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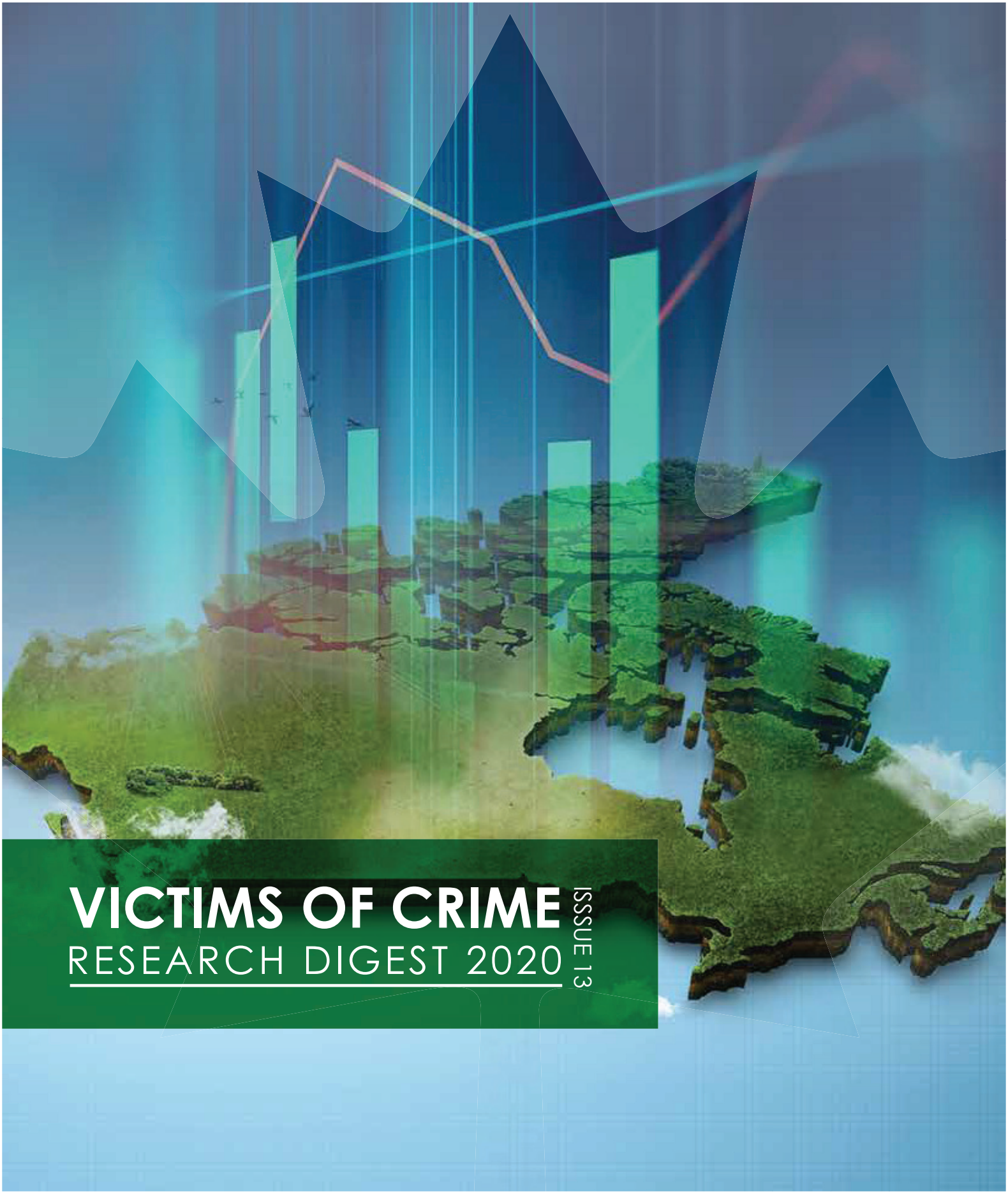

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We invite your comments and suggestions for future issues of Victims of Crime Research Digest. We may be contacted atrsd.drs@justice.gc.ca.

Department of Justice Canada http://www.justice.gc.ca/eng/index.html

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20 Years of the Federal Victims Strategy

Welcome to Issue No. 13 of the Victims of Crime Research Digest! This year's theme is *Recognizing Courage, Renewing Commitment*! Victims and Survivors of Crime Week (Victims Week) 2020 has been postponed from the end of May 2020 to 22 November to 28 November 2020 and it will be a different kind of event. We are in a very different place now with COVID-19 restrictions in place. Regardless of which issues are front and centre, we continue to need robust and relevant research in order to help us better understand those same issues, whether in public health or in criminal justice matters.

To mark 20 years of the Federal Victims Strategy (FVS), this introduction begins with a history of the strategy. In this issue, readers will find a review of policy research from before the strategy (Part I) and under the strategy, from 2000 onwards (Part II). Next up is an article on young victims, memory, and testimony by Sonja Brubacher and her colleagues, a fascinating exploration of the psychological research on children's memory. This is followed by a summary of the Listening Project, an important research study that brought together victims who participated in restorative justice processes across the country to learn about their experiences. Finally, researchers describe the exciting work that is happening at the Department of Justice Canada (Justice Canada) on the development of a tool and guide to identify families at risk for violence, for use by family law lawyers across the country.

The History of the Federal Victims Strategy

Before the federal government established the national strategy, it had been consulting with the provinces and territories on victim-related issues for almost three decades. For example, in 1973, the federal government entered into cost-sharing agreements with the provinces and territories to cover compensation programs for criminal injuries. Between 1981 and 1983, the Federal-Provincial Task Force on Justice for Victims of Crime reviewed victims' issues. In 1985, Canada played a major role in the United Nations Declaration of Basic Principles of Justice for Victims of Crime. And between 1987 and 1990, the Department of Justice Canada established a Victim Assistance Fund to promote victim services in the provinces and territories.

Furthermore, many *Criminal Code* amendments related to crime victims were made during the 1980s and 1990s. They related to sexual assault, child abduction, and child sexual abuse. The federal victim surcharge (FVS) and the victim impact statement (VIS) were both introduced in the *Criminal Code* in 1988. Then Bill C-41 was enacted in 1995, which

- added compensation to victims as a sentencing objective,
- required that victim impact statements be considered in sentencing, and
- clarified the use of restitution as a sentence.

In 1997, a Federal-Provincial-Territorial (FPT) working group recommended that existing victims' programs and services be reviewed. It also recommended some specific amendments to the *Criminal Code*, and suggested that the federal government further improve how it addressed victims' concerns. In 1998, the Standing Committee on Justice and Human Rights reviewed the role of victims in the justice system and released its report, *Victims' Rights – A Voice, Not a Veto*.

The government responded to this report in two fundamental ways. First, in 1999, it introduced amendments to the *Criminal Code* to improve victims' ability to participate in criminal proceedings. Second, it established the Policy Centre for Victim Issues (PCVI) within the Department of Justice and funded it with $25 million over five years. Within the first five-year mandate, there was funding for both salaries and operations to support a strong program of research. This resulted in a number of

foundational reports on: the role of the victim in the criminal justice process (Young 2001); victims and restorative justice (Wemmers and Canuto 2002); plea bargaining (Verdun-Jones et al. 2004); victim impact statements; and other key areas, such as the needs of Indigenous victims, particularly in the newly-formed Nunavut, and increasing general awareness and understanding of the *Criminal Code* provisions about victims. This initial research is available on Justice Canada's website.[1]

As with all federal initiatives, the Victims of Crime Initiative (VCI) was evaluated before the end of its five-year mandate. The evaluation found that the VCI was addressing victims' needs in an efficient and relevant way. The VCI was renewed and funding was made permanent so that the work could continue. In 2005, under the *Strengthening Community Safety Initiative* (SCSI), the National Office for Victims (NOV) was established. It had two purposes:

- to provide a single point of contact for public enquiries and complaints for victims of federal offenders, and
- to coordinate policy, communications, and information development with the Correctional Service of Canada and the Parole Board of Canada.

The Federal Victims Strategy (FVS) was introduced in 2007 under a new government and continues today under the same name. Key changes at that time included the establishment of the Office of the Federal Ombudsman for Victims of Crime. For the next nine years, the Victims Fund grew to include:

- the development and enhancement of Child Advocacy Centres,
- support for underserved communities in the provinces and territories,
- dedicated funding for Indigenous peoples, and the North, and
- putting in place important legislation such as (former) Bill C-2 on testimonial aids.

National Victims of Crime and Survivors Week began (under a different name) in 2006 with a federal symposium and with funding to support local events across the country.

The *Canadian Victims Bill of Rights* came into force in July 2015,[2] and once again signalled the importance of victims within the criminal justice system. Over the years, especially with the introduction of *It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence Strategy*,[3] other departments have been mandated to research and fund projects for violence against women, family violence, and other areas under the large umbrella of victims of crime. Expanding the scope from beyond the criminal justice system to prevention and health shows that policy and program decision makers understand that when people are victimized, the impacts extend beyond the justice system. The FVS will continue to advance our knowledge and understanding of the needs of victims of crime and how to best respond. And research will continue to play a crucial role.

As always, we hope you enjoy this issue of the Digest and welcome your comments.

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[1] See the list of publications available at: https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/index.html
[2] S.C. 2015, c. 13, s. 2
[3] For more information see https://cfc-swc.gc.ca/violence/strategy-strategie/index-en.html

Table of Contents

Twenty Years and More of Victims Research: Learning from the Past – Part I By Susan McDonald

1.0 Introduction

The Department of Justice Canada (Justice Canada) celebrated its 150th anniversary in 2018, one year after Canada celebrated its own 150th anniversary. However, while Justice Canada can boast a long history, it was not until the 1970s that policy research became an established activity within Justice Canada. The topic of victims of crime has been included in Justice Canada's policy research agenda since then, primarily because Justice Canada is responsible for the *Criminal Code of Canada*. This article will review research done at Justice Canada before the start of the Victims of Crime Initiative / Federal Victims Strategy[4] in 2000. Part II of this article (also included in this edition of the Digest) covers research under the Federal Victims Strategy. The areas of research that continue, as well as newer areas that demand attention, reflect the growth and changes in victims' rights, technology, social context, and policy and program development.

2.0 Key Research Areas in the 1980s and 1990s – Before the Federal Victims Strategy

This review of victim research will focus on work done in the 1980s and 1990s. It is divided into three key areas:

i. the introduction in the 1980s of provisions in the *Criminal Code* to help victims – the victim fine surcharge, victim impact statements (VIS), and restitution. Research was done to assess how the provisions were working.
ii. access to justice – a series of research studies were done on victim services programs and public legal education and information (PLEI) for victims of crime.
iii. the impact of substantive changes to legislation, such as new definitions of sexual offences in the *Criminal Code*, and the introduction of the offence of criminal harassment.

In addition to the research on victims issues that will be presented, there is additional research under the two following initiatives:

1) Family Violence Initiative

The Family Violence Initiative (FVI) has been the federal government's main collaborative forum for addressing family violence since 1988. The FVI is led by the Public Health Agency of Canada, which coordinates 15 partner departments and agencies, including Justice Canada, to prevent and respond to family violence. Research has always played a part in the Family Violence Initiative. At Justice Canada, it has examined how the criminal justice system responds for both victims and perpetrators of family violence. This article, and Part II, does not include family violence research, or research from other specific initiatives from before or after 2000, such as elder abuse.

2) The National Justice Statistics Initiative - Statistics Canada

The National Justice Statistics Initiative (NJSI) began in 1981. It involves Public Safety Canada and Justice Canada, as well as each province and territory, and it partners with the Canadian Centre for Justice and Community Safety Statistics (CCJCSS). Collecting data on victims of crime has not always been a focus of the NJSI, but it has gathered data through the General Social Survey – Victimization, which is carried out every five years. It also carried out a one-

[4] The Victims of Crime Initiative began in 2000. In 2007, under a new government, the name was changed to the Federal Victims Strategy. This is the name used today. For ease of reference, these articles will use the Federal Victims Strategy or its acronym, the FVS, throughout, regardless of the time period.

time survey in 1994 entitled the Violence Against Women Survey (VAWS). This article will not go into detail about the resulting articles and data published by Statistics Canada about criminal victimization.[5]

2.1 Research on Victim-related *Criminal Code* Provisions

Victim Impact Statements

Victim Impact Statements first appeared in the United States in the 1970s. Since then, their use has grown in in both common- and civil-law countries. In Canada, the 1983 report of the Federal-Provincial-Territorial (FPT) Task Force on Justice for Victims of Crime recommended introducing VIS when offenders were sentenced. A few years later, in 1986, Justice Canada funded a number of pilot projects to test the use of VIS in six jurisdictions. Consultants carried out evaluations of the six pilot projects and the Research and Statistics Division prepared a summary report.[6] The summary focused on three main areas:

1) how the program operated;
2) how victims who completed the VIS were affected; and,
3) what effect introducing victim impact statements into the criminal justice system had at sentencing.

Overall, the findings showed that:
1) VISs were more likely to be used when victims had personal contact with and assistance from lawyers, or that option;
2) a VIS on its own would not necessarily affect a victim's confidence in the criminal justice system; and
3) victims should be cautious in their expectations of VIS.

