



Government
of Canada

Office of the Federal
Ombudsman for Victims
of Crime

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

Progress Report: *The Canadian Victims Bill of Rights*

Office of the Federal Ombudsman
for Victims of Crime

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Message From the Federal Ombudsman for Victims of Crime

I am very pleased to present this Progress Report on the first five years of the *Canadian Victims Bill of Rights* (the Act), which came into force in 2015. In the following pages, we examine the treatment of victims in the Canadian criminal justice system and assess Canada's performance in upholding the rights the Act provides. The presentation of this report coincides with the review called for in the Act, and is intended to encourage parliamentarians to study the Act closely to ensure it is doing the job that Parliament intended.

My Office's mandate is to help ensure that the rights of victims and survivors of crime are respected and upheld, and that the federal government meets its obligations to victims. This includes ensuring that victims and their families have access to the federal programs and services that were specifically designed for their support. In addition to assisting individual victims, we also have a responsibility to identify and bring forward emerging and systemic issues that negatively affect victims of crime at the federal level. We work closely with victim support organizations and a host of other government and non-government stakeholders to achieve our common goal of building a justice system that better serves everyone in this country.

As our report shows, "the adoption of a law in the books is different from its implementation in action."¹ While putting victims first is an easy concept to understand, putting it into practice is far more difficult. Although victims' interests are directly affected by the crimes committed against them, our adversarial justice system relegates victims to the role of observer or witness in criminal justice proceedings between the state and the accused. The most recent review of Canada's criminal justice system by the Department of Justice acknowledges that victims often feel "revictimized" under the current system, and argues that major changes are needed to support the rights of victims, survivors and their families.² I could not agree more.

When it came into force five years ago, the *Canadian Victims Bill of Rights* represented an important step forward for victims in this country. It gave all victims and survivors the right to information about how their case was being pursued; the right to protection; the right to participate and convey their views in processes that affect their rights; the right to seek restitution for losses; and the right to file a complaint if they felt their rights had been infringed or denied. At the time, officials promised it would change the culture of the Canadian criminal justice system by ensuring, for the first time, that everyone working in that system respected and upheld victims' statutory rights.

However, based on our analysis of the data available to us, it appears that the objectives set out in the Act have not been met. The Act falls far short of delivering the real rights it promised. The voices of victims and survivors are clear, and our own practical experience with the Act over the past five years has shown us that, despite the primacy it was given as quasi-constitutional when it was created, its implementation has been sporadic and inconsistent. There has been no consistent effort to implement the Act. Training opportunities for criminal justice officials have been limited, and there has been no public education effort to inform citizens of their rights. Thus, the situation of victims of crime has not fundamentally changed since it was passed. I believe the Act needs to be strengthened to require officials to uphold victims' rights in the criminal justice system and require institutions to measure and report on their compliance with the Act.

We are suggesting several areas for improvement. **On enforceability, for example, we call for the Act to be amended to provide a legal remedy for its violation.** Currently, the Act prevents victims from legally enforcing their rights through judicial review of decisions or other administrative mechanisms. For example, the Act specifically states that none

of its provisions can be interpreted as giving any victim "standing" in a court to challenge authorities on whether their rights have been met. Victims can only make a complaint. Federally, that amounts to an administrative review of policy or actions taken by the body to which a victim has directly complained.

In addition, the complaints processes for agencies are hard to find and navigate. To make it less complex for victims to complain about an agency in breach of their right, **we believe the Office of the Federal Ombudsman for Victims of Crime should be named as the single authority with jurisdiction to review complaints by victims of crime in relation to how they were treated by a federal department, agency or body.** This will give both victims and federal officials a clear understanding of the role of the Office.

The Act lacks clearly defined roles and responsibilities. Criminal justice officials' obligations and responsibilities to victims are not plainly spelled out. The Act must set out which officials are meant to inform victims of their rights. It must also require them to document what information is shared; how protections will be delivered; how victims can participate; and how victims can seek and collect restitution. Currently, victims must rely on the goodwill of the police, Crown prosecutors and other authorities in the criminal justice system to provide them with the information, protection and support they have been promised.

Some of the suggested improvements to the Act could be undertaken by the federal government under its criminal law powers. Other enhancements to victims' rights may require co-operation between the federal government and provincial



and territorial governments. **To the extent that co-operation is required to ensure the rights of victims of crimes are improved and respected, the federal government should work with provincial and territorial authorities to improve how victims are treated throughout the criminal justice system.**

The Act needs to be a guarantee of rights and services. As written, it puts the onus on victims to know, understand and assert their rights. Meanwhile, persons accused of crimes enjoy the opposite approach: under the *Charter of Rights and Freedoms*, they have guaranteed legal rights about which they must be made aware upon arrest or detention. Under the *Canadian*



Victims Bill of Rights, victims are not shown equal treatment. They are not automatically told they have the right to receive information on their case; they must specifically ask for it. How is a traumatized victim supposed to know they have any rights at all, unless a criminal justice official tells them they do? Requiring a victim to ask for information or self-register means they must first agree that they are a victim, not merely a person who has been traumatized. This is difficult for many. Socioeconomic status may also play a role in whether victims are aware of their rights. By proactively informing **all** victims, we can ensure that those who suffer property or personal crimes know and can assert their rights.

The Act needs to provide for measurable implementation. One of the major challenges in assessing the impact of the *Canadian Victims Bill of Rights* is that not all jurisdictions record or report on how victims are treated in relation to the rights outlined in the Act. Currently, there are limited data to inform Canadians about the full impact the Act has had. This gap must be addressed with a comprehensive national data collection and reporting regime. Court data represent a significant gap that has been noted by many esteemed Canadian researchers. These data tell us what happens to particular cases and whether the outcomes are linked to the characteristics of those involved, including victims and/or the circumstances of the case. The *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* noted that “Indigenous women, girls and 2SLGBTQQIA [two-spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual] people are also over-policed and over-incarcerated as potential offenders, yet under-protected as victims of crime.”³ **Significant investments are needed to improve the recording of data by all criminal justice institutions.** Canadians deserve transparency. They deserve to know whether our criminal justice system is treating victims fairly and respecting their legislated rights.

Frontline criminal justice personnel must be given proper training on how to work with victims of crime and uphold their rights. In too many cases,

victims’ concerns are overlooked because the “real” pursuit of justice is seen to be between criminal justice authorities and the accused. Victims of crime have suffered harms, losses and damages. They need and deserve a special level of compassionate assistance from criminal justice authorities who are fully versed in how to uphold and respect victims’ rights and concerns throughout the process. As well, authorities must be trained to inform victims about the community supports and resources available to them so they can access programs like financial compensation within the prescribed time limits.

For victims’ rights to be fully realized, the Department of Justice should be responsible for developing and evaluating ongoing training for all officials working in the criminal justice system at the federal, provincial and territorial levels. It is critical that an evaluation take place to examine the content of the training, who is delivering it, how much training individuals receive, and what the impacts are. We must evaluate the effectiveness of the training on criminal justice personnel—especially trauma-informed principles and anti-racist education—to deconstruct power and privilege.

Finally, as I mentioned earlier, my Office works very closely with victim support organizations, many of which receive project funding in the form of grants and contributions from the Department of Justice Victims Fund. This is a haphazard and inconsistent funding scheme. These organizations of dedicated frontline anti-violence and victim support workers offer invaluable advocacy to victims of crime to ensure their rights are respected and upheld. Yet they are required to spend many hours applying, reapplying and reporting, which reduces their capacity to provide frontline services. **I believe the government should provide sustainable core funding to allow these organizations to expand their capacity to support victims in communities in every part of this country. Community-based restorative justice programs must also receive core funding.**

We expect a lot of heavy lifting from victims in the Canadian justice system. They are expected to report the crime, provide evidence, bear witness,

be cross-examined on the stand, and relive their traumas over and over again as they tell their truths—yet we provide them with little assistance to do so. Unsupported victims are less likely to come forward. When victims are not treated as full partners in the criminal justice system, the system is less effective.

