judges are instructed to draw the defence's attention to this to allow them an opportunity to challenge the evidence.⁶² This greater judicial intervention departs from the adversarial model and has not been recognized in other common law jurisdictions.

In *Dimitrovska*,⁶³ the Court of Appeal distinguishes between legal language and the language of victims. The court recognized the subjectivity of VIS and stated that they can only be used to provide information about the general effect of the injury, rather than about more specific effects resulting from the injuries. When more specific elements are cited as evidence, such as prognoses, evidence from a qualified expert is necessary. Further, it was decided that VIS would lose much of their force and benefit if expressed in language used by lawyers. It is therefore acceptable for VIS to be imprecisely or ordinarily expressed.

Finally, as in some Canadian cases, the court in *GE*⁶⁴ expanded the recognition of ancillary harm suffered by family members beyond cases of homicide where the primary victim has died. The court held that, given the broad definition of harm, the statute includes the harm suffered by a family of a young child, who is the primary victim, even if death has not occurred.

⁵⁶ This is also similar to the Canadian approach, although cross-examination in Canada is not automatic and thus is limited to the air of reality test. See *R v VW*, 2008 ONCA 55.

⁵⁷ See footnote 55.

⁵⁸ *R v Nunn*, [1996] 2 Cr App R (S) 136, 140.

⁵⁹ *R v Roche*, [1999] 2 Cr App R (S) 105.

⁶⁰ *R v Perks*, [2001] 1 Cr App R (S) 19.

⁶¹ *R v Tuala*, 2015 NSWCCA 8.

⁶² *JWM v Tasmania*, 2017 TASCCA 22.

⁶³ *Dimitrovska v Western Australia*, 2015 WASCA 162.

⁶⁴ *R v GE*, 2014 ACTSC 181.

4.3 United States

The American VIS regime differs notably from most common law jurisdictions. In *Bosse*,⁶⁵ the Supreme Court considered it an error to allow victim recommendations to the jury about the sentence in a death penalty case. However, this question is not settled, since a state supreme court⁶⁶ held that *Bosse* does not apply to non-capital proceedings. That court stated that a jury's dangerous uses of a victim's recommendation in a capital murder trial do not occur in non-capital sentence proceedings before a neutral and impartial judge. If this approach were to apply, it would differ from common law jurisdictions that do not usually allow for sentencing recommendations. Finally, another court recently held that a sentencing judge has broad discretion to admit and consider victim evidence in forms outside of the bounds of VIS and victim impact testimony.⁶⁷ Contrary to the ambiguity in Canada, the court made clear that videos are part of these accepted forms.

CONCLUSION

Domestic and international case law has evolved considerably since the CVBR was enacted. Although courts have offered some clarity throughout the years on questions about recognizing VIS and CIS as evidence, more guidance based on a principled analysis of sentencing would be helpful in this area. Further reflections and research on conceptions of harm, secondary victimization, and the impact of emotions in the criminal process would contribute to a better understanding of the value of victim and community participation in the criminal process.

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⁶⁵ *Bosse v Oklahoma*, 580 U.S. (2016).

⁶⁶ *Commonwealth v McGonagle*, 478 Mass. 675 (2018).

⁶⁷ *Lopez v Maryland*, 468 Md. 164 (2018).

2018 CRIMINAL JUSTICE PROFESSIONALS SURVEY: A SPOTLIGHT ON RESTORATIVE JUSTICE

By Natacha Bourgon

1.0 BACKGROUND

The Federal Victims Strategy (FVS), led by the Department of Justice Canada (Justice Canada), began in 2000 and was initially known as the Victims of Crime Initiative. It aims to give victims a more effective voice in the criminal justice system (CJS) and is based on the premise that although many significant advances have been made in legislation, policies, and programs for victims of crime, there are still many outstanding and emerging issues.

Although using a victim-focused approach is essential to give victims a more effective voice in the CJS, if no one in the system, or in the general public, knows about the resources available to them, they will not access them. As a result, the resources cannot be effective. Since the beginning of the FVS, as part of its regular five-year evaluations, Justice Canada has surveyed CJS professionals to measure their levels of awareness about victim-related *Criminal Code* provisions, and the CJS in general.

This article presents some of the results from the most recent survey, conducted in February 2018. The survey examined the attitudes, knowledge, and perceptions of police, victim services providers (VSPs), and Crown prosecutors on the role and participation of victims in the CJS. Crown prosecutors were later removed from the analysis due to a low response rate (n=8).

Restorative justice (RJ) processes for victims and survivors of crime have received increased attention and focus because RJ was mentioned in the Minister of Justice's

mandate letter.¹ This article will focus on the survey findings on RJ to further understand police and VSPs' current awareness and experiences of RJ in Canada.

2.0 THE SURVEY RESPONDENTS

The survey had 846 respondents – 63 percent (n= 531) were police respondents and 37 percent (n=315) were VSP respondents.² Although there were respondents from each region, findings should be interpreted with caution as there was unequal representation across jurisdictions. The majority of police respondents were located in British Columbia (57 percent; n=301); the majority of VSP respondents were based in Alberta, British Columbia, and Ontario (40, 25, and 19 percent, respectively; n=125, 78 and 59, respectively).

2.1 Police Respondent Profile

Of all police respondents, over one-third (37 percent; n=194) were from a municipal force, a little over one-third (34 percent; n=179) were from a provincial police force, and a quarter (26 percent; n=139) were from the Royal Canadian Mounted Police (RCMP). Police respondents reported working with victims of crime for a longer length of time compared with VSP respondents. More specifically, approximately two in five (41 percent; n=220) police respondents reported between 10 and 19 years of experience working with victims of crime and over a quarter

¹ Canada, Office of the Prime Minister, *Minister of Justice and Attorney General of Canada Mandate Letter*, by Rt. Hon. Justin Trudeau (Ottawa: Office of the Prime Minister, 12 November 2015).

² Victim services are a provincial and territorial responsibility. Each jurisdiction has a different service delivery model, which could include police-based, community-based, court-based, or system-based victim services.

(29 percent; n=153) reported 20 years or more. The majority of police respondents (59 percent; n=312) reported working regularly (i.e., at least once a week) with victims of crime.

Police respondents more commonly served an urban population (66 percent; n=348). At least half of police respondents noted serving a rural population (51 percent; n=270) and close to a quarter reported serving a remote community (23 percent; n=121).³

2.2 VSP Respondent Profile

Of all VSP respondents to this survey, over half (56 percent; n=176) reported providing police-based services⁴ and about a third (31 percent; n=97) reported providing community-based/specialized victim services⁵ such as services specialized in cases of domestic violence and sexual assault. Very few VSP respondents reported providing court-based victim services⁶ (2 percent; n=6), system-based services⁷ such as assisting victims throughout the CJS process (2 percent; n=5) and other types of victim services

(8 percent; n=24). Over half (56 percent; n=175) of VSP respondents were relatively new with fewer than 10 years of experience working with victims of crime (compared with 28 percent for police respondents; n=151). Close to a quarter of VSP respondents reported having 10 to 19 (23 percent; n=72), or over 20 years of experience working with victims of crime (20 percent; n=62). The majority of VSP respondents (73 percent; n=231) reported working regularly (i.e., at least once a week) with victims of crime.

VSP respondents to this survey more commonly served an urban population (68 percent; n=213). At least half of VSP respondents noted that they served a rural population (58 percent; n=184) and close to a quarter reported serving a remote community (24 percent; n=76).⁸

3.0 FINDINGS

3.1 Restorative Justice

Restorative justice (RJ) is “an approach to justice that focuses on addressing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by crime – victim(s), offender, and community – to identify and address their needs in the aftermath of a crime.”⁹ RJ is respectful, inclusive, and voluntary. The values of RJ are based on respect for the dignity of everyone affected, healing, reintegration, the prevention of future harm, and reparation, if possible.^{10, 11}

³ Respondents were able to select multiple options. As a result, totals do not add up to 100 percent.

⁴ A police-based victim service often provides support, information, assistance, and/or referrals to victims of crime in the immediate aftermath of crime, through RCMP and/or municipal police detachments, community agencies, and non-governmental organizations.

⁵ A community-based victim service provider often provides support, information, assistance and/or referrals to victims of crime in the immediate aftermath of crime and includes specialized services.

⁶ A court-based victim service includes providing assistance to victims of crime during their participation in criminal justice proceedings. This may include providing information about: the criminal justice process, the victim's role in criminal proceedings, the scheduling and outcomes of proceedings and testimonial aids, as well as court preparation and assistance to victims in completing victim impact statements (VIS).

⁷ A system-based victim service provides assistance to victims of crime from the time of the offence to the conclusion of court proceedings and their aftermath. Assistance provided includes: referrals for counselling, court preparation and support, and information about available compensation or financial benefits programs, the outcome of criminal proceedings, and how to register for information on offender release if the offender is incarcerated.

⁸ Respondents were able to select multiple options. As a result, totals do not add up to 100 percent.