The VIS provisions in the *Criminal Code* came into effect in October 1988. More research was conducted to assess the VIS Program in BC (Focus Consultants 1992), and more amendments were made to the *Criminal Code* based on recommendations from the Report of the Standing Committee on Justice and Human Rights in 1998. These amendments came into force in December 1999 and included several changes to the VIS provisions.[7]

Federal Victim Surcharge

The Federal Victim Surcharge, then known as the Victim Fine Surcharge, also came into effect in October 1988, as s. 727.9 of the *Criminal Code.* The purpose of this legislation was primarily to generate revenue for victim services and programs and to provide a way for offenders to make some effort to compensate the victims of their crime.

Justice Canada initiated two studies to review the impact of the new provisions, one in British Columbia and one in Ontario. Three themes emerged from the BC report, *An Assessment of Victim Fine Surcharge in British Columbia* written by Tim Roberts (1992):

1) the surcharge was imposed inconsistently;
2) judges resisted imposing the victim surcharge; and
3) surcharges were not consistently collected on sentences that did not include a fine.

The Ontario report, *Helping Victims through Fine Surcharges,* by Lee Axon and Bob Hann (1994), examined Ontario's experience with the

[5] See the Statistics Canada website for lists of recent and archived reports, as well as tables and other products on victims of crime.

[6] Pilot projects and evaluations were carried out in Victoria, Calgary, North Battleford, Winnipeg, Toronto, and Montreal. Each pilot project had a different setting and context: a police-based model in Victoria; a court-based model in Winnipeg; a mail-out questionnaire model in Calgary; an RCMP-based model in North Battleford; a Crown-based model in Montreal; and a police-based mail-out questionnaire model in Toronto.

[7] A 20-year review of the VIS, by Professor Julian Roberts, can be found in Issue No. 1 of the Victims of Crime Research Digest, "Victim Impact Statements: Lessons Learned and Future Priorities" (2008). https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr07_vic4/p1.html

surcharge as well as practices in other parts of the country and found the following:

1) In Ontario, after being introduced in 1989, the revenue generated by the surcharge declined dramatically because it was being applied less often.
2) Only about 15 percent of the potential surcharges (allowing for undue hardship at 33 percent and default at 45 percent) were imposed in 1992 and only 2.7 percent of the revenue was actually collected.
3) More than 80 percent of all surcharges were imposed on "victimless" crimes (impaired driving, morals offences, and willful damage).
4) The major reason the surcharge was imposed at such low rates in Ontario was judges' concern that the revenue was not being used to provide services for crime victims.
5) In other parts of the country, the study found that:
    a. little attention had been given to informing offenders about the purpose of the surcharge;
    b. judges were more likely to impose the surcharge on fines than on non-fine dispositions;
    c. the surcharge was most successful in jurisdictions that kept judges informed about how the revenue was being used; and
    d. most jurisdictions had developed a designated fund for the revenue.

Research studies on the federal victim surcharge have continued to take place since 2000 to document these challenges and how to address them. Part II will discuss these implementation issues further.

Restitution

Since it was drawn up in 1892, Canada's *Criminal Code* has permitted a sentencing court to order "compensation" for property lost as a result of an offence. These provisions remained mostly unchanged until amendments in 1996 repealed them and replaced them with restitution orders. "Restitution" refers to payments the offender should make, "compensation" to payments the state makes.

Parliament passed *Criminal Code* provisions that would require judges to enforce restitution orders in 1988, but they were never enacted because the provinces raised concerns that such a scheme would cost too much. After Justice Canada studied the costs and the challenges of operating the scheme, it concluded that there would be support for the existing civil enforcement scheme, but not for a criminal enforcement scheme because it would cost the provinces too much to implement; the annual operating costs would far exceed the financial benefits realized by victims.[8]

Justice Canada policy research played a role in better understanding all three of these victim-related *Criminal Code* provisions. In the case of VIS and the federal victim surcharge, research before and after the provisions came into force helped decision makers understand how to implement the program. In the case of restitution, costing work on the proposed enforcement scheme showed that such a scheme would not be financially viable. As a result, the provisions never came into force.

2.2 Research on Access to Justice for Victims and Public Legal Education and Information (PLEI)

Victim/Witness Needs and Services

Services for victims of crime have grown exponentially in the last decade or so. Thirty-five years ago, however, victim services – as a program run and supported by government – was a relatively new idea. Yet they are fundamental to the goal of access to justice for victims. Justice Canada has done needs

[8] You can find a short history of restitution in "Understanding Restitution" by Susan McDonald, in Issue No. 2 of the Victims of Crime Research Digest (2009). https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd09_2-rr09_2/p2.html

assessments and evaluation-type research at different sites across the country, often where it had invested funding into the start-up of the program itself. A brief review of these assessments follows.

The *Evaluation of the Ottawa Witness Co-ordinator Project* (Colin Meredith 1984) found that the program was effective in providing information to witnesses, reducing their court appearances, and playing an intermediary role between Crown attorneys and other social services personnel. The study also calculated how much money the program saved.

Review of Court-Based Victim/ Witness Projects (Abt Associates of Canada 1985). The objective of this study was to identify and describe all such projects (a total of eight were reviewed) in Canada and to discuss practical concerns about how to carry out and operate these projects. Five evaluation reports were reviewed for this larger study, including Winnipeg (1983) and Ottawa (1984). Three other evaluations were completed in 1984 for a program in London, programs in Saint John and Campbellton in New Brunswick, and one in Edmonton.

Justice Canada continued to review victim and witness programs over the next decade: The *Review of the Yukon Victim-Witness Administration Program* by E.B. Lane Consulting (1989), for example, measured whether the program met its three main objectives, which it did, to some extent. These objectives included:

1) providing assistance to victims and witnesses before, during, and after court;
2) providing information on the trial – dates, court procedures, and available community resources that provide long-term counselling for crime victims; and
3) arranging travel and accommodation/reservations for witnesses living in a place other than where the trial was held.

Justice Canada, with the former department of Health and Welfare Canada, provided funding over three years for the Child Victim-Witness Support Project, operated by the (then) Metro Toronto Special Committee on Child Abuse. This project arguably represented the first specific program for child victims and the criminal justice system. The *Program Review of the Child Victim-Witness Support* Project by Campbell Research Associates (1992) found that:

1) not all children who were eligible were being referred to the program, and
2) often children less than eight years of age were being referred because there were no other resources for them.

The report, *Evaluation of the Women's Advocacy Program (Winnipeg)*, was produced by Focus Consultants and C/S RESORS Consulting (1991). The study showed that participants found the program most valuable for the information it provided on charges and cases. They found the program weakest in referrals to other social services and long-term planning assistance. The program was highly valued by the Office of the Crown Attorney, police, and judges in domestic courts because it encouraged victims to come forward with information.

Victims' Needs and Services in Nova Scotia Research Project, Christopher Murphy (1992) This report documents a needs assessment in Nova Scotia to support the Victim Services Division, which was created by legislation passed in Nova Scotia in 1989. The goals of the assessment were to identify service needs, establish what services existed, distinguish funding priorities, and describe alternative strategies for funding and services.

These evaluations found that, overall, public legal education and information (PLEI) and access to legal services for victims were deemed extremely important for victims and their families.

Public Legal Education and Information (PLEI)
PLEI provides legal information and education for the general public. Education and information are important tools in raising awareness for victims and others about their rights, as well as resources that are available to meet their needs. In the early eighties, the Research and Statistics Division (RSD) carried out the *Victims' Legal Information Needs Survey* (1984) to see if victims of crime had relevant information available to them. The report recommends providing ongoing information to victims, led by the provinces and territories, including: victim-related services; matters specific to victims' case; and the criminal justice system in general, with updates throughout the process.

Justice Canada undertook a unique study, summarized in the final report *Ask Me No Questions: A Project Evaluation* by Stephen P. Norris and M. Jane Burnham (1992). The report focused on the role of PLEI in changing attitudes of victims. In a Newfoundland high school, students read the novel, *Ask Me No Questions*, the story of a 15-year-old young woman who is sexually abused by her father. The novel contained a significant amount of factual information and expressions of attitudes about sexual abuse and the role of the law in helping address it. After reading the novel, the students' knowledge of the factual information, together with their attitudes, "shifted a noticeable amount towards the position of the novel, compared to a control group who had not read the novel."

Inventory of Public Legal Education and Information Materials and Programs Related to Crime Prevention and Victims – Alderson-Gill and Associates (1994)
This report presents an inventory of PLEI materials, programs, and projects about crime prevention and victims. A total of 108 items were organized into five groups; the first four were related to crime prevention and the final was PLEI for victims. Along with providing basic information on the various PLEI materials, the report also made some recommendations and a list of gaps in the materials then available, including PLEI for hard-to-reach members of society.

2.3 Research on Substantive Offences
The third key area of research for Justice Canada during the eighties was on violent offences in the *Criminal Code,* primarily significant changes to sexual assault legislation and the introduction of the new offence of criminal harassment, through the lens of the victim/witness/survivor.

Sexual Assault – the 1980s
The crimes of rape, attempted rape, sexual intercourse with the feeble-minded, and indecent assault were repealed in 1983, and replaced with three degrees of sexual assault. The sexual assault provisions of the legislation made fundamental amendments to the *Criminal Code*.

The legislation was the result of a decade of consultations and lobbying efforts by equality-seeking women's groups to redress problems in the *Criminal Code's* treatment of the crime of rape. The overall objectives of the amendments were:

1) to reduce or prevent the "secondary victimization" of the complainant resulting from her/his involvement in the criminal justice system (in particular during the trial);
2) to extend legal protection to a wider range of Canadians and to enhance their protection from a wider range of non-consensual sexual offences; and
3) to encourage the reporting of sexual offences and increase their founding and conviction rates.

In the mid-eighties, the Research and Statistics Division contracted with various consultants to undertake extensive research on the impact of the sexual assault provisions. This research was completed at a time when the field of legislative evaluation research was relatively young. The

studies were done in six Canadian cities (Vancouver, Lethbridge, Winnipeg, Hamilton, Montreal, and Fredericton).

An Evaluation of the Sexual Assault Provisions of Bill C-127, Fredericton and Saint John, New Brunswick, J. and J. Research Associates Ltd. (1988) – The aim of this evaluation was to provide information on both the practice of the new legislation, as well as the attitudes towards it and the intended and unintended consequences. The data generated findings that led to contradictory conclusions. For example, while there was a general perception that procedures, practices, and attitudes had changed, there was little systematic empirical data to confirm these changes. There was every indication that much was being done formally/informally to ensure that the ordeal of testifying was not made worse but the objective of encouraging victims to report sexual assaults did not appear to have been met. The data suggested that the new *Criminal Code* provisions had neither increased nor decreased the level of reporting; most victims who reported were not aware that there had been any changes in the law regarding sexual assault.

Report of the Impact of the 1983 Sexual Assault Legislation in Vancouver, British Columbia, EKOS Research Associates Inc. (1988) – This study reviewed police, Crown, and sexual assault centre files both pre- and post-amendments, conducted interviews with criminal justice professionals (Crown prosecutors, police, victim services) and service providers, observed court proceedings, and conducted interviews with victims. The study was not able to explain whether some of the observed changes – mostly the increase in reporting of incidents – were due to the legislation or to a combination of factors, such as media, public education efforts, and greater awareness. The study found that the amendments were essentially progressive, but had not increased the number of reported sexual assaults. Overall, those interviewed for the study noted ongoing concerns in several areas:

1) public awareness and attitudes towards victims of sexual assault were still affected by rape myths;
2) roles and responsibilities of criminal justice professionals (police, victim services, and Crown prosecutors) needed to change; and,
3) the process needed to ensure that the victim's experience of reporting an assault and going through a criminal trial minimized the harm to them.

Report of the Impact of the 1983 Sexual Assault Legislation in Hamilton-Wentworth, EKOS Research Associates Inc. (1988) – As with the study in Vancouver, EKOS used a variety of methods to understand the impact of the sexual assault provisions. The study faced the same challenges in determining the causes of the impacts it observed. Likewise, the study found virtually no change in the proportion of cases that ended in conviction. Four major concerns stood out:

1) need for knowledge, education, and consciousness-raising among the public and all stakeholders;
2) need for a better understanding of roles and responsibilities;
3) need for better co-operation and communication; and
4) need to minimize the trauma for the victim in dealing with the system.

Report of the Impact of the 1983 Sexual Assault Legislation in Lethbridge, Alberta, University of Manitoba Research Ltd., Social Sciences Division (1988) – Changes in the post-reform period and interviews with key informants suggested that the law made a difference; however, the number of cases moving through the system and the court outcomes of cases, both before and after the legislation came into effect, suggested otherwise. Although more cases were processed under the new provisions, there was evidence that change was inhibited by the failure of police and Crown attorneys to adjust

their attitudes and practices. The study also concluded that a formal system to provide support services to victims of sexual assault could help alleviate some of their problems. In Lethbridge at the time, such support was minimal and most respondents who provided it wished for more resources. Finally, the study concluded that training was needed at all levels of the system.

Report of the Impact of the 1983 Sexual Assault Legislation in Winnipeg, Manitoba, University of Manitoba Research Ltd., Social Sciences Division (1988) – This research was also conducted by the University of Manitoba. The interviews and court monitoring data provided evidence that the new provisions had a positive impact on the processing of sexual assaults. The study also found that victims' trauma could be minimized by reducing the amount of time complainants wait for a court appearance and eliminating preliminary hearings in sexual assault cases. The report concluded that while the *Criminal Code* changes were an acknowledgment of women's rights to be autonomous and self-determining, legislation alone cannot guarantee that these rights will be consistently affirmed.