In the Summer of 2020, my Office launched an online survey to give victims and survivors of crime an opportunity to share their experiences with the Criminal Justice System since the CVBR has been in place. Their feedback guided our recommendations and influenced our report. We are so grateful to all those who took the time to share their experiences. Their declarations are reflected on these pages.

I sincerely hope that the recommendations contained in this report will be given serious consideration. Victims deserve to be respected as integral participants in our criminal justice system, and officials must take real responsibility for delivering their rights. We must also be able to monitor and track exactly how those responsibilities are being met. Most importantly, we must provide victims with the ability to seek legal remedies when they are not.

The vast majority of persons who are victims of crime in Canada choose not to engage (or cannot engage) in the justice system. Nevertheless, I believe that strengthening the *Canadian Victims Bill of Rights* is crucial. We must remind ourselves of the objectives that the Act set out to attain five years ago: recognition in law of the violation of human rights suffered by persons who are victims of crime. We will advance justice for all Canadians only when we truly empower victims to assert their rights.

A handwritten signature in black ink, appearing to read "Heidi Illingworth". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Heidi Illingworth

Federal Ombudsman for Victims of Crime

Victims and the Canadian Criminal Justice System

The Office of the Federal Ombudsman for Victims of Crime was created in 2007. It contributed to the consultative process that led to the introduction in Parliament of the *Canadian Victims Bill of Rights* (the Act) in 2014 and its enactment in July 2015.^a

The purpose of this Progress Report is to offer our analysis of the impact that the *Canadian Victims Bill of Rights* has had on victims in this country over the past five years, and to offer our recommendations for improvements leading up to the five-year parliamentary committee review mandated in the Act's enabling legislation, *Bill C-32*.⁴

We also note and offer our support for the observation put forward in the *Federal Government's Guide to Making Federal Acts and Regulations* (produced by the Privy Council Office), which states that the review of legislation once it is enacted is “*indispensable for improving the management and execution of future projects*.”⁵

In its preamble, the Act spells out how Parliament intends the courts to interpret it, stressing that consideration for the rights of victims of crime is in the interest of the proper administration of justice, and that victims have rights that are guaranteed by the *Canadian Charter of Rights and Freedoms*. It also acknowledges that crime has harmful impacts on victims and on society, and that victims and their families deserve to be treated with courtesy, compassion and respect, including respect for their dignity. The Act also makes it clear that

the statutory rights of victims of crime need to be considered at every stage of the criminal justice process (i.e., police investigation, trial and sentencing, and corrections/parole), and specifically provides rights in four main areas:

- 1) Information
- 2) Protection
- 3) Participation
- 4) Restitution

In addition, the Act allows victims to make a complaint if they feel their rights have been infringed or denied. At the federal level, every department, agency or body involved in the criminal justice system must have a complaints mechanism that provides for a review of complaints involving alleged infringements or denials of rights under the Act. Essentially, agencies review complaints, make recommendations to correct any problems, and then notify victims what steps they took, if any.

“As victims, I feel we should be more involved, more informed of the process and what to expect as we have never been in this situation before.”

– Anonymous respondent, CVBR survey, summer 2020

The Act allows a victim to exercise their rights at every stage—from when an offence is being investigated or prosecuted to when the offender is subject to the corrections or conditional release process. There are six main points of contact where victims of crime interact with the Canadian justice system: the police, Crown prosecutors, the courts, review boards for special sentencing,^b Correctional Service Canada (CSC), and the Parole Board of Canada (PBC). The volume of cases handled by the criminal justice system is significant. In 2018, for example, Statistics Canada's annual Uniform Crime Reporting Survey⁶ showed that 2,269,036 crimes were reported in Canada. Among those, 423,767 were classified as violent. In 2017–18, the Integrated Criminal Court Survey (ICCS)⁷ reported that the courts reached 214,540 guilty verdicts, leading to 82,659 offenders being jailed, 5,099 of whom were sent to federal prisons.

This Progress Report presents a snapshot of where Canada is currently situated with respect to upholding victims' rights. Are the rights of more than two million victims who report crimes to the police are being met? Are they being informed of their rights and provided with information about services to help them? Do they know about restorative justice programs? Is their

safety considered? Are they offered protections for their privacy when testifying? Are they told they can make a victim impact statement and informed about the limitations of their statement? Do they know they can seek restitution? Do they know they can receive information about the offender who harmed them, and participate in corrections and parole processes?

To help answer these questions, this Progress Report will review each specific right as set out in the four main issue areas of the *Canadian Victims Bill of Rights* (Information, Protection, Participation and Restitution) along with commentary on how those rights are currently being met at the six main points of contact mentioned earlier.

“The process is complex, lengthy, and aims to deter people from making a report.”

– Anonymous respondent, CVBR survey, summer 2020

Review by Issue Area

1. Information

General information

6. Every victim has the right, on request, to information about (a) the criminal justice system and the role of victims in it; (b) the services and programs available to them as a victim, including restorative justice programs; and (c) their right to file a complaint for an infringement or denial of any of their rights under this Act.

Investigation and proceedings

7. Every victim has the right, on request, to information about (a) the status and outcome of the investigation into the offence; and (b) the location of proceedings in relation to the offence, when they will take place and their progress and outcome.

Information about offender or accused

8. Every victim has the right, on request, to information about (a) reviews under the Corrections and Conditional Release Act relating to the offender's conditional release and the timing and conditions of that release; and (b) hearings held for the purpose of making dispositions, as defined in subsection 672.1(1) of the Criminal Code, in relation to the accused, if the accused is found not criminally responsible on account of mental disorder or unfit to stand trial, and the dispositions made at those hearings.

Canadian Victims Bill of Rights

Police: No comprehensive national data are collected, recorded or published regarding whether police services across Canada inform victims of their rights or the services and programs available to them, including restorative justice programs. Many police departments do not have internal victim services units or staff,

so it falls to individual police officers to deliver this information, with inconsistent results. Moreover, many community- and system-based victim services programs across Canada continue to indicate that referrals to their programs from police are too low. We also do not have any data concerning police interactions with over-represented and targeted populations, such as Indigenous women and girls and LGBTQ2S (lesbian, gay, bisexual, trans, queer or two-spirited) persons.

Crown prosecutors: No comprehensive national data are collected, recorded or published on whether Crown prosecutors provide information to victims concerning the timing and location of proceedings in relation to the offence, or the progress and outcome of criminal cases. In some provinces (not all), victim support organizations provide such information and support survivors in the courts. Crown attorneys may view data collection as the responsibility of these agencies, which work closely with victims in the courts.

Courts: Criminal courts report on the total number of guilty verdicts, the number of offenders jailed, and the number sent to federal prisons. No comprehensive national data are recorded, collected or published on whether victims—upon conviction with a federal sentence—are informed about their rights to register with Correctional Service Canada to receive information about the offender who harmed them.

Review boards: Review boards provided no specific reporting about the number of victims with whom they communicated. They dealt with 4,044 accused persons in 2017–18.

Correctional Service Canada: At the federal level, tracking and reporting are carried out on the number of victims who self-register to receive

information, as well as on the types of offences that harmed registered victims and the most common types of information provided to them, including information about temporary absences and travel permits.

Parole Board of Canada: The Parole Board tracks and reports the number of victims registered to receive information as well as the number of contacts it has with victims.

Observations:

While the *Canadian Victims Bill of Rights* requires victims to request information, there have been no serious efforts on the part of the federal government to inform victims of their rights. Communication and training after the adoption of the Act focused on professionals to familiarize them with the Bill and its consequences for their work. While it is important that those working in the criminal justice system are familiar with the Bill and its implications, it is equally important that Canadians are aware of the rights contained in the Bill in order to exercise them.