⁹ Federal-Provincial-Territorial Working Group on Restorative Justice. (December 22, 2009). “Key Messages on Restorative Justice.” Online: <http://www.csc-scc.gc.ca/restorative-justice/003005-4005-eng.shtml>. This definition has been adapted from Cormier, R. B. (2002). *Restorative Justice: Directions and Principles – Developments in Canada*. Solicitor General Canada, User Report 2002-02. Available online at: <http://publications.gc.ca/collections/Collection/JS42-107-2002E.pdf>.

¹⁰ Federal-Provincial-Territorial Working Group. (2015). *Values and Principles of Restorative Justice in Criminal Matters*. Available online at: <http://www.iirp.edu/pdf/RJValues-DOJCan.pdf>. The principles were developed and approved by the Federal-Provincial-Territorial Working Group in 2003 and are currently under revision.

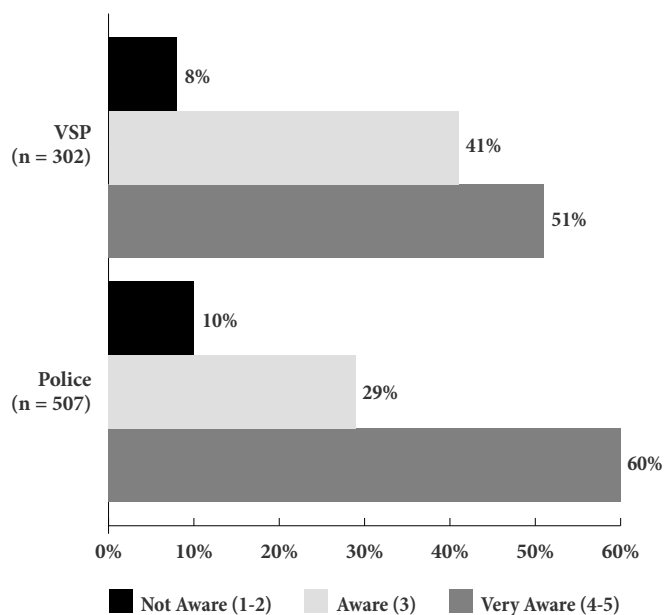
¹¹ Note that recent research on the topic of restorative justice (RJ) in Canada is limited.

3.2 Awareness of RJ Processes

Respondents were asked about their awareness of RJ processes based on a five-point scale, 1 being “not aware” to 5 being “very aware.” Findings showed that most police and VSP respondents reported being aware of RJ processes; 90 percent of police respondents (n=454) and 91 percent of VSP respondents (n=276) reported being either aware (rating of 3) or very aware (rating of 4 or 5).

AWARENESS OF RJ PROCESSES

“In general, how aware are you of restorative justice processes?”



3.3 Referrals to RJ Programs

Respondents were asked how often they refer victims to RJ programs based on a five-point scale, 1 being “never” to 5 being “all of the time.” Findings showed that although respondents had a high awareness of RJ processes, they do not refer victims to RJ programs very often. Specifically, over half (51 percent; n=214) of police respondents said they rarely (rating of 1 or 2) refer victims to RJ programming. A little less than one-third (30 percent; n=126) said they referred victims to RJ programs some of the time (rating of 3), and only 9 percent (n=39) said they referred victims often (rating of 4 or 5). In comparison, close to two-thirds (62 percent;

n=165) of VSPs said they rarely refer victims to RJ programs, 14 percent (n=38) said they referred some of the time, and only 6 percent (n=16) said they referred often.

3.4 Dissemination of Information on RJ to Victims

Respondents were asked whether they believe victims usually receive adequate information on RJ and who should be responsible for providing that information. Overall, both police and VSP respondents believed that victims do not usually receive adequate information on RJ. Specifically, a little over one-third of police and VSP respondents (34 percent, for both; n=140 and 88, respectively) disagreed (rating of 1 or 2) that victims usually receive adequate information on RJ; 29 percent of police respondents (n=120) and 25 percent of VSP respondents said they neither agreed or disagreed (rating of 3); 21 percent (n=88) of police respondents and 19 percent (n=49) of VSP respondents said they agreed (rating of 4 or 5).¹²

Findings also showed that over half of both police and VSP respondents (53 and 52 percent, respectively; n=284 and 165, respectively) believed that VSP should have the responsibility to provide RJ information to victims. Approximately two-fifths of both police and VSP respondents (40 and 45 percent, respectively; n=213 and 143, respectively) believed that Crown should have the responsibility to provide RJ information to victims. Approximately one-third of both police and VSP respondents (37 and 31 percent, respectively; n=204 and 97, respectively) believed that police should have the responsibility to provide RJ information to victims.¹³

3.5 Perception of the Number and Accessibility of RJ Programs

Respondents were asked if the number and accessibility of RJ programs has changed in the last five years, based on a five-point scale, 1 being “less than five years ago” and

¹² A total of 16 percent (n=68) of police respondents and 23 percent (n=59) of VSP respondents said they did not know if victims usually receive adequate information on RJ.

¹³ Respondents were able to select multiple responses. As such, totals do not add to 100 percent.

5 being “more than five years ago.” Findings showed that the majority of respondents perceived that the number and accessibility of RJ programs had stayed the same over the past five years. Approximately one-third (32 percent; n=122) of police respondents perceived that the number and the accessibility (33 percent; n=125) of RJ programs available to victims have remained unchanged in the last five years. This trend is similar among VSP respondents (32 and 31 percent, respectively; n=58 and 56, respectively). Less than one-fifth of respondents thought that the number (15 percent for police and 17 percent for VSP; n=57 and 31, respectively) and accessibility (14 and 15 percent; n=53 and 79) of RJ programs available to victims had increased in the past five years. A few thought the number (7 percent for both police and VSP; n=28 and 13) and the accessibility (8 and 10 percent; n=29 and 18) of services available to victims had decreased in the past five years.^{14, 15}

3.6 Challenges in Accessing RJ

Respondents were asked if victims of crime faced challenges in accessing RJ programs in their communities. One-third (33 percent; n=87) of VSP respondents and close to one-quarter (22 percent; n=92) of police respondents said that, yes, they did.¹⁶ Respondents who replied “yes” were prompted to provide a brief description of the challenge(s). Below is a summary of respondents’ most commonly reported challenges.

¹⁴ Close to half of all respondents said they didn’t know if the **number** of RJ programs available to victims had changed in the last five years (45 percent (n=171) of police respondents and 44 percent (n=79) of VPS respondents said they didn’t know).

¹⁵ Close to half of all respondents said they didn’t know if the **accessibility** of RJ programs to victims had changed in the last five years (45 percent (n=171) of police respondents and 44 percent (n=79) of VPS respondents said they didn’t know).

¹⁶ At least half of all respondents said they did not know (50 percent (n=209) of police respondents and 56 percent (n=150) of VSP respondents said they did not know).

3.6.1 Absence or limited RJ programs: Many respondents noted that there are very few or no RJ programs available in their community, or in a nearby community.¹⁷ This challenge also included programs with limited available funding and resources.

Restorative Justice is essentially unfunded in our area. There are no standards and no paid positions. The only program we have access to is the Youth Criminal Justice Committee which is 100% volunteer run and lacks the capacity and training to manage dealing directly with victims. Police respondent

3.6.2 Limited knowledge of RJ: Another challenge brought forward by the respondents was the limited knowledge or understanding of RJ, the programming, and the process as a whole. This also includes lack of awareness of RJ among the public as well as other CJS professionals.¹⁸ A number of respondents provided comments on this challenge:

Awareness of the program in the community. Police respondent

Not enough information available, no training or info to victim services available. VSP respondent

Generally a lack of awareness on the part of both police, court system and the public. (Police respondent)

¹⁷ Some respondents mentioned that although there are no current RJ programs available in their community, some are being developed.

¹⁸ This is an interesting finding considering results showed high awareness of RJ processes among both police and VSP respondents.

3.6.3 Lack of referrals: Having limited knowledge or understanding of RJ can affect the number of referrals to RJ programs. Other possible explanations for low referrals to RJ programs include the lack of “buy-in”¹⁹ from other CJS professionals (which links back to the challenge on the limited knowledge of RJ).

3.6.4 Serious-offence cases: Another challenge identified by respondents was the appropriateness of RJ in serious-offence cases. Opinions differ widely on the use of RJ in sexual assault or domestic violence cases. Some respondents mentioned that in such cases RJ is inappropriate due to the power dynamics in the relationship, which can trigger secondary victimization. Others support RJ in cases of sexual violence, but highlighted the need to have specific tools and safety precautions in place to handle such cases. For example, a few mentioned that having a victim-centred approach and trauma-informed training are essential to support RJ in such cases to lower the risk of re-traumatization. Many respondents noted the lack of both components in their current programs:

There is a moratorium on RJ being used with victims of IPV and sexualized violence because the current program is not victim-centered and doesn't take into consideration the safety of victims or what they need to heal. Current programs are focused on the benefits for the accused and don't reflect the needs of the victims. Not culturally safe.