The Impact of Legislative Change on Survivors of Sexual Assault: A Survey of Front-line Agencies, CS/RESORS Consulting Ltd. (1988) – This study surveyed different agencies that provided services for sexual assault survivors: police-based victim/witness assistance programs (PV/WAs), sexual assault/rape crisis centres (SACs), and hospital-based treatment teams with special training to provide medical, forensic, and psycho-social services for survivors. The majority of the agencies noted that the treatment of the survivor had improved while a strong minority felt that it had remained the same. Respondents believed that it would be unrealistic to expect that legislative change alone could be solely responsible for changing – or not changing – such complex attitudes and behaviours. All hospitals had special areas for privately treating the survivor and ensured that the survivor felt in control of the medical and other procedures and did not feel "acted upon." There was a consistent picture of positive relationships between agencies, police, and Crown, and among the agencies.

Sexual Assault – the 1990s

In the 1990s, as in the decade before, Canada witnessed significant changes in its sexual assault law, through legislative amendments and case law. *Criminal Code* amendments passed in 1992 introduced a definition of "consent" and limitations on the use of sexual history as evidence. There were also a number of Supreme Court of Canada decisions that supported the rights of the accused within the context of access to complainants' confidential records, as well as significant discussion around the impact of these decisions. In May 1997, the *Criminal Code* was amended to include specific provisions that limited the accused's access to third-party records in sexual assault proceedings (s.278.1). The provisions were challenged on constitutional grounds in *R v. Mills* and in November 1999, the Supreme Court upheld the legislation.

Implementation Review of Bill C-49, Abt Associates (1997)

This report describes the findings of a review of the implementation of the 1992 *Criminal Code* amendments on consent and the use of sexual history as evidence. This research project reviewed case law and conducted interviews with Crown attorneys, defence counsel, police, and representatives of sexual assault centres in Vancouver, Calgary, Regina, Toronto, and Montreal.

The report was organized into three main sections concerned with:

1) whether evidence of prior sexual history could be admissible;
2) consent or honest but mistaken belief in consent; and
3) whether personal records of the victim could be disclosed.

In contrast to the interviews with Crown attorneys and defence counsel, but consistent with the interviews with sexual assault centre representatives, the case law review revealed that the judicial interpretations of the new "rape shield" legislation were inconsistent, conflicting, and, overall, did not appear to promote the goals set out in the preamble of the legislation.

The authors of the report noted that judicial interpretation is a key element of the "success" of the legislation in achieving the goals set out in the preamble and that the review showed that the purpose and intent of the legislation was not being furthered by the way in which judges were interpreting it. In the next article, Part II, the difficulties in implementing the sexual assault legislation continue to play out.

Third-Party Records Cases since R. v. O'Connor: A Preliminary Analysis, Karen Busby (1998) – Law professor Karen Busby reviewed records cases for Justice Canada in the aftermath of the *O'Connor* decision and before the release of the *Mills* decision. The *O'Connor* decision dealt with the accused's access to records before the changes to the *Criminal Code* established a procedure and set limits. Busby's findings are limited in that one cannot determine whether applications are standard practice for defence, what the actual frequency of production to the judge or disclosure to the defence is, nor what overall trends are on reasons for production/disclosure. Overall, Busby found that, "the defendant obtained (or was denied) disclosure of records in about 50 per cent of the cases both before and after Bill C-46" (1998, 44). Busby's work was cited in the *Mills* decision at para. 92.

Prevalence of Sexual Assault and Therapeutic Records: Research Findings, Julian Roberts (1998) – This short research paper summarized research on: the incidence of sexual assault in Canada, including official crime statistics and victimization surveys (Violence Against Women Survey, General Social Survey); and the incidence of personal records in the Canadian population. In reviewing the available literature, the author found empirical support for the following conclusions:

- Many victims of sexual assault report multiple victimizations;
- Most incidents of sexual assault are never reported to the criminal justice system;
- Within the female population, specific groups of women are disproportionately at risk of being a sexual assault victim. These groups include persons with disabilities (particularly those who are institutionalized), younger women, and Aboriginal women;
- By the time they reach middle age, significant proportions of the female population will have met with a counsellor/therapist and there will be a record of these meetings. Since most of these records contain personal information, it is reasonable to assume that these women would rather keep that information private;
- There is an additive nature to the risk factor. Research has shown that some stressful life-events can only be applied, or applied differentially, to women (e.g., having an abortion, being sexually assaulted);
- Gender differences emerge with criminal victimization, self-reported medical and psychiatric symptoms, and the acquisition of a therapeutic record; and
- A higher percentage of women than men report medical and psychological symptoms, and women are disproportionately likely to be clients of medical, therapeutic, and counselling services.

Survey of Sexual Assault Survivors, Tina Hattem (2000) – Justice Canada conducted this survey with the Canadian Association of Sexual Assault Centres to better understand:

1) what sexual assault survivors consider when deciding whether or not to report the abuse to the police;
2) how that decision is affected by the possibility of having to disclose their therapeutic records;
3) experiences of survivors who report to the police; and,
4) what women would change in how the criminal justice system handles sexual assault cases.

The findings included that women who recognized that they had been abused were more likely to report to police than women who minimized the behaviour or who were ashamed. Women who were believed or validated by their partners, families, etc., were also more likely to report to the police. Survivors noted that they experienced many aspects of the criminal justice process as a form of re-victimization. Overall, there was a strong sense of the importance of involving survivors in policy research and program implementation.

Criminal Harassment

Section 264 of the *Criminal Code,* the criminal harassment provisions, came into effect in August 1993. The section was further amended in 1997 and again in 2002. Gill and Brockman reviewed the legislation for Justice Canada in 1995[9] and conducted a short literature review, as well as case file reviews and interviews with criminal justice staff across the country. Statistics Canada released two articles on criminal harassment[10] that used the Uniform Crime Reporting (UCR) Survey to review trends in criminal harassment charges, prosecutions, and court outcomes over the previous five years. Overall, the report concluded that the criminal harassment/stalking legislation represented an important step in addressing the problem. However, it identified the need to improve enforcement, training, communication with victims, management of protection orders, as well as examining cyberstalking more extensively.

The studies conducted on sexual assault and criminal harassment legislation represent strong examples of empirical research on legislation. Ultimately, they also reveal the limitations of legislation in effecting social and cultural change in attitudes and behaviours. Regardless, legislation remains a powerful, if blunt, policy tool and research on its implementation remains an essential piece of the policy cycle.

Conclusion

Part I reviewed three key areas of victims of crime research conducted by Justice Canada in the 1980s and 1990s. The first area dealt specifically with victim-related provisions in the *Criminal Code*, either newly enacted or amended. The research focused on implementation of the provisions in the provinces and territories, trying to better understand what was working and what was not working for all stakeholders. The second area focused on access to justice, through victim services and the use of PLEI to address victims' information needs. While still in the early days of such services, it is possible to see the groundwork of project evaluations in this work that was supported by federal, provincial and territorial governments. The third key area was to examine the implementation of significant changes to sexual assault legislation and the introduction of the new offence of criminal harassment.

While not discussed in depth, the latter part of the 1990s also saw the proclamation of the new territory of Nunavut in 1999. With it came the interest and the responsibility on the part of the federal government to address information

[9] Richard Gill and Joan Brockman. 1996. *A Review of Section 264 (Criminal Harassment) of the Criminal Code of Canada*.

[10] Rebecca Kong. 1996. Criminal Harassment. *Juristat.* Statistics Canada – Catalogue no. 85-002-XPE Vol. 16 no. 12; Karen Hackett. 2000. Criminal Harassment. *Juristat.* Statistics Canada – Catalogue no. 85-002-XIE Vol. 20 no. 11.

gaps, as well as the needs of its peoples. Two reports completed by Justice Canada should be mentioned: *Nunavut Justice Issues: An Annotated Bibliography* by Naomi Giff (2000) and *Inuit Women and the Nunavut Justice System* by Mary Crnkovich and Lisa Addario with Linda Archibald (2000). These reports called for a significant departure from the then-existing system of justice towards a community-based system. As will be seen in Part II, research on the North and Indigenous peoples as victims of crime emerged as a key area of research in the next decades. And perhaps it is no surprise that the key areas of the 1980s and '90s remain priorities after 2000 as well.

Twenty Years and More of Victims Research: Learning from the Past – Part II By Susan McDonald

1.0 Introduction

In 2000, the Government of Canada's Victims of Crime Initiative (VCI) established the Policy Centre for Victim Issues (PCVI) at Justice Canada. The name of the initiative has since changed to the Federal Victims Strategy (FVS).[11] Policy research was a central component of the initiative from the time the GOC established the VCI and the PCVI and this is still the case 20 years later. This article is Part II of the review of victims of crime research at Justice Canada and focuses on the work done to support the FVS from 2000 to 2020.

At the beginning of the FVS, the PCVI consulted with different stakeholder groups across the country. Academics, victims' rights advocates, and criminal justice professionals[12] met to define key areas for research. Table 1 below summarizes the themes that emerged from each of the different groups by order of priority.

Table 1: Themes Organized by Group and Level of Priority from PCVI Research Consultation (2001)

Priority	***Academics***	***Victims' Rights Advocates***	***Criminal Justice Professionals***
1.	Victim services	Training/Attitudes of public officials	Victim notification & information
2.	Reporting rates for sex crimes	Physical structure of courts	Victim-witness testimony
3.	Judicial interim release	Notification & provision of information	Victim Witness Assistance Program (i.e., victim services)
4.	Victims and plea bargaining	Categories of victims (needs assessments)	Victims' rights advocacy (i.e., standing, legal framework)
5.	Victim impact statements	Media depiction and community perception	Plea bargaining
6.	Victims and alternative sentencing, conditional	Plea bargaining	Community supervision
7.	Restorative justice	Sentencing	Victim impact statements
8.	Representation of victims in the media	Victim impact statements	Victims and parole
9.	Bibliography on victims' issues in Canada	Compensation & counselling	Professionalism in delivering services to victims

Justice Canada has not been able to address every issue that stakeholders have raised over the past twenty years given finite resources and competing demands. As a result, priorities have been established based on the Government of Canada's legislative and policy agendas.

The PCVI ensures that the federal approach to victim issues is coordinated. It plays a leadership role in ensuring federal collaboration and the development and implementation of policy to give victims a more effective voice in

[11] As in Part I of this article, the initiative is referred to as the Federal Victims Strategy (FVS) throughout to avoid confusion.

[12] The order of the stakeholders does not reflect prioritizing one group over another.

the criminal justice system and to increase access to justice for victims and survivors of crime.[13] PCVI also develops and provides policy support. This includes developing new victim-related policies, legislation, and programs within Justice Canada and establishing a research program that ensures that policies, legislation, and programs respond effectively to victims' needs. The PCVI collaborates with Justice Canada colleagues, primarily the Research and Statistics Division (RSD), to deliver this research program. As social science researchers working *within* Justice Canada, RSD is well positioned to provide research support.

This article picks up where Part I of this review of research ended. It looks at the role research has played as well as the key areas of research on victims of crime issues from 2000 to 2020.

2.0 Twenty Years of Research – Different Types of Research, Serving Different Functions

2.1 Different Types of Research

Justice Canada conducts different types of research so it can meet different goals.

Evaluation research – Evaluation research assesses the extent to which the specific goals of a program or a policy initiative have been met, and how the program might have done better in meeting its objectives. Evaluation research has developed specialized tools to identify the objectives of a program or an activity, to map the logic model by which objectives are translated into actions and impacts, and measure the results. The FVS has been evaluated every five years since it started. These evaluations have been led by the Justice Canada Evaluation Division and have been undertaken to meet central agency accountability requirements and inform decision making on continued funding of the FVS. Over the past 20 years, evaluation and research officers have collaborated on numerous projects to maximize resources where questions and objectives are similar.

Academic research - The objective of academic research is to contribute to the stock of knowledge on a particular topic. The framework upon which the research rests is the body of literature in the field. Basic academic research defines topics for research on the basis of unanswered questions in that literature, though relevance to social or human issues is also a consideration.

In Canada and internationally, there is a significant body of research in areas such as sexual assault, family violence/intimate-partner violence, restorative justice, and victims' needs. But there is less academic research in evaluating programs and reviewing legislative reform with an empirical (versus a theoretical) lens. In particular, there is very little Canadian academic literature on a number of specific victim-related *Criminal Code* provisions, such as the federal victim surcharge and restitution.

Community-based research - Advocacy groups and not-for-profit/community-based organizations also regularly conduct research. These groups may partner with academics for methodological expertise, or may do the work themselves. Community-based research has its own value as it can develop capacity within the community itself, as well as drive action and solutions to specific problems.

Policy research - Researchers at Justice Canada have focused their work on areas that are not currently being studied by academics to avoid duplicating their work. By focusing on understanding how the *Criminal Code* and other pieces of federal legislation are being implemented across the country, Justice Canada is able to tell the story of victims' experiences with the criminal justice system. By working with other federal departments and agencies –

[13] See for example, the Department of Justice Canada website at: https://www.justice.gc.ca/eng/cj-jp/victims-victimes/index.html

Public Safety Canada, Correctional Service Canada, the Parole Board of Canada, and the RCMP – this story becomes more comprehensive. In the first few years after the creation of the PCVI, RSD commissioned some foundational research to examine victims' role in the criminal justice system,[14] victims' experiences with restorative justice,[15] and victims' experiences with plea bargaining.[16]

3.0 Twenty Years of Research – Key Areas

3.1 Research on Victim-related *Criminal Code* Provisions

From the beginning of the FVS, Justice Canada sought to assess criminal justice professionals' and other stakeholders' understanding and awareness of the role of the victim in the criminal justice system. The first major research study was the *Multi-Site Survey of Victims of Crime and Criminal Justice Professionals Across Canada* (PRA, 2006), which sought insight on a wide range of issues in the criminal justice system as it pertains to victims. The study sought to establish baseline levels of awareness of Crown prosecutors, defence counsel, judges, law enforcement, victim services and victim advocates, victims themselves, judges, and correctional officers. Follow-up studies were conducted for the 2011 and 2018 evaluations of the FVS. These studies targeted only Crown prosecutors, law enforcement, and victim services and used online surveys.