Given that police services, Crown prosecutors, courts and review boards are provincially mandated and delivered, there is no accountability mechanism for them to share their data, nor any responsibility to ensure their services align nationally. There is no question that an enormous amount of work lies ahead to ensure that all victims are informed of, and understand their rights. Equally important is the collection and reporting of nationally consistent data by criminal justice institutions related to victims' rights under the Act.

2. Protection

Security

9. Every victim has the right to have their security considered by the appropriate authorities in the criminal justice system.

Protection from intimidation and retaliation

10. Every victim has the right to have reasonable and necessary measures taken by the appropriate authorities in the criminal justice system to protect the victim from intimidation and retaliation.

Privacy

11. Every victim has the right to have their privacy considered by the appropriate authorities in the criminal justice system.

Identity protection

12. Every victim has the right to request that their identity be protected if they are a complainant to the offence or a witness in proceedings relating to the offence.

Testimonial aids^c

13. Every victim has the right to request testimonial aids when appearing as a witness in proceedings relating to the offence.

Canadian Victims Bill of Rights

Police: Although we know that police services generally do consider the safety and security of victims, the annual Uniform Crime Reporting Survey does not capture comprehensive national data on how this is carried out. As a result, we do not know how Canadian police protect victims from intimidation and retaliation. We do not have any information about police interactions with over-represented and targeted populations. For example, we do not know if or when police take measures to protect Indigenous women and girls and LGBTQ2S persons, or what measures they take, if any.

“Recognize that with regards to victims safety, the mental health and emotional health status of the victim must be considered along with physical safety.”

– Anonymous respondent, CVBR survey, summer 2020

We do know that the measures available to police for the protection of victims are significantly different than those for the protection of witnesses. There are also concerns about unequal access to protective measures. Women's social situations (i.e., mothers with children) may hinder their access to protective measures. Data from the Victim Services Survey indicate a shortage of space in women's shelters. As a result, every day across Canada, hundreds of women and children are turned away. In November 2019, an average of 620 women and children were turned away from domestic violence shelters across Canada daily—nearly 19,000 women and children per month.⁸

Crown prosecutors: No information is reported by provincial or territorial attorneys general on the number of victim requests for publication bans, victim requests for testimonial aids, or whether victims are told when bail applications are made or granted.

It is also important to note that young victims or witnesses must ask the prosecutor for a testimonial aid. The prosecutor can then ask the court for these special protections before or at any time during the proceedings. A victim or witness over the age of 18 can also ask the court directly for testimonial aids.

Courts: The ICCS does not report on how the courts deal with upholding victims' privacy rights or orders made to protect their identity. No information is reported publicly on the number of publication bans or testimonial aids granted.

“While there is a Victims Bill of Rights, no one was advocating or representing 100% my interests.”

– Anonymous respondent, CVBR survey, summer 2020

Likewise, there is no information reported on the number of non-communication orders granted or on how many non-communication orders are waived to allow for communication with family members in the justice system (as victimization often occurs within families).

Review boards: Review boards do not report on or publicly release the number of victim no-contact orders placed on accused persons given a conditional discharge.

Correctional Service Canada: Evidence shows that Correctional Service Canada contacts registered victims about the potential release of offenders, but does not report this information publicly. It also does not report on the number of no-contact orders or geographical restrictions requested by victims, the number of times such restrictions are imposed, or the compliance or non-compliance with such orders. Since victims are not proactively contacted about registering, they may miss the opportunity to express concerns about their personal safety. Victims have expressed an interest in better access to restorative justice opportunities within the context of CSC in order to reduce their anxiety and fear regarding the offender's release. However, access to restorative justice services in prisons is extremely limited due to lack of funding.⁹

Parole Board of Canada: The Parole Board of Canada provides no statistical information about the number of offenders who receive no-contact orders related to their victims, the number of geographical restrictions placed on an offender as part of a conditional release, or the number of offenders who breach or violate these conditions or restrictions.

Observations:

The *Canadian Victims Bill of Rights* recognizes the vulnerability of victims and the importance of protecting them from intimidation and retaliation. It equally recognizes victims' safety and privacy must be considered so that they can provide evidence in the criminal justice system. There is no question that an enormous amount of work lies ahead to collect and report nationally consistent

data regarding how criminal justice institutions address the right to protection under the Act.

3. Participation

Views to be considered

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

Victim impact statement

15. *Every victim has the right to present a victim impact statement to the appropriate authorities in the criminal justice system and to have it considered.*

Canadian Victims Bill of Rights

Police: The UCR Survey does not report on the number of police interactions with victims or how victims can convey their views to police. Police agencies are not required to report on how they considered victims' views.

Statistics Canada's General Social Survey could also provide information on victims' interactions with police. However, this survey is only conducted every five years. This schedule undermines the ability to effectively track the implementation of victims' rights.

Crown prosecutors: Neither the Annual Report of the Public Prosecution Service of Canada (PPSC) (which is responsible for prosecuting criminal cases in the territories and prosecuting offences under federal jurisdiction) nor the ICCS (which tracks this information in the provinces) report on how many interactions with victims take place or how many are given information about their cases.

Courts: The PPSC does not report on the number of victim impact statements made; the ICCS reports on the number of victim impact statements made to the courts in only five jurisdictions in

Canada. In 2017–18, in 344,585 cases heard in those jurisdictions, a victim impact statement was presented in just 2,563 of them (0.74%). The courts do not record how many times judges ask Crown prosecutors whether they have informed victims about submitting victim impact statements. Nor do they record how many times judges delay sentencing so the Crown could collect a statement.

Review boards: A sample of provincial and territorial review boards shows that not all jurisdictions report on the number of victims who write or present victim impact statements during annual reviews.

Correctional Service Canada: CSC tracks and records the total number of registered victims, but does not report on the number who provide victim statements to institutional case management for consideration in making various temporary release decisions, such as work releases and travel permits.

Parole Board of Canada: The PBC reports the number of parole hearings with presentations from victims. In 2017–18, there were 328 presentations made at 181 hearings.

Observations:

The *Canadian Victims Bill of Rights* recognizes the importance of victims being able to convey their views, to have those views considered by officials and to be able to participate in the criminal justice system. There is no question that an enormous amount of work lies ahead for criminal justice institutions to collect and report nationally consistent data relating to how victims and communities of victims participate under the Act.

4. Restitution

Restitution order

16. *Every victim has the right to have the court consider making a restitution order against the offender.*

Enforcement

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

Canadian Victims Bill of Rights

Police: In several jurisdictions, even though the police are specifically tasked with providing restitution forms to victims and submitting completed forms to the Crown prosecutor, the number of forms distributed and submitted to the courts is not reported publicly. Many victims report that they have never been advised that they can seek restitution for financial losses suffered because of the offender's crime.

Crown prosecutors: Neither the PPSC nor the ICCS report on whether Crown or federal prosecutors inform victims of their right to seek restitution, or on how many victims request restitution in court proceedings.

Courts: The ICCS reports the number of restitution orders made by the courts, but does not report on how many of them are requested by victims and disallowed by the courts. In 2017–18, ICCS reported that out of 214,540 guilty verdicts, just

5,170, or 2.41%, contained restitution orders. We have no data about which kinds of cases restitution is ordered in, or the amounts sought versus imposed. There are also no data on the number of times victims had orders entered as civil court judgments in efforts to enforce the orders.

Review boards: Review board documents do not discuss restitution. Accused persons who are found unfit to stand trial or not criminally responsible are unlikely to be ordered to pay restitution.

Correctional Service Canada: Evidence suggests that while CSC institutional parole officers discuss restitution orders with offenders, CSC does not report on whether offenders fulfill or partially fulfill their court-ordered responsibilities to victims.