There are not victim-focused, trauma-informed programs in most communities. RJ is focused on offender timelines and process, not victim healing. Victims do not get to direct the process, they are only asked to participate. (VSP respondent)

3.6.5 Interest in participating: Some respondents noted that in some cases victims have little interest in participating in RJ programs. Respondents provided some explanations, for example stating that CJS professionals, the victim, and/or the accused have negative views of RJ or believe that RJ would not meet their expectations and needs. This is closely linked to the challenge of limited knowledge and understanding of RJ. Another possible explanation respondents highlighted is that victims could have emotional and psychological difficulties in proceeding with the RJ process. The previously noted challenges thus compound the emotional and psychological difficulties experienced by victims (e.g., the limited available supports, the lack of trauma-informed training, and the absence of a victim-focused approach).

3.6.6 Slow process: A few respondents noted that RJ processes may take a long time to set up and complete. This can be explained by the absence of, or the limited, RJ programs available, in communities, compounded by the limited funds and resources available. A slow process may also reduce victims' interest in participating in RJ.

The program faces significant delays in processing/ actioning decisions. In essence the program is defunct. Police respondent

The process is too slow, takes too long to set up and put in place. Police respondent

LIMITATIONS

As noted above, the results of the study are limited due to the absence of Crown prosecutors. In addition, the distribution of the sample is skewed, with over half (57 percent) of the police responses coming from British Columbia and two-fifths (40 percent) of the VSP sample coming from Alberta. Another important limitation is that the majority (56 percent) of the VSP sample consists of those providing police-based services. The survey's sample is thus not representative of all police and VSP in Canada.

The next survey of CJS professionals should re-examine and strengthen the sampling and participation strategy to mitigate the limitations noted in this current study.

¹⁹ Lack of “buy-in” refers to lack of support and/or negative views of RJ.

CONCLUSION

Since 2015, one element of the federal Minister of Justice's mandate has been to "increase the use of restorative justice."²⁰ The survey results do provide some valuable insights into the attitudes, knowledge, and perceptions of police and VSP on the use and accessibility of RJ. Results show that most police and VSP respondents are aware of RJ processes and believe that the number and accessibility of RJ programs have stayed the same over the past five years. The findings also show that most respondents believe that victims do not usually receive adequate information on RJ and that they face many challenges in accessing RJ programs in their communities. Identifying these challenges is a first step towards increasing the use of these programs.

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²⁰ *Supra* note 1.

ACCESS TO JUSTICE FOR VICTIMS OF CRIME

By Susan McDonald

Former Chief Justice Beverley McLachlin once called access to justice “the central justice issue in Canada today.”¹ This article will explore the idea of access to justice for victims of crime, though in doing so will ask more questions than it answers.

WHAT DOES ACCESS TO JUSTICE MEAN?

What does access to justice mean? Who gets to define it? And does it mean the same thing to everyone? Is access to justice different for the petitioner in a divorce case and the victim of an assault? To try to answer these questions, this article will review Canadian research on access to justice and links to international dimensions, such as the Goals of the United Nations 2030 Agenda for Sustainable Development (SDGs), to better understand what access to justice for victims means and how it is being measured.

Access to justice has traditionally been seen as access to lawyers (e.g., legal aid) and court-based processes (Macdonald 2005, 20).² In more recent years, the concept has taken on a much broader definition, one that recognizes that access to justice goes beyond the formal structures and needs of the justice system to incorporate a citizen- or people-focus.³ Many lawyers have championed this work. Indeed, the Canadian Bar Association and the National Action Committee on Access to Justice in Civil and Family Matters both released significant reports in 2013 on access to justice.

The Honourable Thomas Cromwell, former Justice of the Supreme Court of Canada, defines access to justice as having the knowledge, resources, and services to use the justice system in family, criminal, and civil law (Cromwell 2012, 39). Osgoode Hall Law School law professor Trevor Farrow and his research team interviewed 99 Canadians in the Greater Toronto Area, asking respondents to define “justice.” The responses were then organized into themes, including the following:

- Justice is about fairness, equality, morality, and active participation in society.
- Procedural justice and substantive justice are both important.
- Not everyone has equal access to justice. (2014, 968)

Farrow further notes that “Good laws, rules, judges, educators, lawyers and courtrooms are all important. However, these are not ends in themselves, rather steps along the path to justice and access to it.” (2014, 983)

ACCESS TO JUSTICE AT THE DEPARTMENT OF JUSTICE CANADA

The Department of Justice Canada (JUS) considers access to justice a fundamental value of the Canadian justice system. It is part of the Minister of Justice’s mandate to ensure “a fair, relevant and accessible justice system for all Canadians.”⁴ Developed through an internal working group several years ago, JUS defines access to justice as:

Enabling Canadians to obtain the information and assistance they need to help prevent legal issues from arising and help them to resolve such issues efficiently,

¹ [Chief Justice, Beverley McLachlin \(August 2011\)](#).

² Access to lawyers and courts is Macdonald’s first “wave” of access to justice.

³ Numerous reports reflect the expansion of the concept of access to justice. See for example, the work of the [Canadian Forum on Civil Justice](#), or the work of the Canadian Bar Association (see <https://www.cba.org/CBA-Equal-Justice/Home>).

⁴ See the Department of Justice website at <https://www.justice.gc.ca/eng/abt-apd/index.html>.

affordably, and fairly, either through informal resolution mechanisms, where possible, or the formal justice system, when necessary.⁵

This definition acknowledges that:

1. The justice system extends beyond courts and tribunals to include an extensive informal system (e.g., information sources, self-help strategies, and other options for resolving disputes). Using formal or informal systems to increase access to justice is key to achieving fair⁶ and just outcomes.⁷ The government and the whole justice system thus save money by better allocating and distributing resources.
2. There is a need to develop Canadians' understanding and literacy of, and capability to navigate, the legal system. This can be done through a range of measures (e.g., providing all Canadians with basic legal training) that enable individuals to better manage their legal problems, i.e., those that can be decided by a court of law (see McCoubrey 2015).
3. Other conditions often make it harder for victims to access justice, i.e., to report crimes, seek assistance, and take part in criminal trials. These include:
 - socio-economic factors, such as poverty;
 - geographic factors;
 - cultural factors;
 - health factors; and/or

- policy decisions taken in other areas of responsibility.⁸

These principles illustrate that definitions of access to justice can be broader. They can also include resolution mechanisms outside the formal justice system, as well as information that goes beyond strictly legal issues. While access to justice may be defined differently depending on the context, the definition should ensure that victims are able to report crimes, seek assistance, and fully participate in criminal proceedings.

RESEARCH AND WRITING ON ACCESS TO JUSTICE FOR VICTIMS

Over the past few years, JUS has searched for peer-reviewed research articles on victims and access to justice. It found a significant body of literature in Canada and internationally on access to justice in general (see McDonald 2017) but little that focused on victims. Only a few pieces are reviewed here. The language used in articles about access to justice is not normally used in writing and research, hence the limited findings.

Legal scholars Mary Jane Mossman and Patricia Hughes completed a significant report for JUS (Mossman and Hughes 2004) entitled, *Re-Thinking Access to Criminal Justice in Canada: A Critical Review of Needs, Responses and Restorative Justice Initiatives* (Mossman and Hughes 2004). This report, while dated, reviews selected literature, including the shift from access to justice being about fairness and equality to being about balancing budgets and cutting deficits. The authors also examine the public and private dimensions of justice, cautioning about privatizing criminal justice, and calling for continued

⁵ *Access to Justice Toolbox*, Internal document. Ottawa: Department of Justice Canada, 2012.

⁶ Ibid. "fair" means "accessible, affordable, efficient, sustainable, and proportional."

⁷ Ibid. "just outcomes" means "Demonstrates respect for the rule of law, supports Charter values, and enables greater social inclusion for Canadians."

⁸ These principles have been developed from the results of the National Legal Problems Survey (NLPS)⁸ and the findings from the cycles of the survey done in 2004, 2006, and 2008 (Currie 2009). In those first three cycles, the NLPS focused on civil justice problems. In 2014, the Canadian Forum on Civil Justice took over the NLPS and for the first time included a question about being accused of, detained, or questioned about a crime. In the 2020 NLPS, which will be described in greater detail below, the section on criminal legal problems has been expanded to include asking respondents if they had been a victim of or a witness to a crime.

community involvement. They argue that valuing the individual victim over the public interest, thus creating a call for stiffer sentences, fosters the law and order political agenda that can be so popular among citizens.

Ultimately, the authors conclude that it is not possible to resolve what may be the competing roles of the Crown prosecutor and the community, or the competing perspectives of an offender and a victim. It is equally important to ponder how restorative justice can meet the goals of substantive equality, as well as meet the needs of victims, accused Indigenous peoples, and other offenders. On the needs of Indigenous peoples in a criminal context, the issues of overrepresentation, as both accused and as victims, are as relevant today as they were when the report was first released 15 years ago.