Victim Impact Statements

In the early 2000s, several research projects explored the topic of victim impact statements (VIS). These included focus groups held with victims across the country, surveys of judges,[17] and interviews with both victims and criminal justice professionals conducted as part of the Multi-Site Study (PRA 2006).

Amendments have continued to improve the VIS provisions. New provisions allow victims to: read a VIS out loud in court or have someone else read it on their behalf; use testimonial aids to deliver VIS at sentencing; and prepare a VIS for a mental health review board hearing, or for a parole board hearing (these are called impact statements and fall under the *Corrections and Conditional Release Act*).

In the very first issue of the Victims of Crime Research Digest (2008), criminologist Julian Roberts prepared a review of social science research on VIS from the previous 20 years.[18] Further research has included monitoring VIS case law (Roberts and Manikis 2012; Manikis 2018).[19] Since then, with the introduction of Community Impact Statements (CIS) in 2011

[14] Young, Alan N. 2001. The Role of the Victim in the Criminal Process: A Literature Review – 1989 to 1999. Department of Justice Canada, Ottawa. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr00_vic20/index.html

[15] Wemmers, Jo-Anne, and Marisa Canuto. 2002. Victims' Experiences with, Expectations and Perceptions of Restorative Justice: A Critical Review of the Literature. Department of Justice Canada, Ottawa. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr01_9/index.html

[16] Verdun-Jones, Simon, and Adamira Tijerino. 2004. Victim Participation in the Plea Negotiation Process in Canada: A Review of the Literature and Four Models for Law Reform Department of Justice Canada. Ottawa. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr02_5/index.html

[17] Roberts, Julian V., and Allen Edgar. 2006. *Victim Impact Statements at Sentencing: Judicial Experiences and Perceptions: A Survey of Three Jurisdictions.* Ottawa: Department of Justice Canada. See also Julian Roberts and Allen Edgar. 2007. "Victim Impact Statements at Sentencing: Judicial Experience and Perceptions – A Survey of Three Jurisdictions." *JustResearch*, No. 14.

[18] See the article "Victim Impact Statements: Lessons Learned and Future Priorities" in Issue No. 1. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr07_vic4/p1.html

[19] See the article "Recent Developments in Victim and Community Participation in Criminal Justice" by Professor Marie Manikis in Issue No. 12 of the *Victims of Crime Research Digest,* as well as the earlier article by Marie

and the subsequent broadening of their use through the *Victims Bill of Rights*, case law has been an appropriate approach to monitor how these are being used at sentencing. Other research projects included understanding the community impact of hate crime with two case studies and included the CIS used at sentencing (Fashola 2011).[20]

The criminal justice system has gradually accepted that the VIS is a voice for the victim at the sentencing hearing. Questions remain, however, regarding the weight that sentencing judges should give to it and what the victim can include in their statement, as well as procedures that may differ from jurisdiction to jurisdiction.

Federal Victim Surcharge

Starting in 2005 - 06, RSD conducted studies in New Brunswick, the Northwest Territories, and Saskatchewan on the use and enforcement of the federal victim surcharge. Many of the same challenges that had been identified in the early research from the 1980s remained. These included a lack of enforcement where sentences did not involve a fine and little understanding of how the funds collected were used. In 2013, the Government of Canada introduced legislation that removed judges' discretion to waive the surcharge in cases of undue hardship, making it mandatory. Following these changes, Justice Canada conducted a study to determine how the changes were being implemented and presented the results in a report entitled *The Federal Victim Surcharge – The 2013 Amendments and Their Implementation in Nine Jurisdictions.*[21] The study could not draw any conclusions because there were insufficient data on the amount of revenue collected. A series of cases challenging the constitutionality of this legislation went to the Supreme Court of Canada and in December 2018, the federal victim surcharge provision was struck down. As a result, the waiver for undue hardship was reintroduced in 2019. Further research in the coming years will determine the impact of these changes.

Restitution

One sentencing option is restitution where offenders pay their victims for their losses. Sometimes it happens directly and sometimes through the court. Justice Canada conducted several studies in Saskatchewan to understand how the Adult Restitution Program, the only one of its kind in Canada in 2008, was working. Justice Canada followed up that study with an early evaluation of Saskatchewan's Restitution Civil Enforcement Program, another first in the country. These studies have provided valuable information and lessons learned for other jurisdictions that have sought to implement programs to better support victims in cases where restitution has been ordered.[22]

Testimonial Aids

In 2006, significant changes were made to the *Criminal Code* provisions on the use of testimonial aids in court proceedings. RSD did several studies in the subsequent years, including a survey of judges (Bala et al. 2010), literature reviews, court observation studies and original data collection. In 2018, the PCVI hosted a knowledge exchange on testimonial aids. The 2018 Digest article, "Helping Victims Find their Voice: Testimonial Aids in Criminal

Manikis and Julian Roberts entitled "Victim Impact Statements: Recent Guidance from the Courts of Appeal" in Issue No. 5.

[20] An article by Sidikat Fashola in the 2011 issue of the *Victims of Crime Research Digest* is entitled "Understanding the Community Impact of Hate Crimes: A Case Study" and describes one of the case studies from Kitchener-Waterloo. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd4-rr4/p4.html

[21] This 2016 report by Moira Law, who also conducted the original New Brunswick FVS research, can be found at https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr16_vic/index.html.

[22] "Understanding Restitution" in the Victims of Crime Research Digest, No. 2, and "'Explain Please!' Working with Victims and Restitution" in the Digest, No. 3, are two articles on the topic.

Proceedings"[23] summarized the research done by Justice Canada on testimonial aids. Over the years, testimonial aids have become more accepted by Crown, defence and judges. Today, support dogs are the newest testimonial aid for vulnerable witnesses.[24]

The report *Victim Privacy and the Open Court Principle* by Jamie Cameron (2004) is about victim privacy in general, but focuses on the crime of sexual assault. Professor Cameron traces the development of the right to victim privacy under s.7 of the *Charter*, when the Supreme Court of Canada placed this right on an equal plane with the defendant's right of full answer and defence. In 2019, Professor Cameron updated the report, adding in the social context of recent high-profile sexual assault cases and social media movements, including #MeToo.

Victims' Rights

The *Canadian Victims Bill of Rights (CVBR)* came into force in July of 2015. It ensured four rights for victims of crime at the federal level:

- the right to information,
- the right to protection,
- the right to participation, and
- the right to restitution.

Victims who believe that their rights have been breached by a federal department can file a complaint through its complaints process. Justice Canada has monitored the implementation of this legislation through case law and has also been working to improve data collection on key national indicators such as VIS and requests for restitution.[25]

3.2 Research on Access to Justice for Victims

Victim/Witness Needs and Services

Victim services and other programming are designed to respond to victims' needs and are available across the country. Victim services is primarily the responsibility of the provinces and territories, except for federal victim services, which are provided for victim/witnesses in the three territories. These programs are the responsibility of the Public Prosecution Service of Canada, which prosecutes all criminal offences in the territories. Correctional Service Canada and the Parole Board of Canada provide services for victims of offenders in federal custody.

An entire area of research and evaluation is devoted to examining these programs and services. A number of provinces and territories have evaluated delivery models for victim services. Justice Canada did a qualitative study on the professionalization of victim services, interviewing practitioners, administrators, and academics about their views on appropriate qualifications for those providing victim services. The resulting report, *The Professionalization of Victim Services in Canada* (2007), found that the service delivery model (volunteers vs. full time paid staff) impacted views on the importance of education (real life experience vs. a university degree) and that a similar debate had circulated through sexual assault centres and women's shelters in previous years. Ultimately, regardless of the delivery model, the report concluded that all those – volunteer or otherwise – who worked with victims required training to be able to support victims at any stage in the criminal justice system.

In line with the need for adequate training and support for those working with victims in the

[23] Available at https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd11-rr11/p2.html

[24] An article by Susan McDonald and Lara Rooney in the 2014 issue of the Digest is entitled "Let's 'Paws' to Consider the Possibility: Using Support Dogs with Victims of Crime." The article can be found at: https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd7-rr7/p4.html

[25] See Melanie Kowalski. 2017. "A Strategy for Assessing the Impact of the Canadian Victim Bill of Rights – Opportunities to Make Better Use of Data Holdings." *Victims of Crime Research Digest*, No. 10. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd10-rr10/p4.html

criminal justice system, Dr. James Hill developed a manual for working with victims of crime based on a review of the literature. The manual was so well received that a second edition was produced, with specific chapters added on victims of terrorism and victims of hate crimes. It remains an important tool for training victim services providers.[26]

Justice Canada provided funding to the Canadian Centre for Justice and Community Safety Statistics (CCJCSS) at Statistics Canada from 2000 to 2010 to develop and conduct the Victim Services Survey every three years. This was a census of all Justice Canada-funded services across the country. Victim Services Survey results were published up until its last cycle in 2010 - 2011. More recently, Justice Canada has worked with CCJCSS and the provinces and territories to develop national indicators on victims services that are reported annually. However, with varying definitions of "victim" and different ways of counting caseloads, there remain many challenges.

Justice Canada also catalogued the programs and services considered to be part of the formal victim services programming in each jurisdiction. The resulting report, *Victim Services in Canada,* released in 2018, also provides information on related agencies that provide critical services to victims of crime.

Child Advocacy Centres

In 2010, Justice Canada began funding the enhancement or development of Child Advocacy Centres (CACs) in Canada. CACs provide an array of services to reduce the trauma of child victims/witnesses and their families as they navigate the criminal justice system. In the early years, Justice Canada played a significant role in providing research and policy support to help build CACs. An article in the 2013 issue of the Victims of Crime Research Digest27 details the type of research Justice Canada did to assist organizations. In addition, research and evaluation officers collaborated on a six site review of the development and impact of CACs.28 At the beginning of the initiative only five organizations resembled the CAC model. There are now at least 25 CACs with doors open, and another dozen or so in a feasibility or development phase. Justice Canada continues to document the growth of the CAC using mapping software and monitors research that informs the Canadian guidelines for CACs.29 Recent research (2019) explores how relationships among members of multidisciplinary teams at CACs across the country are being navigated and documents the variety of approaches to the relationship between the Crown and CACs.30

3.3 Research on Substantive Offences

Sexual Assault

Under the FVS, small studies on aspects of the 1990s sexual assault legislation were conducted to prepare for the parliamentary review of these legislative changes, which took place in 2011. A final report from the Senate Standing

[26] See James Hill. 2009. *Working with Victims of Crime: A Manual Applying Research to Clinical Practice (Second Edition).* Ottawa: Department of Justice. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/res-rech/index.html

[27] Susan McDonald, Katie Scrim and Lara Rooney. 2013. "Building Our Capacity: Children's Advocacy Centres in Canada." *Victims of Crime Research Digest,* No. 6. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/p2.html

[28] A summary of this large study can be found in the 2017 issue of the *Victims of Crime Research Digest*. See "Understanding the Development and Impact of Child Advocacy Centres (CACs) in Canada," by Cynthia Louden and Kari Glynes Elliott. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd11-rr11/p4.html

[29] The report *Evidence Supporting National Guidelines for Canada's Child Advocacy Centres – updated 2018* may be requested from RSD at rsd-drs@justice.gc.ca.

[30] The report *The Role of Crown Prosecutors in Child Advocacy Centres in Canada* may be requested from RSD at rsd-drs@justice.gc.ca.

Committee on Constitutional and Legal Affairs was released in December 2012.

In the research report, *Words Are Not Enough: Sexual Assault – Legislation, Education and Information* by Renate Mohr (2002), the author presents the results of qualitative research, which involved 32 interviews with Crown prosecutors, sexual assault centre counsellors, and judges in Toronto and Ottawa. Almost all the participants commented that legislation alone cannot succeed in achieving the goal of encouraging the reporting of sexual assaults.

In the report *Bill C-46: Caselaw in the post-Mills Era* by Susan McDonald et al. (2004) the authors followed a similar approach to the case law review by Karen Busby a few years earlier.[31] They reviewed a total of 48 cases from December 1, 1999, through to June 30, 2003. This report was highlighted in the parliamentary review of the regime by the Senate Standing Committee on Constitutional and Legal Affairs, which released its report and recommendations in December 2012.[32] Since the release of the Committee's report , Justice Canada has continued to review and to publish regularly on case law via the *Victims Digest* articles on third party records.[33]

Building on the research by Tina Hattem (2000) described in Part I, Justice Canada conducted research with survivors of sexual assault – one study with men, one with women from three cities, and one study specific to the North.[34] These three studies showed that while significant efforts have been made in training criminal justice professionals and improving services for victims/survivors, few survivors report the incidents to police or have high levels of confidence in the criminal justice system.