The Parole Board of Canada: The PBC does not report on whether offenders on conditional release fulfill their restitution order responsibilities. Requirements to pay restitution cannot be included as a condition of release.

Observations:

The *Canadian Victims Bill of Rights* recognizes the importance of victims being able to seek restitution for their losses. There is no question that an enormous amount of work lies ahead with respect to informing victims of their right to seek restitution in the courts, assistance with enforcement of restitution where it is ordered, as well as comprehensive data collection and reporting in all jurisdictions related to restitution orders.

Complaints

Victims who feel their rights have not been upheld by a federal department or agency must first make their complaint directly to that department or agency. Section 25 (1) of the *Canadian Victims Bill of Rights* provides that every federal department or agency involved in the criminal justice system must have a complaints mechanism to review and address complaints by victims about infringements or denials of their rights under the Act, and must notify victims of the results of reviews. If, after

going through this process, a victim is still not satisfied with the treatment they have received, they may file a complaint with “any authority that has jurisdiction to review complaints in relation to that department, agency or body.”¹⁰

The authority with such jurisdiction at the federal level is the Office of the Federal Ombudsman for Victims of Crime. However, we believe that the Ombudsman should be the main office of review. This would make it easier for victims to know where to go with their complaints. There would be one door only, sparing victims the stress and frustration of having to knock on several to get an answer. This would also allow for an overview of the weak spots in the application of victims' rights. With this knowledge, we could make recommendations on how to better respect victims' rights.

From the time the *Canadian Victims Bill of Rights* came into effect in 2015 to December 12, 2019, the Office of the Federal Ombudsman for Victims of Crime handled 385 complaints regarding federal agencies involved in the criminal justice system. Of those, 159 dealt with information issues, 63 with participation, 59 with protection, 21 with restitution and 83 with remedy issues. It is worth highlighting that 159 complaints relate to information, because information is a gateway right. Without it, people cannot enjoy the rights to participation, protection or restitution.

Both Correctional Service Canada and the Parole Board of Canada report on how many complaints they receive from victims and whether the

complaints are considered admissible. In 2017–18, CSC received 17 complaints, of which just eight were deemed admissible; seven were deemed inadmissible and two were deemed partially admissible. In the same year, PBC received six complaints. It deemed four of them admissible and two not. Unlike other federal authorities or entities, the RCMP does not have a special form or mechanism for receiving complaints from victims. It reported that it received no complaints related to victims' rights in 2017–18.

Observations:

Unfortunately, we do not know if the complaints we receive represent the actual number of victims who feel underserved or mistreated. We know, for example, that many individual victims in racialized or marginalized groups are not made aware of their right to access formal complaint mechanisms, and that many do not have the ability to do so. Because the police, Crown prosecutors, courts and review boards do not report on how many victims complain that their rights have not been met, or how those complaints are handled, these significant facts are missing. While there are provincial and territorial mechanisms for making complaints against police or a Crown prosecutor, we do not know how many are filed in relation to the *Canadian Victims Bill of Rights*, because there is no requirement to record and share these data publicly.

« The most important way to strengthen the CVBR is to have a strong system in place for receiving and acting on feedback from victims when they articulate repeatedly all the ways their rights appear to be less important than those of the offenders. »

– Anonymous respondent,
CVBR survey, summer 2020

Toward a Better Future for Victims' Rights

In the following section, we outline a brief history of the rights of victims in Canada. We believe this is important because there is much to learn from our history in hopes of a better way forward. We also illustrate our recommendations on how best to strengthen the *Canadian Victims Bill of Rights*.

A Brief History of Victims' Rights in Canada

In 1985, the General Assembly of the United Nations adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. It defines victims as:

*"... Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power."*¹¹

It also states that:

*"A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."*¹²

The UN Declaration was adopted to help governments secure justice and assistance for victims of crime and victims of abuse of power. It calls upon member states, including Canada, to take the necessary steps to give effect to the Declaration's provisions. As such, Canada has a duty to respect and implement the Declaration's recommendations, and the federal government has a responsibility to ensure that the provinces and territories respect these international standards and norms.

The Declaration states that victims have the right to information about their particular cases, such as their timing, progress and disposition, and that provision should be made to ensure that the views and concerns of victims are presented and considered at the appropriate stages of proceedings. It says that governments should protect victims' privacy and protect them and their families from intimidation and retaliation. It further states that governments should provide proper assistance to victims throughout the legal process, and that restitution and compensation for losses should be available.

One of the world's foremost experts on the treatment of victims is Irvin Waller, a professor emeritus of criminology at the University of Ottawa. Waller, who helped prepare the *Declaration*, points out that it *"... does not limit the role of victims to that of a witness. It enacts provisions to provide support, protection, reparation and participation to victims that go further than previous international courts and creates by example a standard for national jurisdictions"*.¹³

Canada did not enact national legislation to comply with the UN Declaration. Instead, in 1988, in honour of the Declaration, the Federal, Provincial and Territorial Ministers Responsible for Justice endorsed a Canadian Statement of Basic Principles of Justice for Victims of Crime, which said that *"... (these) principles are intended to promote fair treatment of victims and should be reflected in federal/provincial/territorial laws, policies and procedures."*¹⁴ It should also be noted that in the same year, Canada did enact legislation when it changed the *Criminal*

Code to include victim impact statements (article 722). It also added a surcharge to pay for new services for victims.

Fifteen years later, in 2003, a new Canadian statement was adopted. However, its content was little different from that of its predecessor. The only change was that the new statement no longer included an obligation for victims to collaborate with authorities.

The basic statement was often criticized by victims, advocates and academics as pronouncing broad principles at the federal level, but not providing real rights in law or holding anyone in the criminal justice system accountable for upholding them.

Are Victims' Rights Actually Protected?

Recommendation: Delete sections 27, 28 and 29 of the *Canadian Victims Bill of Rights*, which deny victims any standing to appeal to courts for review when their rights are not upheld. Amend the Act to provide victims of crime with two mechanisms of accountability: first, the mechanism of judicial review; and second, the administrative right to review decisions not to prosecute.

Recommendation: Amend section 20 of the *Canadian Victims Bill of Rights* to ensure that the interpretation of the Act requires officials to **acknowledge victims' human rights: to security of the person, access to justice and procedural fairness** in the administration of justice in Canada.

The introduction of the *Canadian Victims Bill of Rights* put victims' rights into a federal statute for the first time ever, and was certainly welcomed by victim advocates and many others. However, it must be said that the Act does not provide a comprehensive national solution, in part because it provides a limited complaint mechanism for federal agencies only. This has the effect of promising rights but not providing a means to enforce them.

A number of the Act's deficiencies of have been cited before.

For example, in 2019, Justice Canada's final report on the review of Canada's criminal justice

"I feel like officials gave it their best efforts to treat me with respect. However, I feel that the justice system itself is more focused on punishment, and not victim supports."

– Anonymous respondent, CVBR survey, summer 2020

system acknowledged that *"... many victims and survivors of crime emerge disillusioned with — and disappointed by — the criminal justice system. Despite some advancements in victims' rights, many victims continue to lack confidence in the system. Some even feel revictimized by their experience. We need to do more to treat victims and survivors of crime with courtesy, compassion and respect."*¹⁵

Our Office shares that concern because we see examples of this lack of confidence almost every day. Many of the individuals who approach our Office for assistance do so because they have been frustrated and confused by a justice system that does not appear to take serious account of their safety, or of the pain and suffering they have endured.

This frustration was echoed at a recent community forum on victims' issues that we sponsored in Yellowknife, NWT,¹⁶ where many participants told us that the *Canadian Victims Bill of Rights* was vague and unenforceable, and does not hold anyone accountable when victims' rights are not respected. Most participants said they thought the accused and offenders had more rights than victims, and that victims' rights were treated as secondary to those of offenders.