Mossman and Hughes (2004) introduce the idea of restorative justice as a mechanism by which victims of crime can achieve access to justice. In her article in the tenth issue of the *Victims of Crime Research Digest* (Wemmers 2017), Professor Jo-Anne Wemmers examines the use of reparative justice in cases of sexual violence and the importance of victims being able to choose how they would like to proceed in the civil, criminal, or administrative justice systems.

During the past decade, there have also been legislative reforms in Canada, including the *Canadian Victims Bill of Rights* (CVBR). The CVBR enshrines in legislation some elements of access to justice, including the right to participation and the right to information. In the current issue (No. 12) of the *Victims of Crime Research Digest*, Professor Marie Manikis (2019) discusses victim and community impact statements, which exemplify victims' right to participate in their case. Victims and their right to information about their case, about the criminal justice system, and about restorative justice is the subject of another article in Issue No. 10 (see McDonald 2017).

Sexual assault and the criminal justice system's response to it in Canada and other countries have been under close scrutiny in the past few years. For example, a February 2017 *Globe and Mail* feature article by Robyn Doolittle highlighted

the problems caused by the use of the classification term "unfounded" and different investigation practices by police services around the country (Doolittle 2017). In another article at that time, in the *Toronto Star*, the author noted (del Gobbo 2017):

We need to fundamentally rethink the way that the law handles sexual violence. To do that, we should start by asking survivors what "justice" means to them.

For some survivors, justice means reporting their assaults to police. It means participating in a criminal trial process that protects them.

But for other survivors, justice means repairing the harm caused by the offender's actions through healing and reintegration. It means holding the offender accountable through voluntary measures that engage the community and prevent future crime. It means understanding sexual violence as the product of complex systemic forces that impact different groups differently. It means working together with offenders to promote gender equality in our society.

One response to these concerns was to establish the Coordinating Committee of Senior Officials (CCSO) Working Group on Access to Justice for Adult Victims of Sexual Assault, an ad hoc group comprising federal, provincial, and territorial victim services, Crown attorneys, and police. This working group released its report, *Reporting, Investigating and Prosecuting Sexual Assaults Committed Against Adults – Challenges and Promising Practices in Enhancing Access to Justice for Victims*, in the fall of 2018. In the preface, it defines access to justice:

Access to justice is a principle that flows from respect for the rule of law and, as such, is a fundamental value of the Canadian criminal justice system. For adult victims of sexual assault in particular, access to justice means that: victims feel comfortable reporting crimes to police; police investigations are conducted thoroughly in an objective and timely manner; charges are laid where they meet the legal criteria; and, prosecutions are conducted fairly, with supports provided to victims. While a sexual assault victim may face many challenges in the aftermath of a

sexual assault, this report focusses solely on *criminal justice system barriers* that a victim may face following a sexual assault, which impede access to justice. (2018, Preface, *emphasis added*)

The report focuses on practices in the jurisdictions that encourage victims of crime to report to police, support the victim, and improve the efficiency and effectiveness of investigations and prosecutions of sexual assaults.

The group contracted Indigenous experts Patricia Barkaskas and Sarah Hunt to prepare a paper on Indigenous perspectives. The paper, entitled *Access to Justice for Indigenous Adult Victims of Sexual Assault*, highlights that systemic violence has been, and continues to be, a key barrier to justice for Indigenous people and communities. They note:

Within the settler colonial context of Canada, the process of redefining justice for Indigenous survivors must be understood as always delimited by the structural factors which continue to deny Indigenous peoples' self-determination at individual and collective scales. (2017, 33)

Barkaskas and Hunt (2017) argue that while many criminal justice professionals recognize the systemic problems in the current system when responding to sexual violence towards Indigenous peoples, they continue to advocate for a blended model in which Indigenous communities would work with the traditional criminal justice system. Others are skeptical of Canadian justice systems and believe that they can only obtain justice outside the judicial system, particularly when sexual violence occurs within Indigenous families. The authors comment, in both the executive summary and in the main report, that:

Many efforts to define access to justice for Indigenous survivors have sought to contend with the impossibility of true justice for Indigenous people whose lives are always bound up in colonial systems and ideologies. Rather, access to justice has been defined through the lens of

avoiding the perpetuation of trauma through actively centering Indigenous knowledge, perspectives and voice. (2017, 34)

Another Canadian report that explored access to justice was released by the former Canadian Research Centre for Law and the Family in 2017, entitled *Access to Justice in Indigenous Communities: An Intercultural Strategy to Improve Access to Justice* (Wright 2017). The report focuses primarily on the relationships between Indigenous communities in Alberta, police, and others in the criminal justice system. Through a series of focus groups with key stakeholders, the report found that the most common legal issues were child welfare and criminal problems, including substance-related charges and traffic issues. It prioritized four key areas: 1) addressing the needs of youth in the court system; 2) formalizing partnerships between agencies; 3) improving legal rights literacy for all; and 4) making the court system accessible. (Wright 2017, 12)

An article by Clarke et al. (2016) describes the findings from an evaluation of the pilot project *Access to Justice for Victims/Survivors of Elder Abuse*. This project was launched in 2010 as part of the Welsh government's six-year integrated strategy for tackling domestic abuse. The pilot project was developed to address the needs of older people in domestic settings and make it easier for them to access criminal and civil justice. Although elder abuse very often involves criminal behaviour, criminal investigations and, ultimately, prosecutions, are rare. As the authors note,

Accessing justice is not only a human right but in some instances may be the only effective way of protecting the individual. The use of criminal or civil justice processes and the provision of welfare support are not incompatible or mutually exclusive interventions, but can complement each other as long as an appropriate balance is achieved which recognises the wishes of the individual. It is essential that service providers adopt a

person-centred approach when discussing the criminal, civil and welfare options available. (Clarke et al. 2016, 209)

A 2010 study JUS completed with the Ottawa Police Service Elder Abuse Section shows similar results. It showed that 17% of elder abuse files reviewed (77 out of 453 files) resulted in charges being laid (Ha 2013, 32). Officers interviewed as part of the study noted that those numbers did not reflect the challenges of each file, making it more complicated to assess what the appropriate response should be.

Interestingly, while very similar to the Clarke study, this 2010 JUS study does not mention “access to justice.” It suggests that there is a great deal of research and writing on access to justice for victims of crime, both in peer-reviewed journals and in government and civil society reports, but it doesn’t use the language of access to justice. If the language is not included, the article will not show up in any search.

MEASURING ACCESS TO JUSTICE FOR VICTIMS

Where access to justice for victims is clearly defined, what are the anticipated outcomes? Are these outcomes being achieved? How is access to justice for victims being measured? There are many different ways to measure access to justice. In the mid-2000s, researchers at the University of Tilburg, Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution (TISCO), developed a framework to ensure that researchers view access to justice from the perspective of the person experiencing the problem (Gramitkov et al. 2008). Researchers at TISCO developed a tool that measured the cost, the quality of the process, and the quality of the outcome. Within each dimension, there are specific indicators, which are measured on a five-point scale. Consistently measuring the indicators makes it possible to consistently score and construct scales and indexes to represent the cost and quality measures.

A study by Laxminarayan (2010) illustrates how lawyers can use this framework and measurement tool to improve/measure the experiences of victims going through the justice system: first, by exposing the costs of justice; second, by asking victims about important aspects of their particular procedure or trial, e.g., Was your right to submit a VIS explained to you?; and third, by specifying what characteristics are required for a satisfactory outcome. Lawyers can use this approach regardless of which pathway a victim follows, for example civil proceedings or restorative justice proceedings.

JUS has developed an access to justice index (the Index) for federal administrative bodies (McDonald 2017) based on this framework (Gramitkov et al. 2008). The Index is intended to be a self-assessment tool for tribunals and other administrative bodies to determine how well they are ensuring access to justice for their constituents. Most recently, the Index has been adapted to measure program outcomes for seven of JUS’s funding programs that include “improving access to justice and well-being” as long-term outcomes. One of those funding programs, the Victims Fund, offers examples of projects that improve access to justice for victims of crime and their family members. One is the Child Advocacy Centre model for child victims of violence; another is the Family Information Liaison Units, which provide Indigenous families with information about their missing or murdered loved ones in a culturally appropriate way.⁹ JUS has developed and supported these initiatives alongside a growing understanding that access to justice goes beyond access to legal representation.

⁹ Another example from Ontario is Legal Aid Ontario’s Domestic Violence Strategy (the Strategy), which was developed after consulting with stakeholders across the province in 2015. The Strategy focuses on three key areas: reducing barriers to access; improving legal capacity; and supporting collaborative change. See <https://ablawg.ca/2018/11/12/albertas-family-violence-laws-intersections-inconsistencies-and-access-to-justice/>.

INTERNATIONAL DIMENSIONS

There are also very clear international dimensions to access to justice. Most important, Canada supports the United Nations 2030 Agenda and the 17 sustainable development goals (SDGs).¹⁰ The SDG framework includes a goal to ensure access to justice for all (SDG 16.3).¹¹ This is an exciting development for those in the justice field because access to justice has never before been included in development goals, and all countries have signed on to reach these goals by 2030.