In a widely publicized 2017 *Globe and Mail* investigation, Robyn Doolittle examined unfounded rates of sexual assault at different police services across the country. Justice Canada had previously examined this issue at police services in BC through a 2006 study done by Linda Light and Gisela Ruebecht.[35] While Canada's sexual assault legislation is progressive, prevailing attitudes hinder reporting sexual assault and getting convictions in cases that do move through the system. Justice Canada chaired a working group of provincial and territorial government officials to produce a report on the criminal justice system's response to adult sexual assault.[36] This report, released in 2018, was informed by Justice Canada-funded studies on Indigenous women's experiences with the system[37] on the neurobiology of trauma in the context of sexual

[31] Karen Busby. 2000. Third Party Records Cases since R. v. O'Connor. *Manitoba Law Journal* 355:27-3, 2000 CanLIIDocs 82, <http://www.canlii.org/t/2cg2>, retrieved on 2020-09-16

[32] The report can be found at:https://sencanada.ca/content/sen/Committee/411/lcjc/rep/rep20dec12-e.pdf

[33] See Susan McDonald et al. 2014. at https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd7-rr7/p5.html and Carly Jacuk and Hassan Rasmi Hassan. 2018. at https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd11-rr11/p6.html

[34] A summary of the three studies by Melissa Northcott can be found in the 2013 *Digest* at https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/p3.html#sec3

[35] Highlights of this report can be found online in JustResearch No. 14, at https://www.justice.gc.ca/eng/rp-pr/jr/jr14/p9.html

[36] See the Report of the Coordinating Committee of Senior Officials Working Group on Access to Justice for Adult Victims of Sexual Assault (2018) entitled *Reporting, Investigating and Prosecuting Sexual Assaults Committed Against Adults – Challenges and Promising Practices in Enhancing Access to Justice for Victims* https://scics.ca/en/product-produit/reporting-investigating-and-prosecuting-sexual-assaults-committed-against-adults-challenges-and-promising-practices-in-enhancing-access-to-justice-for-victims/

[37] The report *Access to Justice for Indigenous Adult Victims of Sexual Assault* may be requested from RSD at rsd-drs@justice.gc.ca

assault[38] and on police and Crown perspectives of sexual assault in the system.

Criminal Harassment and Family Violence Research

Until recently, responsibility for policy and research on family violence fell under the Family Violence Initiative. Over the years, RSD has done research on the Partner Assault Response Program in Ontario,[39] a review of case law on the spousal violence aggravating factor at sentencing,[40] intimate-partner violence risk assessment tools,[41] and comparing intimate-partner and non-intimate-partner homicide cases.[42] This issue of the Digest describes current work in this area in the article "Developing a Family Violence Identification and Response Tool."

Some research has also looked at criminal harassment, including an annotated bibliography (2011), as well as a study that included interviews with victims in the Atlantic provinces.[43]

3.4 Costing and Mapping

RSD conducted two significant projects on costing and victimization in 2009, the first studies to measure the economic impacts of victimization in Canada: *An Economic Estimation of the Impact of Spousal Violence in Canada* and *An Economic Estimation of Violent Victimization in Canada*, which covered all non-spousal incidents. The work involved external experts from England and Australia, economists, and experts on violence against women.

Justice Canada has led several projects that use Geographic Information System (GIS) mapping software. They include documenting fatalities in impaired driving cases, tracking the rise of child advocacy centres across the country, as well as identifying the availability of victim services in the North.[44]

3.5 Research in the North and with Indigenous Communities

At the outset of the FVS, Justice Canada conducted a number of research studies on Northern and Indigenous issues. These include:

- *Creating a Framework for the Wisdom of the Community: Review of Victim Services in Nunavut, Northwest and Yukon Territories (2003)* by Mary Beth Levan. This study included comprehensive research on the services available to victims of crime in each community in the territories, the traditional Inuit and First Nations

[38]See *The Impact of Trauma on Adult Sexual Assault Victims* (2019) at https://www.justice.gc.ca/eng/rp-pr/jr/trauma/index.html

[39] See the report *Attitudinal Change in Participants of Partner Assault Response (PAR) Programs: A Pilot Project* at https://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/rr06_fv2-rr06_vf2/index.html as well as the inventory of programs across Canada.

[40] A summary of the report by Professor Isabel Grant, "Sentencing for Intimate Partner Violence in Canada: Has s.718.2(a)(ii) made a difference?" is in the *Victims of Crime Research Digest,* No. 10. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd10-rr10/p2.html

[41]The report, *Inventory of Spousal Violence Risk Assessment Tools Used in Canada,* was originally completed in 2009, updated in 2013 and is currently being updated again. It can be accessed at: https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr09_7/index.html

[42] Myrna Dawson. 2005. *Criminal Justice Outcomes in Intimate and Non-intimate Partner Homicide Cases.* Ottawa: Department of Justice. https://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/rr04_6/index.html

[43] Diane Crocker. 2004. *Criminal Harassment: Understanding Criminal Justice Outcomes for Victims in Nova Scotia and Newfoundland and Labrador.* Ottawa: Department of Justice.

[44] See for example, *Victims of Crime Research Digest,* No. 6, and the article "Is a Picture Worth a Thousand Words? The Opportunities and Challenges of Using GIS-Base Mapping with a Victim's Lens." https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/p4.html#sec4

processes to deal with violent crime and victimization, and community responses to violent crime and victimization.

- *Criminal Victimization Among First Nations, Métis and Inuit Peoples* (2006) by Larry Chartrand and Celeste McKay. This literature review examined Indigenous peoples' over-representation as victims of crime. Many of the findings of this study are relevant to First Nations and Inuit peoples in the three territories, i.e., high rates of victimization, victimization of women, youth victimization, suspected FASD, and under-reporting of victimization, all of which are embedded in colonization.

RSD has collaborated with Indigenous organizations to produce a large report on promising practices to support women and girls' safety.[45] RSD has also worked with CCJCSS to better define relationships between the accused/offender and Indigenous victims in the Homicide Survey.[46] Justice Canada also contributes to the cost of the General Social Survey on Victimization in the three territories every five years, where in-person interviews yield much higher quality data.

3.6 Public Opinion Research

In 2010, Justice Canada conducted public opinion research to gauge Canadians' awareness of victim issues, including the availability of victim services. A few years later, when the *Canadian Victim Bill of Rights* was introduced, Justice Canada asked stakeholders what they wanted to know about the legislation and how they wanted to learn about it. Articles on both these studies can be found online.[47]

3.7 Other Issues

RSD has been involved in exploratory research, mostly involving in-depth interviews with key informants, to look at how to use technology to improve victim services.[48] It has also worked on the darker side of technology, particularly around online child sexual exploitation,[49] identify theft,[50] and cyberbullying.[51] Public Safety Canada leads on these files, and Justice Canada is committed to working collaboratively, contributing a victims' lens wherever appropriate.

Other research has focused on elder abuse, which included a review of federal and provincial legislation, and a study looking at cases from the Ottawa Police Services Elder

[45] See *Compendium of Promising Practices to Reduce Violence and Increase Safety of Aboriginal Women in Canada.* 2012 at https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/comp-recu/index.html with an annex that provides detailed program descriptions.

[46] See Marsha Axford's article in the Victims of Crime Research Digest, No. 10, entitled "Missing and Murdered Indigenous Women and Girls: The Importance of Collaborative Research in Addressing a Complex National Crisis." https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd10-rr10/p5.html

[47] See "Canadians' Awareness of Victim Issues: A Benchmarking Study" in Issue No. 4, and "The Right to Information" in Issue No. 9.

[48] Melissa Lindsay. 2014. Assisting Victims Through Technology. *Victims of Crime Research Digest,* No. 7. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd7-rr7/p3.html

[49] Susan McDonald. 2012. The Darker Side of Technology: Reflections from the Field on Responding to Victims' Needs. *Victims of Crime Research Digest,* No. 5. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd5-rr5/p4.html

[50] Melissa Northcott. 2012. Identity-Related Crime: What it is and How it Impacts Victims. 2012. *Victims of Crime Research Digest*, No. 5. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd5-rr5/p3.html

[51] Lisa Ha. 2014. A Snapshot of Cyberbullying. *Victims of Crime Research Digest*, No. 7. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd7-rr7/p2.html

Abuse Unit.[52] RSD has also done work on victims at the International Criminal Court,[53] community sentences,[54] the needs of victims of hate crimes,[55] as well as memorializing the victims of terrorism.[56]

Conclusion

During the past 20 years, research has flourished under the FVS, and Justice Canada has developed a body of government literature on a wide variety of issues about victims of crime. Research has played an important role in developing and monitoring policy, programs, and legislation, and will continue to do so. Justice Canada has employed traditional social science quantitative and qualitative methods – surveys, interviews, focus groups, and the like – along with case law reviews, costing techniques, and mapping using GIS software, to improve governments', advocates' and practitioners' understanding of victim issues. Interestingly, what research found in the 1980s – that victims want and need information – is still true today; what has evolved is a greater understanding of the impact of trauma on victims of crime and the importance of social identity. This article could not cover all the research done in the past 20 years so readers are invited to further explore the website at https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/index.html.

[52] A summary of the full report can be found in the *Victims of Crime Research Digest,* No. 6. Authored by Lisa Ha, the article is entitled "Police Responses to Elder Abuse: The Ottawa Police Service Elder Abuse Section." https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/p5.html

[53] See the article in the *Victims of Crime Research Digest*, No. 5 entitled "Victims Before the International Criminal Court: A New Model of Criminal Justice?" https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd5-rr5/p6.html

[54] See the report *Community-Based Sentencing: The Perspectives of Crime Victims.* 2004, at https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr04_vic1/index.html

[55] See the report *An Exploration of the Needs of Victims of Hate Crimes.* 2007, at https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr07_vic1/index.html

[56] See the report *Memorializing the Victims of Terrorism.* 2009, at https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr09_6/index.html

Talking to Young Victims and Witnesses About Repeated Abuse and Maltreatment By Sonja Brubacher, Deborah Connolly, Martine Powell and Heather Price

Many of the experiences that bring children into contact with the criminal justice system are recurrent (e.g., witnessing domestic violence, experiencing neglect, and other forms of ongoing abuse). It is estimated that approximately half of all cases of child sexual abuse involve repeated offences (Connolly et al. 2015). In Canadian criminal courts, complainants must describe each instance of abuse in enough detail to "lift it from the general to the specific" (*R. v. B. [G.]* 1990). Canada is not alone in this requirement for specificity. The United States Supreme Court held "it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it must state the species, – it must descend to particulars" (*United States v. Cruikshank* 1875, p.558). And the High Court in Australia in *S v. The Queen* (1989) held that an indictment must include "such particulars as to the alleged time and place of committing the offence ... as may be necessary to inform the accused person of the nature of the charge."

The courts have interpreted these requirements to mean that complainants who report repeated abuse must describe specific instances of that abuse (Guadagno et al. 2006; Woiwod and Connolly 2017). That means that criminal justice professionals should ideally have extra training (e.g., how to direct children to specific instances), when allegations are about repeated abuse.

Researchers have shown that memories for repeated events have characteristics that are different from memories for one-time occurrences. That is why it is difficult to recall the exact details of individual instances (Roberts and Powell 2001). It remains unclear, however, how repeated instances are stored and organized in memory over time. This knowledge is necessary for developing effective guidelines to use when interviewing children about repeated abusive experiences. For example, should interviewers direct children to talk about specific instances immediately, or should they allow children to first report general information about what usually happens? Are children even capable of describing specific instances of abuse? Under what conditions might they be more or less able? What is the best way to ask children about how frequently the abuse occurs?

The authors of this article are currently conducting a large-scale project to address critical questions about how children's memories are organized for repeated experiences. This article explains the importance of this work within the broader context of memory research and the Canadian criminal justice system. The findings will help professionals who conduct forensic interviews, as well as those who interview children in preparation for or during court.

Using Scripts to Remember Repeated Experiences

Children (and adults) have a difficult time accurately attributing specific details to particular instances of a repeated event (Woiwod et al. 2019), but they have a good memory for "what usually happens" (Brubacher et al. 2014). Imagine that you were being interviewed about your grocery shopping

experiences. First, imagine being expected to describe one time: what you wore, what exactly you bought, what the total cost was, how long you were in the store, and so on. This would be a difficult task! Contrast this request with being asked general details about grocery shopping (e.g., how much you usually spend, what kinds of things you typically buy) – a much easier mental activity. The details of what usually happens make up what memory researchers call a "script" (see Brubacher and Earhart 2019 for a review).

Children begin to have scripts for their regular activities as young as the age of three, although the scripts are very simple (Nelson and Gruendel 1981). When asked what happens at a restaurant, a preschooler might exclaim, "You say what you want, you eat it, and you're done!" As children grow older, and gain more experience, their scripts become increasingly sophisticated (Fivush 1984).

What is in a Typical Script?

The main elements of the script are made up of an ordered list of things that typically happen. For example, at a restaurant, they might include how you order (e.g., counter, waiter, drive-through), what food you eat, what you drink, and how you pay. Some of the categories and their options may vary across instances. For example, you might or might not have dessert at the restaurant, and if you do, the particular dessert might vary. Robyn Fivush, an expert on children's memory development, wrote about script elements in 1984, in a paper titled *Learning about School: The Development of Kindergartners' School Scripts.* She found that 4- and 5-year-old children had already begun to develop scripts by their second day of kindergarten. The children were interviewed again after 2, 4, and 10 weeks. Their scripts became more elaborate the longer they were in kindergarten, but their ability to recall the typical activities in the correct order was already very good on the second day of school (e.g., come to school, [then] put stuff away, [then] play in mini gym, [then] do math).