While the Act states that victims need to be fully informed of their rights, it does not say who in the criminal justice system is responsible for informing victims. In many instances, the Act refers only to *"the appropriate authorities"* in the criminal justice system. This needs to be changed to identify who is responsible for ensuring that victims not only know their rights,

but have the means to realize them at every stage of the process—whether it is the police, Crown prosecutors, the courts, review board members, correctional service members or parole officials.

As it stands now, the Act does not name the actors in the criminal justice system responsible for delivering victims' rights. Further, section 20 of its interpretation clause states that the victims' rights provisions in the Act must be construed and applied in a manner that does not interfere with the discretion of any official in the criminal justice system in Canada. We believe that rather than protecting the discretion of officials, the Act should be refocused to hold officials responsible for ensuring security of the person, access to justice and procedural fairness for victims.

One of the main issues with the *Canadian Victims Bill of Rights* is that it does not include any provision to allow for the measurement of its own effectiveness across all jurisdictions. The *Criminal Code* and the *Canadian Victims Bill of Rights* are federal laws, but it is up to provincial governments to administer the criminal justice system within their own borders. (The federal government is responsible for its administration in the three territories.)

We believe that the parliamentary review of the *Canadian Victims Bill of Rights* should be undertaken with a view to developing an oversight mechanism to monitor, evaluate and assess how and if victims are informed of their rights and whether they have access to the guidance and support services necessary to enforce the rights the law provides. Right now, we have insufficient data related to how victims' rights are upheld by criminal justice institutions and must rely on largely anecdotal information that does not provide a complete picture.

Victims Must Ask for Their Rights

Recommendation: Amend sections 6, 7 and 8 of the *Canadian Victims Bill of Rights* to ensure a proactive approach is taken to upholding the legal rights of victims. Those sections now begin with: "Every victim has the right, on request, to information about..." This text should be changed to read: "Every victim **shall automatically be provided** with information about..."

Recommendation: Amend the *Canadian Victims Bill of Rights* to **guarantee access to victim assistance or support**. Articles 14 to 17 of the UN Declaration address victims' rights to medical, psychological, legal and social assistance.

Recommendation: Develop a pan-Canadian **Victims' Rights Card** that would be automatically provided to victims by first responders and others involved in providing victim services, such as police, fire and ambulance personnel as well as correctional workers, parole officers, health care providers, social workers and others. In plain language, the card would list the rights of victims set out in the *Canadian Victims Bill of Rights* to ensure every victim is aware of their rights and how to assert them. Officials should track how many cards are given out annually and report on how they hold employees accountable for providing information to victims.

As is indicated below, one of the central concerns that we and many others have with the *Canadian Victims Bill of Rights* is that it does not require that victims be automatically provided with information about their rights. In contrast, under Section 10 of the *Canadian Charter of Rights and Freedoms*, when a crime suspect is detained or arrested, they have immediate legal guarantees, including the right to know the reasons for their arrest and to know they have the right to a lawyer.^d

Victims, on the other hand, must ask the police and other authorities what their rights are. But how is a victim supposed to know they have any rights at all, unless someone tells them they do? How can we expect a victim, in the midst of experiencing trauma, to understand the complexities of the justice system and their rights within it if we do not proactively inform them?

A proactive approach to upholding the legal rights of victims is necessary and would ensure that victims automatically receive information about their rights instead of having to request it, and that everyone involved in the criminal justice system understands they have an obligation to keep victims informed of their rights related to information, protection, participation and restitution. Involved parties include Correctional Service Canada and the Parole Board of Canada, which currently require victims to self-register to receive information

about the offenders who harmed them. These organizations should provide for the automatic registration of victims and survivors to receive such information with "opt in" and "opt out" choices so victims and survivors can decide whether registration is in their best interests.

A reluctance by victims to ask about their rights may be a result of the trauma they have experienced, but could also be as a result of language barriers or other issues that cause victims to distrust authority figures. This is particularly true of many members of diverse minority and Indigenous communities that have faced systemic and other forms of discrimination historically. There are also new Canadians who may arrive from countries with less respect for human rights and where government authority figures are seen only as oppressors to be feared, not providers of assistance and support.

We strongly believe that the legislation needs to be amended so victims are immediately and automatically informed of their rights and provided with information about services and assistance to help them. In fact, we believe that victims and survivors should have guaranteed rights to support and assistance in the aftermath of victimization. This would recognize the needs of Canadians victimized outside of Canada too, which the current Act fails to do. It applies only to "the investigation and prosecution of offences in Canada."¹⁷ We know that acts of violence do not recognize geographical borders and when Canadians return home, they deserve access to supports and assistance to help them recover.

Victims also deserve to be automatically informed when offenders are incarcerated or being considered for parole or other temporary release. However, currently, victims must ask for this information. While some provincial victim support programs are mandated to inform victims about their rights in this area (Nova Scotia is one example), victims must still self-register with either Correctional Services Canada or the Parole Board of Canada to receive any information. The current federal policy is that it would violate a victim's privacy to contact them about the offender who harmed them or about their rights, such as the right to participate in hearings or express concerns about their protection. This interpretation violates the spirit of the law and reinforces barriers to the implementation of victims' rights.

Not surprisingly, the number of victims who ask for this information is quite low compared with the number of individuals incarcerated. On December 5, 2019, the Federal Ombudsman for Victims of Crime raised this issue with the Minister of Public Safety, stating that "the automatic or proactive registration of victims when a federal sentence is imposed, with an opt-out provision to provide victims and survivors with the personal agency to decide whether registration is in their best interest. I believe this is the most trauma-informed, strengths-based and victim-centred solution to address the significant lack of victim participation in federal corrections and parole that exists due to the requirement to self-register."¹⁸ In our view, the lack of a proactive approach interferes with victims' access to their rights along the criminal justice continuum.

In some jurisdictions, law enforcement officials are mandated to inform victims of their rights and the support services available to them. In California, for example, Marsy's Card¹⁹ was created to provide this information to victims. A Canadian example is the small wallet card developed and distributed by the British Columbia Division of the RCMP (see Appendix A). We do not know how many of these cards have been handed out. However, we believe this is an excellent initiative, and recommend that a similar card be developed for standardized use across the country. Other examples of victim information tools include an educational brochure (see Appendix A) and video created



by the Association québécoise Plaidoyer-Victimes (AQPV). For examples, see the AQPV's website.²⁰ These are all excellent initiatives. We encourage all jurisdictions to create and use tools like these to help victims understand and assert their rights.

Another way to help ensure victims know about their legal rights and how to assert them would be to establish a national help line. Our office's services could be expanded to run such a line. The Office could also provide information and guidance about victims' rights along with telephone and internet linkages to national, provincial and territorial victim support services and voluntary victim support organizations. Justice Canada should also introduce a national campaign to inform victims about the Act and their rights.

In the immediate aftermath of a crime, providing victims with the information they need about the criminal justice system and helping them connect to public and private victim support organizations can make an enormous difference. Not only do these actions provide for better healing and recovery outcomes for victims, they also carry a strong message of social solidarity.

In the words of victims' rights expert, Edna Erez: *"Participation and input also may be necessary for victims' psychological healing."*

"More restorative justice strategies need to be implemented to avoid re-victimization through the justice system."

– Anonymous respondent,
CVBR survey, summer
2020

*Providing victims with participatory rights could reduce their perceptions of inequity relative to the offender, thereby reducing the potential for further psychological harm."*²¹

Restorative Justice

Recommendation: Amend the *Canadian Victims Bill of Rights* to ensure that all officials in the criminal justice system **are mandated to provide information on restorative justice programs to victims** who report crimes. **Provide sustainable core funding for community-based restorative justice programs.**

Victim participation is central to restorative justice initiatives. Victims should be informed about their options as soon as they report a crime. Community-based restorative justice programs are designed to give victims and offenders an opportunity to come together voluntarily to seek a resolution that holds offenders accountable for their actions, leads to the reparation of damages, and helps prevent further crime, harm and victimization.²² Research has found that restorative justice can benefit victims, offenders and public safety.