The Innovation Working Group of the Task Force on Justice¹² released a report in February 2019 on how to achieve SDG16.3. The report concludes that the access to justice gap in the world is significant and that justice systems are not meeting people's needs. Recommendations to meet these challenges include reframing justice so that it responds to people's needs and considers the fairness of their relationships, with a focus on outcomes.

Within the Government of Canada, JUS is responsible for reporting on progress on SDG16. The international dimensions provide an opportunity to join a broader global conversation about access to justice for victims of crime. This global conversation includes "legal needs" or "legal problems" surveys.

¹⁰ For more information, see Statistics Canada's *Canada's Sustainable Development Goals Data Hub* (<https://www144.statcan.gc.ca/sdg-odd/index-eng.htm>). The agency is responsible for collecting and disseminating data to monitor Canadian progress against the global indicators; also see the *UN Sustainable Development Knowledge Platform* (<https://sustainabledevelopment.un.org/sdg16>). This website provides an overview of global progress on each SDG.

¹¹ Goal 16 is to: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

¹² The Task Force on Justice is an initiative of the Pathfinders for Peace, Justice and Inclusive Societies, SDG 16. For more information, see <https://www.justice.sdg16.plus/>.

CURRENT RESEARCH – THE NATIONAL LEGAL PROBLEMS SURVEY

Countries around the world are conducting national legal needs or legal problems surveys, self-reported surveys that measure access to justice. In Canada, the National Legal Problems Survey (NLPS) was first championed by JUS, which conducted three separate cycles in 2004, 2006 and 2008. In 2014, the Canadian Forum on Civil Justice developed a fourth cycle, adding a section on criminal problems, but only for an accused. Most of the research on victims of crime falls within criminal justice, but the findings from these previous cycles show that civil legal problems are far more prevalent than criminal legal problems. (Currie 2016)

JUS has partnered with Statistics Canada to conduct the NLPS, with support from the Department of Women and Gender Equality. The NLPS is designed to identify how often middle- and low-income Canadians face primarily civil legal problems and how much help they need with these problems. The study measures not only the prevalence of legal problems, but how Canadians attempt to resolve them, and the effect on Canadians' health, well-being, and finances.

JUS worked with other federal departments and agencies to find out what policy priorities the survey could address and the final content for testing. In particular, JUS has added questions for respondents about being a victim of, or witness to, a crime, along with a question on the relationship between the perpetrator and victim to identify incidences of family violence. Of interest are the synergies between the criminal justice system and access to justice there and in the civil and family justice systems. For example, does spousal violence trigger other legal problems, or do legal problems trigger spousal violence? The likely answer is both, but there will be data to illustrate this assertion and to help the justice system respond better to the needs of these victims.

If it secures funding partners, the NLPS will collect data in the spring of 2020 and produce results the following year. The survey represents a great opportunity to address significant data gaps on the intersections of family, civil, and criminal justice, both domestically and internationally.

CONCLUSION

Based on this brief review, it is clear that access to justice is not just about accessing courts and lawyers, but has evolved in recent years to be more citizen-focused and to include responses beyond the traditional justice system. It is also clear that access to justice for victims of crime means something different for different people: being able to report a crime to police; being able to participate in a criminal justice process; being able to access information. It could also mean being able to participate in a restorative justice process to address the harm caused by the offender, or presenting a victim impact statement at a parole hearing.

This review also shows that research, especially in Canada, is not always characterized as “access to justice” research. This speaks further to the importance of adopting the language of the SDGs, which has been accepted by the 193 countries of the UN General Assembly. SDG16 gives us a common language to frame an issue and to respond to challenges. For example, is the issue a lack of services for victims of crime in northern and remote communities in Canada? Or is the issue a lack of access to justice for victims of crime in northern and remote communities? Finally, this review confirms that access to justice flows from the rule of law and is part of JUS’s mandate to ensure “A fair, relevant and accessible justice system for all Canadians.” Much more research needs to be done to understand what access to justice means for victims of crime. This short article is but a glimpse at the literature on the topic and leaves much more to be explored.

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TESTIMONIAL AIDS KNOWLEDGE EXCHANGE: SUCCESSSES, CHALLENGES AND RECOMMENDATIONS

By Shanna Hickey and Susan McDonald

In March 2018, the Department of Justice Canada (Justice Canada) hosted a Knowledge Exchange¹ in Ottawa on testimonial aids, with about 80 participants from across the country and from across the criminal justice system. Justice Canada sought high-level input from the participants of the event on their successes, challenges, and recommendations on the use of testimonial aids for vulnerable witnesses. This article provides the results of that input.

Canada has included provisions in the *Criminal Code* (CC) allowing witnesses to use testimonial aids since 1988, when former Bill C-15 (*An Act to amend the Criminal Code of Canada and the Canada Evidence Act*) came into force. Further amendments came into force in 1999, 2006, and, most recently, in 2015, with the *Victims Bill of Rights Act* (VBR). This article complements the review of social science research in the *Victims of Crime Research Digest*, No. 11 (McDonald 2018) to provide a more comprehensive understanding of how testimonial aids are being used in Canada.

As noted in McDonald (2018, 5):

There are three types of testimonial aids: a witness may testify from behind a screen, from outside the courtroom via closed-circuit television (CCTV), or alongside an accompanying support person. In addition to these traditional aids, the *Criminal Code* and the *Canada Evidence Act* also authorize publication bans and video-taped testimony, along with appointment of counsel

to cross-examine a witness and orders to exclude the public from the courtroom.

SEEKING INPUT

Using an online survey, Justice Canada sent four qualitative questions to the participants of the Knowledge Exchange before the event. It then analyzed the answers for themes, that were presented during the one-day event. No participants were identified in the results.

WHAT PARTICIPANTS SAID

Thirty-two respondents contributed to the survey: 50% (n=16) worked in victim services; 28% (n=9) were legal counsel (including Crown prosecutors, defence, etc.); 13% (n=4) worked in governmental policy or programs; and 1 respondent each reported being a police officer (n=1), a judicial educator (n=1), and a worker at a Child Advocacy Centre/Child and Youth Advocacy Centre (n=1).

SUCCESSSES

The first question asked respondents to share a testimonial aids success story. Out of thirty (30) responses provided, almost all of them told a story about a case in court where CCTV or video-conferencing was successfully used. A success included the victim/witness being able to testify and provide a full and candid account. A few of these success stories are shared below:

... at a recent sex assault trial one of the victims was literally hyperventilating, having a panic attack outside the court room. She had a panic attack on the drive to court and had to pull over to the side of the road and get a friend to drive her the rest of the way. Once she got to court she realized she knew some of the accused's friends who were in the court room...this led to the hyperventilation. I made an application for the witness to testify via CCTV. The application was granted.

¹ A Knowledge Exchange is a gathering of researchers and policy and program analysts to share information on a specific issue across these sectors. The Policy Centre for Victim Issues, Department of Justice Canada, has been hosting at least one Knowledge Exchange each year to foster dialogue, information sharing, and problem solving on victim-specific topics.

The witness, while extremely nervous, anxious and breathing heavily, managed to complete her testimony and the court convicted the assailant.

Young victim of physical abuse by father. Initially wanted to testify in the courtroom. During her testimony it became clear that she was being less than forthcoming with her evidence. During a break she disclosed to a victim witness worker that her father (accused) was glaring at her and making her uncomfortable. Crown made mid-trial application for CCTV which was granted. Victim testified outside of the courtroom, was full and frank in her testimony and accused was convicted.

In a sexual interference trial, (we were) successful in having a 14 year old victim testify via CCTV with a support person, both of which were required as she was extremely nervous about having to testify. The accused was her uncle and this made the need for testimonial aids even more important as the victim felt her aunt, the accused's wife, would be very upset by her testimony and seeing her aunt in the courtroom would make it even harder to have to testify from inside the courtroom. A finding of guilt was made based primarily on her testimony.

In a case of human trafficking, the victim was prepared to testify only if she would not have to do so in front of the accused. During a witness prep meeting, the victim provided some information about the accused contacting her, threatening her and pressuring her into providing a recant statement. The victim was fearful. In preparation for the trial, I brought an application for the use of the CCTV room. Defence counsel was contesting the application as it was not a mandatory order. The judge ultimately granted the application. The victim, who will be testifying later this year, was extremely relieved and she is now fully cooperative.

Each of the success stories participants shared met the goal of providing a full and candid account. Other common threads ran through these stories:

- the violent and often sexual nature of the crimes;
- the young ages of the victims/witnesses; and

- victim services working with Crown prosecutors to identify the needs of the victim/witness and to respond to these needs, regardless of whether the specific testimonial aid was available or not.

Although there were many of these success stories, there were also challenges with the use of testimonial aids.