Problems with Scripts

A large body of research shows that scripts support memory recall, but they can also lead to memory errors, even about central details. Erskine and her colleagues showed 5- to 6- and 9- to 10-year-olds slide shows of a trip to McDonald's restaurant (Erskine et al. 2001). Some children viewed a slide show where central details were not shown (e.g., waiting in a line to order the food), and other children viewed a slide show that was missing peripheral details (e.g., making a phone call). The children were interviewed either 90 minutes or 7 days after watching the slideshow. Researchers asked them 19 questions about whether they had seen certain activities. All the children were more likely to incorrectly agree that they saw the central details that had been missing from their slideshows rather than the peripheral details. Also, younger children, and children tested after 7 days, made more script-based errors than older children and children tested immediately. This finding provides further evidence that children's reliance on scripts for memory recall increases with time, and that younger children rely more heavily on scripts than older children do.

The reason the children made mistakes in Erskine's McDonald's study is because people use scripts to help reconstruct the past (Myles-Worsley et al. 1986), and to make future experiences predictable (Hudson et al. 1992). People know what to expect next time if they have a script. The children in Erskine's study used their script for what usually happens at McDonalds to reconstruct the slideshow, falsely reporting typical details that were never shown. In fact, much of memory recall involves

reconstruction – inferring what must have happened based on prior knowledge and experiences (Loftus 1981). If you tried to answer the earlier questions about a specific grocery shopping trip, you might have used your script to help you. You might have estimated what you spent based on what you usually spend. Adults frequently use scripts in this way, without even thinking about it, and so do children.

Scripts are powerful mental structures, and they are quite accurate in their main elements and things that do not change from one event to the next (Hudson and Mayhew 2009). But they do not help us decide which of a set of variable options was present in any one instance. For example, when recalling a specific grocery shopping trip, you might have incorrectly paired the day you bought the pie with the day you forgot your credit card at the store.

Most of the time, estimations and minor confusions across instances are not a problem. But in legal proceedings, precision and accuracy frequently matter. If your grocery shopping trip was part of an investigation, it might not be enough for you to make estimates based on your script about the approximate time you went to the store, and confusing details across occurrences could leave your account open to challenge. Researchers have been studying children's reports of repeated experiences for over three decades to better understand what they are capable of remembering and how to help them give complete and accurate accounts. The next section explains the typical research model used to understand this.

How the Lab Model Works in Studying Children's Memories for Repeated Events

Researchers who study how children's memories for repeated events develop have used a similar experimental model across studies and independent research groups. Typically, children between 4 and 11 years old participate in 3 to 6 instances of an activity that has been created for the research (e.g., play session, magic show, science experiment, scripted swimming lessons). The spacing between instances ranges from a few minutes (so that all occur in the same day) to a few days (so that all occur within a month). The most common arrangement is 4 instances presented within 1 or 2 weeks. Each instance adheres to a general script that includes a set number of activities occurring in a prescribed order. See Table 1 for an example.

Some of the details that children experience are the same every time (e.g., they complete the same puzzle each time or the magician's wand is always silver). These are *fixed* details. In contrast, *variable* details change at each instance (e.g., children relax a different body part each day or the magician completes a different trick). A subset of research studies has included other types of details as well: *high/low* frequency details comprise one alternative repeated frequently (e.g., Powell and Thomson 1996; 1997), while the other is repeated infrequently; and *new* details are encountered during only one instance of the repeated event (e.g., Brubacher et al. 2011; Danby et al. 2019).

<u>How to Read Table 1</u>

Table 1 presents an example of the types of details that might occur during a staged magic show. The details in the first column are the key components of the event script (e.g., the magician always removes an item of clothing first, and then engages the children in a warm-up exercise). The next column refers to the kind of detail (fixed, variable, high/low, new). In the research studies, multiple schedules are created so that each script component can be represented as a different type of detail. For example, some children might experience the

warm-up exercise as a variable detail, some might do the same exercise each instance (i.e., fixed), whereas others might only do the exercise once (i.e., new).

The four right-hand columns of Table 1 should be read down the column for the specific details for each instance. For example, in instance 4, a child experienced the magician removing his scarf, then the child warmed up by doing push-ups. Next, the magician showed the children his magic wand and pointed to the lucky letter P (in instance 4, the magician had no hat). Then he showed the children a picture of the snowy weather he experienced at his home, and let them smell the chocolate spray he used to banish the snow. Next, he brought out his stuffed dolphin assistant (this was the only time a stuffed assistant joined him) to help prepare for the trick – and so on.

Table 1: Script Components and Examples of Detail Types Across and Within Instances of a Staged Repeated Event (Magic Show)

Script component	Detail type	Instance 1	Instance 2	Instance 3	Instance 4
Magician removes…	fixed	Scarf	scarf	scarf	scarf
Warm-up exercise	variable	Running	stretching	jumping	push-ups
Magic prop	high/low	Wand	wand	ring	wand
Hat colour	new		blue		
Lucky letter	fixed	P	P	P	P
Weather	variable	Sunny	rainy	windy	snowy
Magic spray	high/low	Cinnamon	chocolate	chocolate	chocolate
Stuffed assistant	new				dolphin
Snack	fixed	Apple	apple	apple	apple
Music	variable	Violin	drums	trumpet	Guitar
Magic word	high/low	Alacazam!	Presto chango!	Alacazam!	Alacazam!
Sticker on… body part	new	Cheek			
Magician's secret	fixed	"I broke a cup"	"I broke a cup"	"I broke a cup"	"I broke a cup"
Lucky charm	variable	4-leaf clover	shooting star	#7	horseshoe
Mode of transportation	high/low	Motorcycle	motorcycle	motorcycle	truck
Goodbye gesture	new			curtsey	

Note: The set of details presented here is adapted from Connolly et al. 2016, but includes detail types that were not used in those experiments.

Interviewing Children about Repeated Activities in Table 1

After a delay, researchers interview children about their memories for the repeated activity. Across studies, researchers have used a variety of interview methods. In the most common format, the interviewer asks children to talk about a specific instance (usually the last one),

first in response to free-recall questions, and then in response to a set of specific questions about each key script component (e.g., "What was the magician's lucky charm on the last day?"). The free-recall phase is completed by asking children one or more open-ended questions (e.g., "Tell me everything that happened the last day;" "What else happened?"). Open-ended questions invite an elaborate response, but do not dictate the expected content of the answer. In contrast, specific questions invite shorter responses and restrict interviewees' answers to the particular information being sought by the interviewer (Powell and Snow 2007).

There are advantages to including both open-ended and specific questions in memory research. Children's responses to the former question types tend to be more accurate than their responses to the latter (Brown et al. 2013) because open-ended questions put control of the interview in the hands of the interviewee (Hoffman 2007). By not restricting responses to what the interviewer wants to know, open-ended questions allow children to reply with whatever information comes to mind. However, children may not provide all of the information they are capable of remembering in response to open-ended questions. For that reason, memory researchers will often also ask children a set of specific questions about each item of interest (in this case, each of the key script components). Across all of the research studies, interviews have contained only open-ended questions, only specific questions, or a mixture of both.

Some researchers who study children's memories for repeated events allow children to choose the instances they want to talk about, instead of having the interviewers decide (e.g., Brubacher et al. 2012; Danby et al. 2017). In Brubacher and colleagues' studies, children were invited to talk about the instance they remember best. However, this research group has also shown that young children (younger than 8 or 9) may have difficulty thinking about the qualities of their own memories (Danby et al. 2017); this means that they would have trouble choosing which instance they remember better than others.

How Researchers' Viewpoints Influence How They Interview Children

The body of research on children's memories for repeated experiences has yielded many consistent findings (e.g., that children's memories for fixed details are very strong and resistant to suggestion; Connolly and Lindsay 2001; Pezdek and Roe 1995), but also some differences. Many of these differences can be attributed to the ways in which children are interviewed. Indeed, child development experts around the world recognize the profound influence that interviewer questions have on shaping children's reports (Brown and Lamb 2015). Further, research studies are designed in ways that reflect the theoretical orientations of the researchers, which may differ. For example, some researchers may believe that instances of a repeated event are still accessible in memory after a delay, whereas others may believe that the specific details of each instance are no longer connected together, making it impossible to retrieve an instance.

The current project represents a collaborative effort among international experts in this research field. Some of the present authors hold contrasting viewpoints. For example, Brubacher's studies have focused on interviewing strategies that could help children retrieve instances. Her interpretation of the evidence is that at least some details remain connected to each other in memory (e.g., remembering that the day involving push-ups was also the same time that the magician

brought the dolphin, ate an apple, and travelled by truck, while forgetting which music was playing or mistakenly reporting that there was a trumpet playing). As a result, Brubacher uses mostly or only open-ended questions in her studies. They allow children to choose the instance(s) they want to talk about. In her approach, children are capable – to some extent – of doing the work that interviewers need them to do (under the current legal requirements) with appropriate levels of adult support.

Connolly's theoretical viewpoint, on the other hand, is that children will remember the variable details but recall them as a set of possible options (e.g., remembering that the music was violins, drums, trumpet, and guitar, but not being able to recall which one was playing the day the stickers were placed on children's cheeks). She has focused on trying to characterize how instances of repeated events are organized in memory. Her interviews have thus mainly included specific questions about each script component, to get a complete picture of which details children retain after repeated experience. These differences in perspective across researchers can be found in many areas of social science, not just memory for repeated events.

How Laboratory Research Informs Real-World Interviews

Different theoretical perspectives exist because the phenomena being studied are complicated (e.g., human memory systems), and many factors affect them. Laboratory research, which refers to activities that take place in a controlled setting (like the staged magic show described here), helps identify these factors. The controlled setting allows researchers:

- to know exactly what happened (so that children's memory reports can be compared with a record of fact),
- to make every child's experience in the study as similar as possible (to allow conclusions to be drawn across the group of children), and
- to use methodologies (e.g., random assignment) that allow researchers to draw causal conclusions from the data.

To what extent can laboratory research be applied to real world events? After all, how does being interviewed about a magic show compare to being questioned about an experience of repeated abuse? Critics of laboratory research argue that memory for repeated staged events cannot be compared to memory for repeated traumatic events. Yet, many memory experts believe that the underlying memory phenomena are similar, and that "there is no 'special' memory mechanism for stressful or traumatic events" (Lamb and Malloy 2013, p.576). Further, there is a large body of research supporting the notion that memory for traumatic personal events would be *stronger* and more enduring than memory for neutral or pleasant laboratory events (see Fivush 2002, for an overview of research on trauma and children's memory).

<u>The Influence of Trauma on Memory</u>

Some research has tried to take advantage of naturally occurring stressful events to evaluate the influence of trauma on memory (Fivush 2002). Price and Connolly (2007) studied 4- and 5-year-olds' memories for four instances of swimming lessons. Approximately half of the children (*n* = 40) were classified as anxious and experienced observable emotional distress during the lesson. Other children were classified as non-anxious, and experienced comfort and enjoyment during the swimming lesson. Price and Connolly found no differences in anxious versus non-anxious children's responses to free-

recall questions. Anxious children were not more or less likely than non-anxious children to confuse details that varied across instances. There was only one key difference between children who experienced the swimming lessons as somewhat traumatic compared with those who did not: anxious children were less suggestible (i.e., they were less likely than non-anxious children to report false information that had been given to them after the swimming lessons). An adult case study also addressed this issue of memory for traumatic repeated events (Connolly and Price 2013). A woman who worked in the banking industry for many years was the victim of five separate armed robberies. She was interviewed about each instance on three occasions. Like children reporting about a repeated staged (non-traumatic) event, she was very clear on what details occurred during the robberies. However, she was confused about which details occurred during which instance, so her descriptions of each robbery were inconsistent.

Interviewing Children About Repeated Experiences

When children are interviewed by police and other legal professionals about repeated abuse, they are often asked to specify each instance by time, place, and other contextual details (Guadagno et al. 2006) such as clothing worn, the weather that day, or where other people were at the time of the offence. As shown earlier in this article (when you tried to recall your own shopping trips) this task is difficult and error prone. Young children are also less able than older children and adults to make accurate decisions about which specific details match which instance (Roberts 2002). In fact, the most common mistake children make when they have experienced something repeatedly is to mix up *when* something happened (which instance), not *if* it happened (Powell et al. 1999; Woiwod et al. 2019).

Connolly and her colleagues found that children's reports of an instance of a repeated event are judged to be less credible than children's reports of a unique event, even when the actual accuracy is similar (Connolly et al. 2008). A similar result was found for adults' memory reports (Weinsheimer et al. 2017). This may be due, in part, to differences in report consistency and confidence. When asked to report an instance of a repeated event, children are less confident when they report variable details (Roberts and Powell 2005) and they are less consistent (Connolly et al. 2008) than children who experience an event once. The criminal justice system uses confidence and consistency as indicators of credibility (Myers et al. 1999). However, it is important to note that *inconsistency is a result of confusing details actually experienced, not a result of reporting false details that never occurred*. In spite of this, in a court case, inconsistencies could lead to a wrongful acquittal.

<u>Using an Understanding of How Memory Works to Help Children</u>

The courts in several countries, including Australia and the United States, have recognized the unique challenges involved in accurately recalling specific details about instances of repeated sexual abuse (*People v. Jones* 1990; *Podirsky v. R.* 1990). Child sexual abuse is a crime that rarely involves other witnesses and/or corroborative evidence (Cotter and Beaupré 2014; Myers 2002), so prosecution in these cases relies heavily on children's accounts. In Australia and some US jurisdictions, courts accept charges of *continuous* child sexual abuse. This charge allows investigators to charge a suspect with repeated sexual abuse without requiring a child victim to describe the specifics of each individual instance (see Woiwod and Connolly 2017).