Although restorative justice has been a feature of the criminal justice system in Canada for many decades, primarily in cases involving young offenders and in Indigenous communities, it is possible that more victims would be interested in participating. There must be efforts to inform victims, but also to ensure programs are available in all communities, well-funded and more well-known.

Unfortunately, the *Canadian Victims Bill of Rights* provides only that a victim can ask for information about restorative justice programs; it does not indicate who in the criminal justice system is responsible for delivering the programs. While all federal, provincial and territorial governments have agreed to the accelerated use of restorative justice, given the evidence of its benefits, there does not appear to be a concerted effort to fund programs properly or make them widely accessible. This gap must be addressed with sustainable core funding for community-based restorative justice programs.

Also, the Act falls short of the UN Declaration, which states that mediation and other forms of restorative justice *should* be used when appropriate.²³

Besides providing redress, restorative justice can also provide victims with answers to some of their questions, which may reduce their fear and anxiety and promote healing.²⁴

We believe that more victims and survivors would consider this option if they were aware of it. There may also be a need to identify multiple time points when information about restorative justice programs could be presented to victims, as some may not be open to participation until later in their criminal justice journey. However, the most critical need is for core funding of community-based programs so victims can actually access this option if they wish to.

Who Is Accountable When Victims' Rights Are Infringed?

Recommendation: Amend the Act to replace "appropriate authorities in the criminal justice system" with **a list of officials who have direct responsibilities to victims of crime**, such as police officers, Crown prosecutors, judges, review board members, Correctional Service Canada employees and Parole Board Canada employees.

Recommendation: Amend section 25 (2) of the *Canadian Victims Bill of Rights* to **name the Office of the Federal Ombudsman for Victims of Crime as the single authority with jurisdiction to review complaints by victims of crime** in relation to how they were treated by a federal department, agency or body.

As mentioned above, victims who feel that officials have overlooked their rights can only seek a remedy by submitting a complaint. Right now, victims do not have the right to pursue a legal remedy through the courts when they believe officials have not upheld their rights. Professor Marie Manikis made this point just after the legislation was proposed to Parliament when she wrote: *"Indeed, in cases where the 'rights' listed in this document are breached by federal criminal justice agencies, it is made perfectly clear that no legal action, appeal or any form of damages can be provided under this Act."*²⁵

For example, victims have the right to ask for protection from an accused or an offender. If police or other officials do not provide that protection, the victim has no recourse under the current law. Sections 27, 28 and 29 of the Act deny victims any legal standing to seek redress in the courts if their rights are not respected. These sections read as follows:

Status

27 *Nothing in this Act is to be construed as granting to, or removing from, any victim or any individual acting on behalf of a victim the status of party, intervenor or observer in any proceedings.*

No cause of action

28 *No cause of action or right to damages arises from an infringement or denial of a right under this Act.*

No appeal

29 *No appeal lies from any decision or order solely on the grounds that a right under this Act has been infringed or denied.*

Canadian Victims Bill of Rights

We believe victims should have the ability to seek a legal remedy, such as judicial review, when they believe that officials in the criminal justice system have violated their rights. In England and Wales, there are two mechanisms of accountability available to victims: the mechanism of judicial review and the administrative right to review decisions not to prosecute. The judicial review process allows an interested party to raise an issue against the Crown prosecutor in situations where the law or policy has not been properly understood or applied, or when evidence has not been carefully considered, and in situations where it can be shown that the decision was arrived at as a result of fraud, corruption or bad faith. The administrative right provides a more accessible alternative to judicial review that ensures accountability and redress by recognizing that victims have a right to seek review of decisions not to prosecute.²⁶

Adopting similar accountability mechanisms would be a way for victims in Canada to hold criminal justice officials, particularly Crown prosecutors, accountable. We believe that positive changes can be made to the enforceability of victims' rights without impinging upon offenders' constitutional rights. This should not be considered an either/or situation, but one in which the rights of both victims and offenders must be respected.

At the same time, we know this is a complex and somewhat controversial issue. We believe it should be examined in detail by Parliament in consultation with provincial, territorial and local governments and other stakeholders with a view to changing the law to give victims the right to challenge such decisions.

Comprehensive Data

Recommendation: Collect **nationally consistent data on the treatment of victims in the criminal justice system and report on it publicly.** Data indicators should align with the rights enumerated in the *Canadian Victims Bill of Rights* so that this information can be tracked and measured to evaluate how rights are being upheld across all jurisdictions. The Department of Justice should consider the creation of a **Task Force on Victims' Data** that would bring together representatives of the Department of Justice with provincial and territorial attorneys general, academics and Statistics Canada in a national collaborative effort to achieve this goal.

Another important concern is the lack of consistent and usable data on how the criminal justice system treats victims. While the *Canadian Victims Bill of Rights* clearly delineates victims' legal rights, adequate provisions have not been made to require all officials to measure or record how and when they inform victims of their rights, or which rights victims exercise or when. Without this information, it is difficult to assess the effectiveness of systems. As well, we need data that can inform system improvements—not just administrative or internal data that never gets reviewed. This issue has been a concern of this Office since the Act was introduced.

In 2016, in an effort to meet this challenge, we partnered with the Canadian Centre for Justice Statistics at Statistics Canada on a data mapping study to outline research needs and opportunities related to victims of crime.²⁷ The study involved consultations with policing services, courts, corrections and victims' services as well as federal, provincial and territorial governments, non-governmental organizations and academics. While data sources differ, the study revealed that a wide array of information on victims' rights is routinely collected. The difficulty is that each provincial and territorial government reports somewhat differently on how justice is administered in its jurisdiction. In many cases, data may be collected and recorded, but not published, or not easily accessible to the public.

A recent study by Dr. Benjamin Roebuck, entitled *Resilience and Survivors of Violent Crime*, found that, among other things, victims reported low to moderate levels of satisfaction with how they were treated in the criminal justice system. The study recommended that *“access to victim rights be measured regularly in Canada and embedded within Statistics Canada's General Social Survey on Victimization and other relevant justice surveys to evaluate whether victims' entitlements in law are upheld within the justice system.”*²⁸ In other countries around the world, such as the Netherlands, justice ministries regularly monitor victims' experiences in and satisfaction with the criminal justice system.

Our analysis has shown that Canada's current efforts at data collection are patchy at best and virtually non-existent in some areas. The result is that we have an incomplete picture of how victims' rights are upheld at the different stages of the criminal justice process.

Having comprehensive data is critical to making determinations about whether resources expended to support victims are adequate and are being directed to the right places. By collecting more consistent, reliable and valid data, we could discover and address inequities across the country.

This lack of comprehensive measurement and evaluation is also a great impediment to our ability to fully evaluate whether the Act has, in fact, made a positive difference for victims. For now, it can be said that many victims are unaware of their rights and that many criminal justice stakeholders are unaware of the existence of the *Canadian Victims Bill of Rights*.

We believe a national effort at all levels of government is required. That is why we are recommending that the Department of Justice create a task force to bring together decision makers and specialists on these issues to focus on how this data shortcoming can be addressed.

As this process moves forward, it will need to reflect the Government of Canada's commitment to examining all its initiatives using gender-based analysis plus (GBA+). This analytical tool goes beyond sex and gender to ensure that when measuring the potential impact of a given initiative, gender and related intersecting aspects of identity—such as race, ethnicity, religion, age, sexual orientation, gender identity and mental or physical disability—are taken into account, such as in the formulation of plans, policies, programs and legislation. This approach reflects the fact that groups of individuals of the same gender or with similar identities are not necessarily homogenous. Meeting this goal demands both aggregated and disaggregated victim data collection, which would allow the examination of the potential impacts of government action on racialized and marginalized groups, in particular.