CHALLENGES

Participants were also asked to describe a challenge that they have experienced while using testimonial aids with vulnerable witnesses in the criminal justice system. These challenges included:

- i. Resistance to the use of testimonial aids;
- ii. Lack of availability/resources;
- iii. Technology issues;
- iv. Process issues; and
- v. Problems with screens.

i. Resistance to the use of testimonial aids

Forty-five percent of respondents (n=14) reported that Crown attorneys, judiciary as well as defence counsel, resisted using testimonial aids and that this was extremely frustrating. The challenges respondents faced included:

- getting Crowns to request the application, especially for adults or other vulnerable witnesses;
- judges often denying the application for testimonial aids, and
- defence counsel often opposing the application for testimonial aids.

Victims will often be granted a screen in lieu of testifying via CCTV, by secure video link, or videoconferencing. A screen presents its own set of challenges (discussed below). Victim services are concerned they are providing victims with false hope when they tell victims they have a right to request to testify with testimonial aids under the CVBR, because the applications can be denied.

Judiciary feel they receive a more candid account of a testimony if they can see the fear, tears and anxiety. Very disappointing.

The challenge I am facing is the continuous objection by defence counsel of the use of the CCTV room when the order is a discretionary one. Despite the Supreme Court decision in *R. v. Levogiannis*, some defence counsel continue to raise arguments regarding effective cross-examination, fair trial, etc.

ii. Lack of availability/resources

Thirty-five percent of respondents said (n=11) that testimonial aids are simply not available or are only available on occasion and that there is no consistency across regions. Respondents discussed having to create their own makeshift screen from curtains or room dividers. They also said that fly-in Indigenous communities do not have access to any kind of testimonial aid or victim supports.

iii. Technology issues

Twenty-nine percent of respondents (n=9) said that they experienced technological challenges, primarily challenges with CCTV equipment. Respondents said that either the equipment was not working; the image and sound were not coordinated; the equipment/technology was not available; there were technical difficulties; or that when using CCTV, the camera was left focused on the accused the entire time the victim testified. Others said that court registrars/court staff lacked training and refresher courses, or were not familiar enough with the equipment to be able to operate it properly.

iv. Process issues

Twenty-six percent of respondents (n=8) said that challenges with process issues included the following:

- having to request CCTV equipment 30 days in advance;
- when the identity of the accused is at issue, using testimonial aids does not remove the need for the victim to identify the accused in court;

- using videoconferencing with very young children is sometimes difficult because they are easily distracted;
- some witnesses find testimonial accommodation kits intimidating; and
- having the Crown and defence counsel in a very small CCTV room can be intimidating for victims.

One of our vulnerable (homeless/addicted/indigenous) victims of a serious sexual/aggravated assault was incarcerated under S. 545 of the criminal code ... and transported to and from court ... with the accused person (high risk offender)... The [preliminary] inquiry was well underway (2 days) by the time a "screen" even came up in conversation.

v. Problems with screens

Sixteen percent of respondents (n=5) said that there are challenges when using screens. These include the following:

- their application for screens has been denied;
- testifying with a screen does not reduce anxiety or stress because victims are aware the accused is present;
- screens are ineffective at actually blocking the accused from view; and
- for young children the screen can become a distraction and should be placed in front of the accused instead.

RECOMMENDATIONS

The final survey question asked respondents to provide three recommendations to improve the use of testimonial aids with vulnerable witnesses in the criminal justice system. Five themes emerged. These include:

-
- i. Consider amending legislation to:
 - a. provide clarity on the use of support dogs;
 - b. standardize the application process;
 - c. remove discretionary language in the *Criminal Code*;
 - d. remove preliminary hearings for children;
 - ii. Ensure a broader – and more equitable – use of testimonial aids, especially in rural and remote communities;
 - iii. Address challenges with the logistics of using testimonial aids;
 - iv. Increase resources for the latest technology; and,
 - v. Provide ongoing education/training for professionals as well as public education.

i. Consider amending legislation

Seventeen respondents (57%) recommended changes to the process of applying for testimonial aids, for example, creating a standard process to request a testimonial aid to ensure a decision is made quickly and well before the trial.

Other recommendations included:

- writing applications for testimonial aids that can be ordered as desk orders by the court, i.e., no motion would be argued; and
- entering reasons for allowing/denying an application into the record for proceedings.

Respondents had strong, though at times conflicting, recommendations about the role of Crown, judge, and defence counsel. Some suggested that Crown prosecutors should be more open-minded and more willing to make testimonial aid applications. Others recommended that:

- when Crowns do make applications for testimonial aids they need to make them earlier in the process, well in advance of the hearing, to avoid delays and to better prepare victims;

- Crowns sometimes don't provide enough warning to Court staff that they require the equipment; staff are then unable to provide the testimonial aid;
- Crowns do not have the time or resources to address all the needs of many victims;
- testimonial aids should not depend on the opinion of a Crown or judge; and
- Crowns or judges should have less discretion in the matter.

Some were of the opinion that defence counsel should have less input as to whether the victim should use a testimonial aid, whereas others believed it should be up to defence to demonstrate how using a testimonial aid would interfere with the proper administration of justice.

The use of testimonial aids is wholly dependent upon whether the Crown/judge see value in the victim having such testimonial aid made available. The use of testimonial aids should be on election of a vulnerable victim, not on players within the court room process.

Other respondents recommended that using a testimonial aid should be the decision of the victims and witnesses who have to testify. Many of these recommendations were advocating for the removal of restrictions to testimonial aids, including age, vulnerability, and the legislative language of "may." Respondents want to be able to use testimonial aids with all victims and witnesses, regardless of age or type of crime, and would like to use testimonial aids at pre-trial and in the early resolution process.

The removal of preliminary hearings – which are not testimonial aids – for children was also recommended, along with removing the need for victims to testify at the application for testimonial aids. Last, it was recommended that the screen and the use of CCTV be made into two separate applications and that a photo of the victim at the age they were victimized be shown in court, especially in cases of historical abuse.

I am of the opinion that mandatory testimonial aid orders should not be limited to witnesses under the age of 18 years old or to witnesses that have a disability. There are offences in the Criminal Code for which there should be mandatory testimonial aid orders for the victims (i.e., sexual assault, human trafficking).

Nine respondents (30%) recommended clarifying the use of support animals and support persons. The suggested recommendations included:

- making support dogs available in all jurisdictions;
- amending the *Criminal Code* to include using a dog for support;
- including a provision that supports accredited facility dogs;
- creating consistent guidelines for the use of support persons; and
- having greater flexibility about what is considered a support person.

ii. Ensure a broader – and more equitable – use of testimonial aids, especially in rural and remote communities

Sixty percent of survey respondents (n=18) wrote that the use of testimonial aids needed to be more inclusive, more broadly used, and more available among remote, Indigenous communities. Respondents felt that CCTV needed to be available for all victims of crime and that it should be available in all courtrooms. Some recommended that the technology should be set up in every courtroom, ready to go, regardless of how it would be applied. Respondents also felt it was important to broaden the types of available testimonial aids.

iii. Address challenges with the logistics of using testimonial aids

Thirty-seven percent of respondents (n=11) recommended changes to the logistics of using testimonial aids. These included the logistics of screens, CCTV, and seeing the accused in court. The majority of comments about screens

were that they need to be improved. For example, some of the recommendations stated that screens be bigger, darker, not placed in front of the victim (as this causes anxiety/claustrophobia/fearfulness), and that they allow the accused to first leave the courtroom so that the victim can enter the courtroom behind the screen, privately.

While screens may be utilized with the best of intentions to shield victims from the gaze of the offender – and that objective is often met – they also serve as degrading props that nonetheless do not minimize trauma / re-victimization or inconvenience. The current times call for a better solution.

For concerns about CCTV, respondents recommended that testimony be given from a separate CCTV room or with a protective screen; that the CCTV be set up in a different building altogether so that the victim and offender would not see each other; that the Crown should have the option to question in either the courtroom or the CCTV room; and that for any victim under the age of 12, the Crown and defence should remain in the courtroom.

Finally, it was recommended that victims should be allowed to enter the courtroom from side entrances where possible, to avoid walking by the accused; and that those who are waiting in a vulnerable-witness waiting room should remain there until the matter is before the court; they should never be brought to the courtroom early.

iv. Increase resources for the latest technology

Twenty-three percent of respondents recommended increasing resources (n=7). Respondents said that not only were more resources needed, more equality in resources was needed as well. Respondents also recommended new and more advanced technology, including secure video links and microphones to be able to hear witnesses.

v. Provide both ongoing education/training for professionals and public education

Forty percent of respondents (n=12) recommended education and training as well as public education about testimonial aids. Training/education was recommended

primarily for judges, Crown prosecutors, and court staff. Respondents said that there needs to be sufficient and proper education not only on testimonial aids themselves, but also on CCTV technology, the needs of victims and witnesses, and the stereotypes surrounding the use of testimonial aids. Another recommendation mentioned was for jurisdictions to share information about case law, best practices, and equipment. Respondents' recommendations for public education included encouraging a culture that supports the use of testimonial aids; ensuring that victims are aware of testimonial aids; and also soliciting feedback to find out how the equipment is working when they use testimonial aids.