In practice, the charge of continuous sexual abuse (CSA) is used infrequently. This may be because special approval from the attorney general is required (Shead 2014) or because the courts need to be satisfied that a certain number of instances (usually three) did occur (Bah 2013; Richards 2009). This latter stipulation means that, to some extent, a victim must still explain the details of a few instances.

Further, as outlined in Woiwod and Connolly (2017), a few other significant issues arise when CSA (or any crime) is charged as a continuous offence:

a. it may be harder for the accused to raise a defence,
b. it is difficult to apply double jeopardy laws because the specific offences are not charged, and (c) the complainant's perceived credibility may be at a disadvantage.

Nevertheless, charges of continuous sexual abuse represent a movement to bring the law into line with an understanding of human memory systems.

Despite efforts to balance the needs of the criminal justice system and defendants' rights with victims' capabilities, we still need a more concrete understanding of how children organize instances of repeated events in memory. Without this knowledge, criminal justice professionals will continue to rely on misunderstandings of how memory functions and will continue to ask children to produce evidence that may not only be difficult but impossible for them to access. In extreme instances, children's cases may only move forward in the criminal justice system if they are able to report specific details of a single instance of abuse. The present research will assess the degree to which these instances can truly be accessed, for children of different ages.

Current Research

The primary objective of our research will be to analyze the responses of several thousand children who were interviewed about repeated laboratory events over the last 25 years in Canada and Australia. We expect the following outcomes:

1) to gain a clear understanding of the type, amount, and quality of information children (aged 4 to 10) can report about repeated experiences, and
2) to characterize the patterns of errors children make.

As a result of this work, the research team (headed by the authors) expects to make policy recommendations for how children should be interviewed about repeated abuse, and what types of charges may be reasonable in such cases.

The team will review these interviews to identify, specifically, children's errors. The authors' aim is to find out whether children seemingly recall details completely at random (i.e., do they mistakenly link together details from many different occurrences?) or whether their confusion is the result of mixing up whole instances, such as confusing the third time for the last time. With a better understanding of errors, this research can inform legal professionals about what types of details children can reasonably be expected to recall, and what types of details lead to the appearance of inaccuracy but might indeed be simply a normal memory phenomenon.

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Crime Victims' Experiences of Restorative Justice: A Listening Project

Summarized by Lisa Ha

The Department of Justice Canada (Justice Canada) contracted with Just Outcomes Consulting to hold five Listening Sessions, which took place in Ontario, Nova Scotia, Saskatchewan, British Columbia, and Yukon between February and April 2019. The Listening Project originated in the US in the early 2000s and was adapted to a Canadian context. The process records the experiences and concerns of victims, victim advocates, and victim service providers to better understand victims' needs, their experiences of justice, and their impressions of restorative justice (RJ). This is a summary of the report written by Catherine Bargen, Aaron Lyons, and Matthew Hartman of Just Outcomes, who were responsible for planning and facilitating the sessions. The summary highlights some of the main themes that emerged through this work. The full report can be found at: https://www.justice.gc.ca/eng/rp-pr/jr/cverj-vvpcj/cverj-vvpcj.pdf.

What is Restorative Justice?

As Bargen et al. describe in their report, over the past four decades, restorative justice has become increasingly accepted as a promising practice for improving both the process and the outcomes for and of the Canadian criminal justice system. RJ is rooted in Indigenous legal practices, faith communities, and other cultural traditions. It allows all those affected by harm and crime to participate in the justice process. RJ's goal is to address the harm through recovery, healing, or repair. The approach also holds offenders responsible for their actions, so that both the individual and the community can grow and repair after the crime, and prevent future harm.

About the Listening Sessions

The goal of the Listening Sessions was to understand participants' experiences with RJ. As the authors note, the project is grounded in the belief that restorative approaches to justice can help communities grow by listening to the voices and perspectives of victims/survivors and victim service providers, and by taking these perspectives seriously when designing future policies and programs.

The Listening Sessions included 36 participants; 26 were direct victims, 5 were victim surrogates, 6 were victim service workers/advocates, and 2 were corporate representatives (some participants had more than one of those identities). The types of crimes the participants had experienced include property/vehicle crimes (n=4), fraud (n=1), theft (n=3), assault (n=10), hate-motivated vandalism (n=2), impaired driving causing death of a loved one (n=3), and murder of a loved one (n=3). As Bargen et al. highlight, the severity of the crime did not necessarily correlate with the extent of trauma the victim experienced.

The sessions were led by a facilitator and used an open dialogue and "talking circle" format with a talking piece to ensure that participants were able to speak uninterrupted. The sessions focused on three main themes:

- participants' needs and experiences,
- improvements for RJ programming, and
- reflections on the Listening Session.

Below is a summary of the key findings drawn from the full report.

SUMMARY OF KEY THEMES

Participants' Needs and Experiences in RJ

During the Listening Sessions, participants described what their experience with RJ was like, what motivated them to seek RJ options, and the positive and negative aspects of their experience. One of the dominant themes was the participants' need for information. Some

said that they became interested in RJ because they needed information and answers to questions, such as information about and/or from the person responsible for the crime; specific details about the crime; and information about the criminal justice process and RJ options.

Participants' Experience of RJ
Through the Listening Sessions, many participants said they were satisfied that they had obtained this information through the RJ process. They highlighted the great value in receiving robust follow-up in the form of support from the RJ program and ongoing information about the status of the offender. However, a significant number of participants expressed disappointment at how little information RJ programs provided about the offenders' progress in meeting their RJ commitments. Some participants also highlighted that they would have liked to have received more information at the beginning of the RJ process: estimated timelines about when the process would take place, and details about the offender, such as what to expect from the offender's appearance and attitude.

Participants spoke positively about the personalized support and connection they received from RJ practitioners, particularly during the preparation and follow-up phases of the RJ process. Some participants said that they did not get the kind of victim services they desired, nor did they feel listened to by court officials or other representatives of the criminal justice system or school system. However, many felt that the RJ program provided attention, answers, and services that they otherwise did not have access to in the formal criminal justice system.

Why Participants Got Involved in RJ
As described in the full report, one of the most common reasons participants noted as to why they took part in RJ was their need for meaningful action, justice, or for "something to be done" in the context of the crime committed. Other participants said they were motivated to make a difference by contributing to a pro-social outcome for the offender. While some felt that RJ brought a sense of meaningful justice, several participants said they were uncertain about whether the consequences for the offender were "enough" through their RJ experience. Some participants also said they felt disappointed about an offender's reoffending or other negative behaviours. As one RJ practitioner noted, cases in which victims entered the process primarily out of concern for offenders often led to less satisfying results because neither the victim nor the program could ultimately control the offender's future behaviour.

Need to be involved. Participants emphasized their need to be involved, included, and given choices in the justice process concerning the crime against them, rather than having processes dictated to them by others. Here RJ programs were highlighted positively in comparison with other parts of the criminal justice system, which were often perceived as deciding on behalf of victims what they may or may not need. Similarly, participants who had previously experienced other diversionary programs contrasted their current experience with those previous, less restorative experiences.

Reparation. A number of participants were at least partly motivated to take part in RJ processes, out of a desire for some form of symbolic or financial reparation. Several participants reported they were satisfied that they had received reparation and compensation through the RJ process. Others were disappointed because the offender did not pay or was perceived to be unable to pay.

Holding offenders responsible. Some participants commented that they were involved in RJ because they needed to recognize the "relationships" (meant in the broadest sense) created by the criminal acts. Some articulated this relationship as a deep need to

hear and see that the offender was remorseful. Many participants thus had a common desire to see the person(s) responsible for the crimes against them clearly show that they took responsibility for their choices. Accordingly, some participants said they needed to have a personal connection with the person who offended against them. RJ processes seemed to contribute to more positive and less threatening relationships between many victims and the people who offended against them. However, in some cases participants said they were dissatisfied with the level of responsibility or remorse shown by the offender(s) in their case.

Recover from crime. Bargen et al. identified an overarching motivation for engaging in RJ: as a hope or perception that the process could offer a means towards recovery from the effects of the crime, including elements of psychological trauma. Many Listening Project participants spoke in passionate and positive terms about how RJ had contributed towards their recovery. In many cases, the RJ experience seemed to play one meaningful part in a much longer-term (and often non-linear) process of psychological, social, and emotional recovery. Other participants felt RJ did not contribute meaningfully to their recovery. These participants cited factors such as a lack of adequate support and information from the RJ program, and a process that was focused primarily on assisting with the offender's recovery or avoiding a criminal record. On reflection, these participants were disappointed with the RJ process, as they simply had not experienced the type of justice they had hoped for.

One area in which participants found their range of choices to be less satisfactory was with RJ process timelines and duration. Participants said they would have benefited from more time in making their decision to participate, or from being involved in the process longer. A few participants perceived pressure to make a decision to take part based on a timeline over which they lacked control.

Improving Restorative Justice

Based on the discussions and themes that emerged from the Listening Sessions, the authors outlined a variety of measures that could help improve RJ programs so they could better serve and support people in the aftermath of victimization.

Flexible schedules. Bargen et al. highlighted this as a way of enhancing victims' involvement in RJ processes. In particular, they suggested creating a variety of options for victims, allowing for follow-up and multiple meetings as requested by victims, and allowing victims to have more control over the timelines in RJ processes.

Increasing the amount, and type of information provided to victims, and the messaging about the purpose of the RJ process. Other suggestions included increasing coordination among justice system partners so that there was a better understanding of RJ, in particular between RJ programs and victim services.

Enhancing the support provided to victims. Suggestions included:

- providing creative options, such as having police officers or therapy animals available, depending on the needs of the victim;
- the concept of a victim "mentor" who accompanies and supports the victim throughout the RJ process. A mentor was provided to some participants in RJ programs and was found to be helpful;
- advice from Listening Session participants on how RJ programs could provide more meaningful and safer participation for victims. They highlighted the need for clearer information at the initial intake on how the RJ program could meet the victim's needs for care and support, and how RJ is also for them, not just the offender.
- ensuring that RJ programs hold offenders accountable and that there is recourse if offenders do not complete

agreements. Participants felt that offenders should be provided support and assistance to appropriately participate in RJ processes to help ensure that processes will be productive for all parties.

Improving the victim surrogacy experience. A victim surrogate is used when a victim is unable or unwilling to participate in an RJ process. Suggestions included:

- ensuring that victims are consulted so that a victim surrogate has an appropriate understanding of the victims' needs and desires before entering into the RJ process.
- keeping victims informed about the process and outcomes when a victim surrogate is used. In cases where a victim is shy, it was suggested that a victim could accompany a victim surrogate so that they could have an opportunity to see the offender.

More access to victim-sensitive training for RJ facilitators. Victims expressed how meaningful it was for them to have a facilitator who instilled confidence, and with whom they were able to connect. They highlighted some valuable specific skills/areas of expertise:

- trauma-informed practices;
- facilitators who are able to act on behalf of both offender and victim; and
- RJ program staff (including support staff) who are sensitive and compassionate to victims.

Most Listening Session participants did not think that RJ processes should be limited to specific offences; they did feel it was important, however, for program facilitators to be trained to deal with a range of offences and the safety and other issues that could be associated with different types of crime.

Reflections on the Listening Session

The authors highlighted that many victims found participating in the Listening Session itself to be valuable. Some felt it helped them feel more connected, and a few even felt the Listening Session had a bigger impact than the RJ process on their well-being. In this vein, it was suggested that it would be helpful to have a mechanism by which victims could connect and meet as a way of helping them through their trauma, with people at varying stages in their RJ journey, as well as "alumnae/ii" of an RJ process.

CONCLUSION

Bargen et al. concluded that the Listening Sessions offered a unique opportunity to hear about the immense potential of RJ processes to meet the needs of victims in a meaningful way. Improvements to RJ could focus on making processes more adaptable, optimizing choices and information for victims, prioritizing flexible supports and follow-up, and (for the broader system) considering how to create sustainable funding structures to support programs making these improvements.

Developing a Family Violence Identification and Response Tool By Bianca Stumpf, Jenny Larkin, and Cherami Wichmann

Introduction

Family violence continues to be a highly troubling social and legal problem in Canada. Family violence (see definition below) can cause significant short- and long-term emotional, physical, social, and financial issues for victims. Efforts to respond to family violence have been underway for decades in many sectors. Given the high social, emotional and economic costs of family violence to Canadians, it remains important to continue to find effective and efficient ways to identify and respond to this socio-legal phenomenon.

The *Chief Public Health Officer's Report on the State of Public Health in Canada 2016 - A Focus on Family Violence in Canada* documented the following facts in Canada:

- An average of 172 homicides is committed every year by a family member.
- For approximately 85,000 victims of violent crimes, the person responsible for the crime was a family member.
- Just under 9 million or about one in three Canadians said they had experienced abuse before the age of 15 years.
- Just under 760,000 Canadians said they had experienced unhealthy spousal conflict, abuse or violence in the previous five years.
- More than 766,000 older Canadians said they had experienced abuse or neglect in the previous year (PHAC 2016, 3).