Training & Awareness

Recommendation: Lead a national effort **to develop responsibility training on victims' rights** for criminal justice personnel across Canada to ensure national standards for the treatment of victims, and so all personnel fully understand that they will be held accountable for ensuring that victims have access to the rights stated in the law. Evaluate the training on an ongoing basis to determine its effectiveness.

Recommendation: Lead a **national public education campaign using TV and social media to inform Canadians of their rights as victims of crime.** The campaign should target victims' right to information, as this right opens the gate to services and other rights. Such a campaign would empower victims and enhance their confidence in the criminal justice system.

Achieving better outcomes on victims' rights will also require a more robust training regime for individuals working in the justice system who interact with the accused and with victims. We know from anecdotal evidence that while many police services make training available to their officers, it is often a low priority and sometimes ignored altogether. All too often, we hear of police investigators treating victims and witnesses like suspects. This has been particularly true in sex crimes and intimate-partner violence investigations. All criminal justice officials should be required to have basic knowledge and understanding of trauma and to provide trauma-sensitive responses to victims. Canadians deserve better from their criminal justice system. If Canadians are to have confidence in the criminal justice system, they have to know that the people working in it are properly trained on how to treat everyone fairly, and that the needs of victims are recognized and respected.

This is not a uniquely Canadian issue. Other jurisdictions have noted the central importance of training with regard to victims of crime. For example, a directive of the European Parliament on victims' rights reads, in part: *“Any officials involved in criminal proceedings who are likely to*

“It makes the world of a difference having people in positions of power/authority (lawyers, counsellors, social workers) that are not only trained, but educated & fully understanding of the current situation, whatever it may be... Domestic violence victim, gang violence survivor etc...”

– Anonymous respondent, CVBR survey, summer 2020

come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner.”²⁹

Victims’ rights are human rights, so they should not be pushed aside or overlooked. We believe there needs to be a new, pan-Canadian effort to better train criminal justice personnel on their legal responsibilities to victims. We need to ensure there are national standards for the treatment of victims and that all personnel understand they will be held accountable for delivering the legal rights set out in the Act. The training needs to be victim-focused and anti-racist, and integrate trauma-informed principles. Evaluation of the training is critical to ensure it is effective.

Criminal justice personnel also need to understand that victims are not all the same. They represent a wide variety of diverse social and cultural identities. As well, any interaction with the criminal justice system can be upsetting. Special attention must also be paid to the training of personnel who deal with violent offences, particularly in cases of gender-based violence. The training should focus on helping personnel understand that violence has both immediate and long-term negative effects on victims and their families as well as on the families of offenders. Also, providing victims with a positive first experience with the criminal justice system may be conducive to their willing participation in future.

Victim Impact Statements

An issue that exemplifies many of the concerns outlined above is the use of victim impact statements. These are often the only way for a victim (or a community of victims) to have a voice in a justice process that largely excludes them. Victim impact statements give victims the opportunity to express the harms they have suffered (in writing or orally—or through art, in the case of children). They constitute one of the few chances that victims have to participate in the justice process and have their views considered by the court during sentencing.

The Canadian Victims Bill of Rights clearly states that victims have the right to participate in the court process by making victim impact statements. Section 722 (2) of the Canada Criminal Code instructs judges to “...inquire of the prosecutor if reasonable steps have been taken to provide the victim with an opportunity to prepare a statement referred to in subsection (1).”³⁰

It is problematic that only five jurisdictions report to Statistics Canada on how many victim impact statements are introduced in court. From the information we do have, we know victim impact statements are introduced in only a fraction of the criminal cases processed annually. The lack of tracking, measuring and reporting means we do not know whether the number of statements made is so low because not all victims are informed of their right to make one, or because some choose not to submit one. We also do not know how often victims complete statements only to have them sit in the Crown file, never to be presented at sentencing. There are privacy considerations for victims and survivors, and

“I feel that the offenders have more rights than the victim. Victims did not ask for the crime to have happened to them. Therefore, I feel the system should consider and reflect that. The victim doesn’t deserve to feel re-victimized by the judicial system.”

– Anonymous respondent, CVBR survey, summer 2020

some may choose not to present a statement, since such statements normally become part of the public court record, and can be accessed and published by the media.

Section 722.2 of the *Criminal Code* also states that victims have the right to ask for a testimonial aid to present their impact statements in court. For example, a victim may ask to read their statement from behind a screen, record it on video, or have it read by someone else. However, we do not know if victims are being informed about these options because jurisdictions are not required to report on them. We do understand there is little use made of these options across the provinces and territories. This information should be collected and reported upon.

Restitution Orders

Recommendation: Amend the provisions related to the enforcement of restitution orders (section 17) with: **Every victim in whose favour a restitution order is made has the right, if they are not paid, to have assistance with collection of the judgment that is enforceable against the offender.** This recognizes the responsibility of all governments to assist with the enforcement of court-ordered restitution, as victims have a right to receive reparations for the losses they have suffered.

Recommendation: Replace restitution with the broader notion of **reparation**. This would provide victims with greater access to reparations, as it includes symbolic reparations. This would also be consistent with proposed changes promoting **restorative justice**. It would also permit the inclusion of compensation. According to Article 12 of the UN Declaration, countries should endeavour to provide **compensation** to victims when it is not available from the offender. As a member of the UN, Canada should respect the UN Declaration. The federal government has a responsibility to ensure that UN standards and norms are respected.

Another area of the Act that we believe needs to be strengthened is section 17, concerning restitution orders. A restitution order requires the offender to pay the victim for financial losses suffered because of the crime. Restitution can only be ordered for losses up to the time the offender is sentenced. It is part of an offender’s sentence, and can be a stand-alone order or part of a probation order or conditional sentence.

The Act gives every victim the right to have a court consider making a restitution order when deciding the offender’s sentence. The courts are specifically charged with ensuring that the victim is offered the opportunity to make such a request. If the offender does not pay the restitution order, a victim also has the right to register the restitution order with a civil court and seek to enforce it as a judgment through that court. However, as victims’ rights expert Jo-Anne Wemmers has pointed out: *“This step can nevertheless be arduous for the victim, since they often find themselves in a fragile state due to their victimization and the procedure for a civil claim is complicated and expensive. The personal costs incurred by the civil procedures, and particularly the legal costs, can be a significant obstacle for victims’ desire or their ability to recover their money.”*³¹

We believe that when a victim suffers a loss as a result of crime, we, as a society, should expect the officials who work in the criminal justice system to make serious and real attempts to assist them with the enforcement of court-ordered restitution. We recommend that the Act be amended to ensure officials in Canada’s criminal justice system have the power to do so. Examples of good practice can be found in other countries, such as England or the Netherlands, where the prosecutor’s office is responsible for the execution of the order, just like any other measure imposed by a criminal court. In the Netherlands, restitution orders are handled by the same body that is responsible for the execution of fines. This shifts the burden of execution from the victim to the state.

“I felt in the dark a lot of the time, they would tell me when next hearing was but that was it. I felt alone scared and unknowing as to how this all works so I had to do a lot of reading and research on my own to understand the process.”

*– Anonymous respondent,
CVBR survey, summer 2020*

Victim Support Organizations

Recommendation: Strengthen and **increase the capacity of victims’ support organizations** by providing sustained, stable funding instead of time-limited project funds and grants, and evaluate the effectiveness of them. As well, **provide sustainable core funding for community-based restorative justice programs.** To increase the funds available through the Department of Justice Victims Fund, direct a small percentage of the fines imposed at sentencing in the prosecution of offences under federal jurisdiction (such as environmental fines assessed against corporations or organized crime organizations) to be paid into the fund.