Table 1, below, provides a summary of the five recommendations discussed above. It shows how many respondents identified each recommendation and the corresponding percentage. The table breaks down legislative amendments into two sub-themes, discussed above; when combined it proves to be the recommendation of the five that respondents most supported.

Table 1: Recommendations to Improve the Use of Testimonial Aids (n=30)²

Theme	Count (n)	Percent (%)
Amend legislation	26	87%
Process	17	57%
Clarity regarding support animals/persons	9	30%
Make broader use of testimonial aids	18	60%
Provide ongoing education/training	12	40%
Address challenges with logistics	11	37%
Increase resources	7	23%

² Two responses were excluded from the analysis; one participant chose not to answer the survey questions and another respondent's response did not answer the question.

CONCLUSION

It is clear that those who participated in the Knowledge Exchange on testimonial aids see their value and would like to see them used more often and more consistently across the country. Participants recommended amending legislation, providing more training, addressing logistics, and adding more resources to improve the quality of testimonial aid and to reduce the challenges that criminal justice professionals, as well as victims and vulnerable witnesses, are currently experiencing.

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ARTICLES FROM THE VICTIMS OF CRIME RESEARCH DIGEST

JUSTRESEARCH | # 14 | 2007

Articles	Author(s)	Link
Investigating the Victim Impact Statement in the Cases of Sexual Assault in Nova Scotia: Notes on Methods and some Preliminary Observations	Karen-Lee Miller	http://www.justice.gc.ca/eng/rp-pr/jr/jr14/p5.html
Victim Impact Statement at Sentencing: Judicial Experience and Perceptions – A Survey of Three Jurisdictions	Julian Roberts and Allen Edgar	http://www.justice.gc.ca/eng/rp-pr/jr/jr14/p6.html
An Exploration of the Needs of Victims of Hate Crimes	Susan McDonald and Andrea Hogue	http://www.justice.gc.ca/eng/rp-pr/jr/jr14/p7.html
The Professionalization of Victim Services in Canada	Susan McDonald	http://www.justice.gc.ca/eng/rp-pr/jr/jr14/p8.html
Highlights from a Preliminary Study of Police Classification of Sexual Assault Cases as Unfounded	Tina Hattem	http://www.justice.gc.ca/eng/rp-pr/jr/jr14/p9.html
Criminal Victimization in Canada's Territories: Results from the 2004 General Social Survey	Jodi-Anne Brzozowski	http://www.justice.gc.ca/eng/rp-pr/jr/jr14/p10.html

VICTIMS OF CRIME RESEARCH DIGEST | # 1 | 2008

Articles	Author(s)	Link
Victim Impact Statements: Lessons Learned and Future Priorities	Julian Roberts	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr07_vic4/p1.html
Codes of Ethics for Victim Services: An Annotated Bibliography	Aubrie McGibbon	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr07_vic4/p2.html
A Summary of Research into the Federal Victim Surcharge in New Brunswick and the Northwest Territories	Lisa Warrilow and Susan McDonald	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr07_vic4/p3.html
Victims and Fetal Alcohol Spectrum Disorder (FASD): A Review of the Issues	Charlotte Fraser	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr07_vic4/p4.html
The Court Observation Study: Collaborations Beyond Expectations	Pearl Rimer and Barb McIntyre	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr07_vic4/p5.html
Serving Canada's Crime Victims: Results from the 2005/2006 Victim Services Survey	Jodi-Anne Brzozowski	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr07_vic4/p6.html
Victim-Related Conferences in 2008		http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr07_vic4/p7.html

VICTIMS OF CRIME RESEARCH DIGEST | # 2 | 2009

Articles	Author(s)	Link
Victimization, Resilience and Meaning-Making: Moving Forward in Strength	James K. Hill	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd09_2-rr09_2/p1.html
Understanding Restitution	Susan McDonald	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd09_2-rr09_2/p2.html
Facilitating Testimony for Child Victims and Witnesses	Melissa Northcott	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd09_2-rr09_2/p3.html
Memorializing the Victims of Terrorism: An Overview of the Literature	Rina Egbo	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd09_2-rr09_2/p4.html
Bail and Breach of Conditions in Spousal Abuse Cases: Overview of Methods Used and Methodological Issues	Nathalie Quann	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd09_2-rr09_2/p5.html
Victim-Related Conferences in 2009		http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd09_2-rr09_2/p6.html

VICTIMS OF CRIME RESEARCH DIGEST | # 3 | 2010

Articles	Author(s)	Link
Documenting the Growth of Resources for Victims/Survivors	Myrna Dawson	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/p1.html
"Explain Please!" Working with Victims and Restitution	Susan McDonald	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/p2.html
Aboriginal Victimization in Canada: A Summary of the Literature	Katie Scrim	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/p3.html
Accessing Hard-to-Reach Populations: Respondent-Driven Sampling	Sidikat Fashola	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/p4.html
Victims Services in Canada: Results from the Victim Services Survey 2007/2008	Julie Sauvé	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/p5.html
Victim-Related Conferences in 2010		http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/p6.html

VICTIMS OF CRIME RESEARCH DIGEST | # 4 | 2011

Articles	Author(s)	Link
Canadians' Awareness of Victim Issues: A Benchmarking Study	Susan McDonald and Katie Scrim	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd4-rr4/p1.html
Domestic Violence in Rural Canada	Melissa Northcott	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd4-rr4/p2.html
Practice Based Perspectives: Victimization and Substance Use	Bill Morrison, Cynthia Doucet, Brenda Thomas and Patricia Peterson	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd4-rr4/p3.html
Understanding the Community Impact of Hate Crimes: A Case Study	Sidikat Fashola	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd4-rr4/p4.html
The 2009 General Social Survey on Victimization in the Territories: Lessons Learned	Luke Pelot, Catherine Allan, Jodi-Anne Brzozowski and Patrick St-Cyr	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd4-rr4/p5.html
Victim-Related Conferences in 2011		http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd4-rr4/p6.html

VICTIMS OF CRIME RESEARCH DIGEST | # 5 | 2012

Articles	Author(s)	Link
Victim Impact Statements: Recent Guidance from the Courts of Appeal	Marie Manikis and Julian V. Roberts	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd5-rr5/p2.html
Identity-Related Crime: What it is and How it Impacts Victims	Melissa Northcott	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd5-rr5/p3.html
The Darker Side of Technology: Reflections from the Field on Responding to Victims' Needs	Susan McDonald	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd5-rr5/p4.html
Understanding the Experiences of Youth Victimization	Melissa Northcott	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd5-rr5/p5.html
Victims before the International Criminal Court: A New Model of Criminal Justice?	Frédéric Mégret	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd5-rr5/p6.html
Victim-Related Conferences in 2012		http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd5-rr5/p7.html

VICTIMS OF CRIME RESEARCH DIGEST | # 6 | 2013

Articles	Author(s)	Link
Building Our Capacity: Children's Advocacy Centres in Canada	Susan McDonald, Katie Scrim and Lara Rooney	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/p2.html
A Survey of Survivors of Sexual Violence	Melissa Northcott	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/p3.html
Is a Picture Worth a Thousand Words? The Opportunities and Challenges of Using GIS-Based Mapping with a Victim's Lens	Katie Scrim and Clarinda Spijkerman	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/p4.html
Police Responses to Elder Abuse: The Ottawa Police Service Elder Abuse Section	Lisa Ha	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/p5.html
A Comparative Overview of Victims' Rights, Enforcement Mechanisms, and Redress in England and Wales and the American Federal Jurisdiction	Marie Manikis	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/p6.html
Victim-Related Conferences in 2013		http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/p7.html

VICTIMS OF CRIME RESEARCH DIGEST | # 7 | 2014

Articles	Author(s)	Link
A Snapshot of Cyberbullying	Lisa Ha	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd7-rr7/p2.html
Assisting Victims Through Technology	Melissa Lindsay	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd7-rr7/p3.html
Let's "Paws" to Consider the Possibility: Using Support Dogs with Victims of Crime	Susan McDonald and Lara Rooney	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd7-rr7/p4.html
Third Party Records: The Case Law from 2003-2010	Susan McDonald, Siavosh Pashang and Anna Ndegwa	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd7-rr7/p5.html
The Human Cost of Impaired Driving in Canada	André Solecki and Katie Scrim	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd7-rr7/p6.html
Victim-Related Conferences in 2014		http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd7-rr7/p7.html

VICTIMS OF CRIME RESEARCH DIGEST | # 8 | 2015

Articles	Author(s)	Link
The Use of Close-Circuit Television: The Experienced of Child and Youth Witnesses in Ontario's West Region	Pamela Hurley	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd8-rr8/p1.html
Identifying Young Victims in the Media in Canada: A Media Scan	Lisa Ha and Anna Ndegwa	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd8-rr8/p2.html
Exclusion of the Public and Appointment of Counsel: Tools to Help Victim Witnesses in Canada's North	Susan McDonald and Lisa Ha	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd8-rr8/p3.html
Victim Impact Statements in a Multi-Site Criminal Court Processing Survey	Melissa Lindsay	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd8-rr8/p4.html
Specialized Victim Services for the Families of Missing and Murdered Aboriginal Women: An Overview of Scope, Reach and Impact	Katie Scrim and Naomi Giff-MacKinnon	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd8-rr8/p5.html
Victim-Related Conferences in 2015		http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd8-rr8/p6.html