Statistics on intimate partner violence (IPV)[57] indicate that in 2018, Canada had a rate of 325 victims of IPV (male and female) per 100,000 population (Conroy et al. 2019). IPV represented close to one-third (30%) of all victims of police-reported violent crime in Canada in 2018 (Conroy et al. 2019). According to a study by the Department of Justice (Justice Canada), the total economic impact of spousal violence in Canada in 2009 was estimated at $7.4 billion, amounting to $220 per Canadian (Zhang et al. 2012).

Family law legal advisers[58] (FLLAs) play an important role in addressing family violence because they are often the first person clients meet when they enter the family law system. That is why Justice Canada is developing a family violence identification and response tool (the tool) to assist FLLAs in identifying family violence and responding to it safely and effectively in the context of a legal adviser-client interview. The tool's goal is to promote safe and appropriate outcomes for families that help to prevent family violence and support healthy relationships.

[57] **Intimate partner violence (IPV)** is violence committed by a current or former spouse or partner in an intimate relationship against the other spouse or partner and can also be called spousal violence or conjugal violence. IPV can take a number of forms, including physical, verbal, emotional, economic and sexual abuse. Violence within dating relationships falls under this category. IPV is a type of **family violence**, which encompasses various types of violence occurring in a range of relationships and contexts; family violence may also include domestic violence, conjugal violence, elder abuse and child abuse.

[58] The term legal advisers is used in the amended *Divorce Act*, and it encompasses practising lawyers across Canada, as well as paralegals in British Columbia and notaries in Quebec who are able to provide legal advice in the context of certain family law matters. The term "legal advisers" is used through this article, except in instances where cited research used a different term (e.g., lawyer, paralegal).

This article provides recent data on IPV and other forms of family violence and some of the challenges associated with addressing it. It also presents an overview of the tool and its development.

What is Family Violence?

In Canada, family violence includes violence against children and youth, among siblings, against intimate partners, and against seniors. Recently passed federal legislation, *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act* (former Bill C-78),[59] amended the *Divorce Act*[60] to include a broad, evidence-based definition of family violence. It defines family violence as:

> [A]ny conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person – and in the case of a child, the direct or indirect exposure to such conduct – and includes…
> (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
> (b) sexual abuse;
> (c) threats to kill or cause bodily harm to any person;
> (d) harassment, including stalking;
> (e) the failure to provide the necessaries of life;
> (f) psychological abuse;
> (g) financial abuse;
> (h) threats to kill or harm an animal or damage property; and
> (i) the killing or harming of an animal or the damaging of property.

The tool described in this article focuses on violence against intimate partners and exposure of children to IPV.

Intimate Partner Violence in Canada

IPV refers to violence that occurs between current and former partners who may or may not live together (Conroy et al. 2019). Statistics Canada's *Family violence in Canada: A statistical profile, 2018* (Conroy et al. 2019) highlights a number of key points about IPV:

- The rate of police-reported IPV increased by 2% between 2017 and 2018, reaching its highest rate since 2012. Between 2009 and 2018, however, the rate declined by 12%.
- Women were overrepresented as victims of IPV. For example, women aged 15 to 89 accounted for almost 8 in 10 victims (79%) of police-reported IPV.
- Of the 945 intimate partner homicides that occurred between 2008 and 2018, a large majority (79%) involved female victims. Most female victims of intimate partner homicides were killed by a current or former legally married or common-law husband (73%). Boyfriends were responsible for the other quarter (26%) of female victims' deaths.

[59] S.C. 2019, c. 16. https://www.parl.ca/Content/Bills/421/Government/C-78/C-78_4/C-78_4.PDF. Accessed on -5 October 2020.

[60] Recently passed amendments to the *Divorce Act* also require judges to consider the impact of family violence on the best interests of a child when they make decisions about parenting arrangements. They also include provisions to help coordinate between proceedings when families are simultaneously involved in more than one part of the justice system, which often happens in cases of family violence. These changes will come into force on March 1, 2021.

- In comparison, male victims represented 21% of all intimate partner homicide between 2008 and 2018.[61] Similar to female victims, most male victims were also killed by current or former legally married or common-law wives (59%) and girlfriends (28%), but a notable proportion were killed by same-sex spouses or same-sex dating partners (13%).
- Between 2008 and 2018, 6 in 10 intimate partner homicides (60%) involved a history of family violence.

The Ontario Domestic Violence Death Review Committee's *2018 Annual Report* shows that a history of IPV and an actual or pending separation are risk factors for intimate partner homicide. Between 2003 and 2018, the Committee reviewed 329 cases, involving 470 deaths.[62] It found that about 71% of the cases involved a couple with a history of intimate domestic violence, and about 67% involved a couple with an actual or pending separation (Office of the Chief Coroner 2019, 3).

Research also shows that IPV can have short- and long-term negative effects on victims and their children (Zhang et al. 2012). For example, victims of IPV can experience mental health problems, such as post-traumatic stress, depression, anxiety, hyper-vigilance, and panic disorder (Neilson 2013). Victims can also experience short- and long-term physical health, social, and financial issues.

Overall, data continue to show that:

- according to police-reported data, women represent the majority of IPV victims;
- most intimate partner homicides were preceded by a history of family violence;
- most female victims of intimate partner homicide were killed by a partner from whom they were separating; and
- victims of family violence experience significant harm.

Challenges of Addressing Family Violence in Family Law Cases

Because FLLAs play an important role in addressing family violence, it is important that they be able to identify and respond to that violence.

The following three issues, among others, continue to create challenges for FLLAs:

- FLLAs in Canada lack a universal[63] family violence screening tool/procedure;
- Many FLLAs have limited knowledge about family violence; and
- Victims' feelings of shame and fear of not being believed can make it difficult for them to disclose their experience of family violence (Cross et al. 2018).

Lack of Screening Tools

A recent review of 86 family violence screening tools/procedures showed that lawyers in Canada do not have universal, standardized family violence screening tools/procedures available to them (Cross et al. 2018). If such a tool/procedure were available, it could provide accurate and consistent information about victims' exposure to family violence (Cross et al. 2018; Northcott 2012).

Despite lacking such a tool, some lawyers report that they do screen for family violence. A survey of lawyers at the 2016 National Family Law Program showed that more than two-thirds of survey respondents "*often* or *almost always* screen for family violence" (Bertrand et al. 2016, 50; italics original). Yet over half of lawyers (53.1%) also said that they "never use a

[61] Note that this statistic was calculated based on data found in Table 2.11 in Conroy et al. (2019).
[62] Of the 329 cases, 66% were homicide cases and 34% were homicide-suicide cases.
[63] A "universal" tool is one that can "work with people (women, men and those who situate themselves elsewhere on the gender identity continuum) in a variety of intimate partnerships" (Cross et al. 2018, 10).

standardized measure or instrument to screen for family violence, and another 25.5% said that they rarely do so" (Bertrand et al. 2016, 80). These survey findings show that lawyers are willing to screen for family violence, though few use a standardized measure or instrument to do so.

Many FLLAs have limited knowledge about family violence

Research frequently finds that many lawyers and other legal advisers have limited knowledge about family violence (Cross et al. 2018). Family violence does not necessarily end when a relationship ends. It may continue or even intensify during and after separation. Also, the risk of intimate partner homicide increases during this period. Thus, it is especially important for lawyers who take on family law cases to understand how family violence works. Separation and divorce can provide lawyers an opportunity to identify and deal with family violence. Family members who disclose their experience of family violence to their legal advisers could be given the support, services, and legal interventions they need to help keep them and their children safe (Cross et al. 2018).

Victims may be reluctant to disclose violence or abuse

Cross et al. (2018) noted that several studies have shown that victims "do not readily disclose their history of abuse to anyone, particularly people they do not know, including lawyers" for a variety of reasons (2018, 15). Research has also found that asking victims of family violence specific questions about abusive behaviours (e.g., has the other partner ever hit you?) helps to identify family violence (Cross et al. 2018). These findings highlight how important it is to develop a tool that supports legal advisers in asking clients questions about specific behaviours that can confirm family violence. Overall, these findings point to the need for supports that can help FLLAs identify and respond to family violence. By developing a tool that includes questions that ask about specific behaviours, Justice Canada ultimately aims to help FLLAs support victims to disclose their experience of family violence. Using that information will help FLLAs recommend the most appropriate arrangements and legal remedies that "reflect the best interests of the children, the legal rights of the parties and the safety of [family violence] survivors" (Cross et al. 2018, 5).

Federal Government Tools and Resources to Help Address Family Violence

The Government of Canada has funded a range of research projects to support health and social service professionals, and legal professionals, to help address family violence in Canada. For instance, the Public Health Agency of Canada funded a research team at McMaster University for a five-year project, entitled *Violence, Evidence, Guidance, Action* (or VEGA).[64] This team developed evidence-based resources for health and social service providers to educate them about child maltreatment, IPV, and children's exposure to IPV. As part of this project, the research team developed a framework for recognizing and responding safely to family violence, which includes learning modules (e.g., care pathways, scripts, how-to videos), interactive educational scenarios and a printable handbook.

Justice Canada has conducted research projects on family violence, such as developing a tool to assess the risk of IPV, entitled *The Development of the Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER): A Tool for Criminal Justice Professionals*. This tool was developed by the British Columbia Institute Against Family Violence in 2005 to provide a shorter alternative to existing tools in the field (Kropp and Hart 2004). It is currently used by criminal justice professionals, including police, in many jurisdictions in Canada.

[64] For more information on the VEGA project, please see https://vegaproject.mcmaster.ca/

Justice Canada has also created a list of tools for assessing IPV, entitled the *Inventory of Spousal Violence Risk Assessment Tools Used in Canada*. This inventory was first published in 2009, and updated and republished in 2013. It details tools used by criminal justice professionals in each province and territory to assess the risk of violence to a spouse. Justice Canada is once again updating this inventory.

What is the Family Violence Identification and Response Tool?

In collaboration with Justice Canada' Family Law and Youth Justice Policy Section, the Research and Statistics Division is developing a tool to help support FLLA in safely identifying and responding to family violence. The tool is being developed to take into account trauma and violence-informed principles and to provide guidance on how to incorporate culturally safe practices (see Text Box 1 below) in identifying and responding to family violence. This project aligns with the Government of Canada's *Family Violence Initiative* and is drawing on the expertise of many experts in the fields of family violence and family law.

What is cultural safety?

Cultural safety is a key element of the tool, which aims to draw FLLAs attention to the way that social, economic, historical and political contexts, as well as institutional and interpersonal racism shape individuals' experiences (Browne et al. 2018). The tool will provide guidance for FLLAs on how to acknowledge their own biases and increase their awareness of and self-reflection on the pervasiveness and impacts that these power imbalances and inequitable social relationships can have on their clients (Browne et al. 2018). For instance, FLLAs should recognize that cultural safety depends on what safety means to their clients.

As an example, cultural safety education can help equip FLLAs with the awareness that some Indigenous clients may not feel comfortable reporting violence to the police due to systemic and colonial racism that perpetuates police misconceptions about Indigenous people and Indigenous overrepresentation in the criminal justice system.

The tool will include instructions for FLLAs on how to identify family violence and respond to a client who is disclosing their experience of family violence.

It will provide:

- Guidance to help FLLAs determine whether family violence has occurred that will be integrated into legal adviser-client interviews;
- Guidance on how to respond to disclosures of family violence, with attention to the need to address any immediate danger, as well as information on legal process options, legal remedies, and community resources that may be available to assist the client with other safety needs; and
- Supplemental resources, including information sheets and practice sheets (i.e., materials to support FLLAs' practices).

User-Centred Development and Collaboration

The methodology to develop this project tool involves a user-centred and collaborative approach. Justice Canada is working with the Public Health Agency of Canada, the Department of Women and Gender Equality Canada, and a Justice Canada-convened advisory group of experts in family law and family violence. The collaborative process also involves front line providers who work with diverse clients as well as subject matter experts in areas such as methodology, family violence cases in criminal and/or family law, cultural safety, and trauma and violence-informed practices.

A review of the tool will also be undertaken by FLLAs both those who take on family violence cases and those who do not, along with usability testing of a selected group of FLLAs. Longer-term testing plans include collecting feedback from family law clients. This testing will help to ensure that the tool is comprehensive and useful. Longer term testing provides the project team with the opportunity to gather preliminary data on the impacts of identifying and responding to family violence on various actors involved in the family law system.

Limitations of the Tool

It is acknowledged that this tool cannot be customized for specific groups at this point, but the inclusion of cultural safety elements is an important first step for this work. This project aims to gather the perspectives of diverse individuals, where possible, though it will not be possible to address the needs of all groups in the first release of the tool. However, it is anticipated that following the first release of the tool, more comprehensive testing and validation work could be undertaken. There are also plans for exploring how this tool could be adapted or redesigned to address the unique needs of different populations, such as Indigenous peoples.

The tool is designed to provide concrete guidance for FLLAs who have little to no experience handling cases that involve family violence. We anticipate that the tool will also be useful for FLLAs with more experience who may be interested in refreshing their knowledge and/or reviewing the tool for new ideas, approaches or learning opportunities.

It is important to note that the tool is not designed to replace training for FLLAs related to identifying and responding to family violence. While the tool will contain helpful information for FLLAs to consider and incorporate into their practices, the tool does not describe all of the complexities of family violence.

Conclusion

Family violence remains an ongoing problem in Canada. FLLAs play an important role in identifying and responding to family violence. They can help to reduce the risks of family violence, including intimate partner homicide, that some of their clients may experience. A universal, standardized family violence identification and response tool/procedure in Canada can help address this gap.

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