VICTIMS OF CRIME RESEARCH DIGEST | # 9 | 2016

Articles	Author(s)	Link
Trauma- (and Violence-) Informed Approaches to Supporting Victims of Violence: Policy and Practice Considerations	Pamela Ponic, Colleen Varcoe and Tania Smutylo	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd9-rr9/p2.html
The Right to Information	Susan McDonald	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd9-rr9/p3.html
The Use of Closed Circuit Television: The Experiences of Crown Prosecutors and Victim-Services Workers in the Ontario West Region	Shanna Hickey	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd9-rr9/p4.html
Vulnerable Clients and the Importance of Collaborative Treatment Planning	James K. Hill	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd9-rr9/p5.html
Victim-Related Conferences in 2016		http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd9-rr9/p6.html

VICTIMS OF CRIME RESEARCH DIGEST # 10 2017		
Articles	Author(s)	Link
Sentencing for Intimate Partner Violence in Canada: Has s. 718.2(a)(ii) made a difference?	Isabel Grant	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd10-rr10/p2.html
Judging Victims: Restorative Choices for Victims of Sexual Violence	Jo-Anne Wemmers	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd10-rr10/p3.html
A Strategy for Assessing the Impact of the Canadian Victims Bill of Rights – Opportunities to Make Better use of Current Data Holdings	Melanie Kowalski	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd10-rr10/p4.html
Missing and Murdered Indigenous Women and Girls: The Importance of Collaborative Research in Addressing a Complex National Crisis	Marsha Axford	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd10-rr10/p5.html
Victim-Related Conferences in 2017		http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd10-rr10/p6.html

VICTIMS OF CRIME RESEARCH DIGEST # 11 2018		
Articles	Author(s)	Link
Helping Victims Find Their Voice: Testimonial Aids in Criminal Proceedings	Susan McDonald	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd11-rr11/p2.html
From Traumatized to Energized: Helping Victim Support Volunteers Cultivate Compassion Satisfaction in the Face of Crisis	Alisha M. Shivji and Dawn L. McBride	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd11-rr11/p3.html
Understanding the Development and Impact of Child Advocacy Centres (CACs) in Canada	Cynthia Loudon and Kari Glynes Elliott	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd11-rr11/p4.html
Restorative Justice: The Experiences of Victims and Survivors	Jane Evans, Susan MacDonald and Richard Gill	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd11-rr11/p5.html
Third Party Records: The Case Law from 2011-2017	Carly Jacuk and Hassan Rasmi Hassan	http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd11-rr11/p6.html
Victim-Related Conferences in 2018		http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd11-rr11/p7.html

VICTIM-RELATED CONFERENCES IN 2019

1st Annual Expand the Response Conference

January 15 – January 17

Shelton, WA, USA

<http://victimsupportservices.org/events/expand-the-response/>

Society for Social Work and Research Annual Conference

January 16 – January 20

San Francisco, CA, USA

<http://secure.sswr.org/2019-conference-home/>

Houston Human Trafficking Conference

January 25 – January 25

Houston, TX, USA

<http://www.freethecaptiveshouston.com/houston-human-trafficking-conference/>

The 33rd Annual International Conference on Child and Family Maltreatment

January 26 – January 31

San Diego, CA, USA

<http://www.cvent.com/events/the-34th-annual-san-diego-international-conference-on-child-and-family-maltreatment/event-summary-8e0025d291164805bc9f004399fbfef2.aspx>

Native American Human Resources Conference

January 27 – January 29

Rancho Mirage, CA, USA

<https://www.nativenationevents.org/events-conferences/ninth-annual-native-american-human-resources-conference/>

2019 Violence Intervention and Prevention Summit

February 6 – February 8

Orlando, FL, USA

<http://www.gundersenhealth.org/ncptc/trainings-education/violence-intervention-prevention-summit/#About>

2019 National Conference on Bullying

February 27 – March 1

Jacksonville, FL, USA

<https://www.nccpsafety.org/calendar/>

Embracing Change and Growth Conference: Strengthening Services for Survivors of Sexual Assault

March 12 – March 14

Chicago, IL, USA

<https://www.nsvrc.org/embracing-change-growth-conference>

35th International Symposium on Child Abuse

March 18 – March 21

Huntsville, AL, USA

<http://www.nationalcac.org/symposium-about/>

19th Annual International Family Justice Conference

March 19 – March 21

San Diego, CA, USA

<https://www.familyjusticecenter.org/training/conferences-and-events/>

17th Annual Freedom Network USA Human Trafficking Conference

March 20 – March 21

Alexandria, VA, USA

<https://freedomnetworkusa.org/conference/>

13th Annual Girl Bullying and Empowerment National Conference

March 21 – March 24

Orlando, FL, USA

July 9 – July 12

Las Vegas, NV, USA

<http://stopgirlbullying.com/register.html>

No More Harm National Conference

March 25 – March 26

QT Gold Coast, Australia

<https://nomoreharm.com.au/registration/>

National Sexual Violence Law Conference

March 27 – March 28

New Orleans, LA, USA

<https://www.victimrights.org/events/national-sexual-violence-law-conference>

37th Annual Protecting our Children National American Indian Conference on Child Abuse and Neglect

March 31 – April 3

Albuquerque, NM, USA

<https://www.nicwa.org/conference/>

14th Annual Conference on Crimes Against Women

April 8 – April 11

Dallas, TX, USA

<http://www.conferencecaw.org/>

2019 WVCAN Conference Sponsorship

<https://www.eventbrite.com/e/2019-wvcan-statewide-conference-tickets-55663862110#>

16th Hawai'i International Trauma Summit: Preventing, Assessing and Treating Trauma Across The Lifespan

April 23 – April 26

Honolulu, HI, USA

<http://www.ivatcenters.org/hawaii-summit/>

Every Victim Every Time – Crime Victim Conference

April 23 – April 24

Bryan, TX, USA

<http://www.evetbv.org/>

International Conference on Sexual Assault, Intimate Partner Violence and Increasing Access

April 22 – April 25

San Diego, CA, USA

<http://www.cvent.com/events/international-conference-on-sexual-assault-intimate-partner-violence-and-increasing-access/event-summary-3014a410ca1c4646ab3f6ca0ac31a3bb.aspx>

2019 International Conference on Sexual Assault, Intimate Partner Violence, and Increasing Access

April 22 – April 25

San Diego, CA, USA

<http://www.cvent.com/events/international-conference-on-sexual-assault-intimate-partner-violence-and-increasing-access/event-summary-3014a410ca1c4646ab3f6ca0ac31a3bb.aspx>

2019 Washington Coalition of Sexual Assault Programs Annual Conference

April 30 – May 2

Wenatchee, WA, USA

<http://www.wcsap.org/2019-annual-conference>

ICCLVC 2019: 21st International Conference on Criminal Law, Victims, and Compensation

May 2 – May 3

Rome, Italy

<https://waset.org/conference/2019/05/rome/ICCLVC>

5th Biennial Alberta Criminal Justice Symposium

May 7 – May 8

Edmonton, AB, Canada

<https://www.cjca-acjp.ca/pub/en/event/5th-biennial-alberta-criminal-justice-symposium/>

International Institute for Restorative Justice Practices Europe Conference

May 15 – May 17

Kortrijk, Belgium

<https://canada.iirp.edu/2018/03/08/upcoming-events/>

11th Annual International EFRJ Conference

http://www.euforumrj.org/euforum_event/11th-international-efrj-conference-sassari-2020/

2019 Crime Victim Law Conference

June 7 – June 9

Portland, OR, USA

https://law.lclark.edu/centers/national_crime_victim_law_institute/projects/education_and_training/annual_conference/archive/2019/overview.php

**American Professional Society on the Abuse of Children
Colloquium**

June 18 – June 22

Salt Lake City, UT, USA

<http://www.apsac.org>

45th NOVA Annual Training Event

July 22 – July 25

Phoenix, AZ, USA

<https://www.trynova.org/annualtrainingevent/>

Wyoming's Joint Symposium on Children and Youth

June 25 – June 27

<https://www.wyojscy.com/>

31st Annual Crimes Against Children Conference

August 12 – August 15

Dallas, TX, USA

<http://www.cacconference.org/>

**24th International Summit on Violence, Abuse,
& Trauma Across the Lifespan**

September 5 – September 8

San Diego, CA, USA

<http://www.ivatcenters.org/san-diego-summit/>

**National Coalition Against Domestic Violence's (NCADV)
18th National Conference on Domestic Violence –
Voices in Action**

September 16 – September 19

Washington, DC, USA

<https://ncadv.org/conference>

The 13th Annual Alberta Restorative Justice Conference

<https://www.arja.ca/annual-conference>

31st Annual COVA Conference

<https://www.eventsquid.com/event.cfm?id=5549>