Recommendation: Create a **national Crime Victims’ Support Service to provide victims with information about their rights, including a national, toll-free, 24/7 information and help line.** Analogous to Victim Support Europe, this organization would work to advance the rights of victims across Canada and could work collaboratively with already established provincial lines. The Office of the Federal Ombudsman for Victims of Crime can be made responsible for running this help line.

No report on victims’ rights would be complete without mentioning the dedicated volunteers and staff who work diligently in victim support organizations that serve diverse people across Canada.

Victim support workers provide invaluable assistance and advocacy for victims and their families in so many different ways. For example, they help victims understand their rights and offer them guidance on the criminal justice system. They may help victims prepare for court appearances, provide trauma counselling and crisis intervention, or assist with emergency shelter. They are an essential service and a critical part of our criminal justice system. They should be recognized as first responders and compensated in a manner that is equitable to police, fire and paramedic personnel.

Yet while many victim support organizations receive some financial assistance from the Department of Justice, their work is often undervalued. Some are forced to hold fundraisers to maintain or expand their services. We believe the Department of Justice should offer them the sustained financial support they need to increase their capacity to provide critical services and advocacy to victims of crime in every part of this country.

It is important to note that the *Canadian Victims Bill of Rights* does not include a right for victims to assistance, even though assistance is included in the UN Declaration. The right to assistance should be guaranteed in the Act. It would help to have a federally funded national organization to advance victims’ rights across Canada, similar to Victim Support Europe.

“I refer to it as the Swiss Cheese Bill of Rights because there are so many holes in it.”

*– Anonymous respondent,
CVBR survey, summer 2020*

Conclusion

The findings and recommendations in this Progress Report on the *Canadian Victims Bill of Rights* stem from our years of experience working directly with victims, victim support groups, government departments, police services, correctional and parole officials, and many others who are directly involved in the criminal justice system. Many, if not all, of the issues raised in this report have been acknowledged and discussed in different forums dealing with the criminal justice system over the years.

We believe that leadership at the federal level is required to ensure the legal rights of victims are respected at every stage of the criminal justice process. The sooner we begin, the sooner we will reach an era in which every victim of a crime in this country can feel that our criminal justice system does what it is supposed to do: offer fair and balanced treatment to all who encounter it, including victims and their families.



List of Recommendations from the Federal Ombudsman for Victims of Crime

- 1. Recommendation:** *Delete sections 27, 28 and 29* of the *Canadian Victims Bill of Rights*, which deny victims any standing to appeal to courts for review when their rights are not upheld. Amend the Act to provide victims of crime with two mechanisms of accountability: first, the mechanism of judicial review; and second, the administrative right to review decisions not to prosecute.

Consult with provincial, territorial and local governments and other stakeholders on the most effective language to use in the Act to ensure that victims can seek adequate legal and administrative remedies if they believe their rights have been overlooked.

- 2. Recommendation:** Amend section 20 of the *Canadian Victims Bill of Rights* to ensure that the interpretation of the Act requires all officials to **acknowledge victims' human rights: to security of the person, access to justice, and procedural fairness** in the administration of justice in Canada.

- 3. Recommendation:** Amend sections 6, 7 and 8 of the *Canadian Victims Bill of Rights* to ensure a proactive approach is taken to upholding the legal rights of victims. Those sections now begin with: "Every victim has the right, on request, to information about..." This text should be changed to read: "Every victim **shall automatically be provided** with information about..."

- 4. Recommendation:** Amend the *Canadian Victims Bill of Rights* to **guarantee access to victim assistance or support**. Articles 14 to 17 of the UN Declaration address victims' rights to medical, psychological, legal and social assistance.

- 5. Recommendation:** Develop a pan-Canadian **Victims' Rights Card** that would be automatically provided to victims by first responders and others involved in providing victim services, such as police, fire and ambulance personnel as well as correctional workers, parole officers, health care providers, social workers and others. The card would list the rights of victims set out in the *Canadian Victims Bill of Rights* to ensure every victim is aware of their rights and how to assert them. Officials should track how many cards are given out annually and report on how they hold employees accountable for providing information to victims.

- 6. Recommendation:** Amend the *Canadian Victims Bill of Rights* to ensure that all officials in the criminal justice system **are mandated to provide information on restorative justice programs to victims** who report crimes.

- 7. Recommendation:** Amend the Act to replace "appropriate authorities in the criminal justice system" with **a list of officials who have direct responsibilities to victims of crime**, such as police officers, Crown prosecutors, judges, review board members, Correctional Service Canada employees and Parole Board Canada employees.

- 8. Recommendation:** Amend section 25 (2) of the *Canadian Victims Bill of Rights* to **name the Office of the Federal Ombudsman for Victims of Crime as the single authority with jurisdiction to review complaints by victims of crime** in relation to how they were treated by a federal department, agency or body.

- 9. Recommendation:** Collect **nationally consistent data on the treatment of victims in the criminal justice system and report on it publicly**. Data indicators should align with the rights enumerated in the *Canadian Victims Bill of Rights* so that this information can be tracked and measured to evaluate how rights are being upheld across all jurisdictions. The Department of Justice should consider the creation of a **Task Force on Victims' Data** that would bring together representatives of the Department of Justice with provincial and territorial attorneys general, academics and Statistics Canada in a national collaborative effort to achieve this goal.

- 10. Recommendation:** Lead a national effort to **develop responsibility training on victims' rights** for criminal justice personnel across Canada to ensure national standards for the treatment of victims, and so all personnel fully understand that they will be held accountable for ensuring that victims have access to the rights stated in the law. Evaluate the training on an ongoing basis to determine its effectiveness.

- 11. Recommendation:** Lead a national public education campaign using TV and social media to inform Canadians of their rights as victims of crime. The campaign should target victims' right to information, as this right opens the gate to services and other rights. Such a campaign would empower victims and enhance their confidence in the criminal justice system.

- 12. Recommendation:** Amend the provisions related to the enforcement of restitution orders (section 17) with: **Every victim in whose favour a restitution order is made has the right, if they are not paid, to have assistance with collection of the judgment that is enforceable against the offender**. This recognizes the responsibility of all governments to assist with the enforcement of court-ordered restitution, as victims have a right to receive reparations for the losses they have suffered.

- 13. Recommendation:** Replace restitution with the broader notion of reparation. This would provide victims with greater access to reparations, as it includes symbolic reparations. This would also be consistent with proposed changes promoting restorative justice. It would also permit the inclusion of compensation. According to Article 12 of the UN Declaration, countries should endeavour to provide compensation to victims when it is not available from the offender. As a member of the UN, Canada should respect the UN Declaration. The federal government has a responsibility to ensure that UN standards and norms are respected.

- 14. Recommendation:** Strengthen and **increase the capacity of victim support organizations** by providing sustained, stable funding instead of time-limited project funds and grants, and evaluate the effectiveness of them. As well, **provide sustainable core funding for community-based restorative justice programs**. To increase the funds available through the Department of Justice Victims Fund, direct a small percentage of the fines imposed at sentencing in the prosecution of offences under federal jurisdiction (such as environmental fines assessed against corporations or organized crime organizations) to be paid into the fund.

- 15. Recommendation:** Create a national **Crime Victims' Support Service to provide victims with information about their rights, including a national, toll-free, 24/7 information and help line**. Analogous to Victim Support Europe, this organization would work to advance the rights of victims across Canada and could work collaboratively with already established provincial lines. The Office of the Federal Ombudsman for Victims of Crime can be made responsible for running this help line.

Appendix A

1. Example of existing Victims' Rights flip card for police officers by British Columbia RCMP (2019)



2. Information brochure on the Canadian Victims Bill of Rights (*Association québécoise Plaidoyer-Victimes* (AQPV) 2018) - https://aqpv.ca/wp-content/uploads/ccdv_brochure_eng_2018.pdf

Endnotes

- a) Related amendments to the *Corrections and Conditional Release Act* did not come into force until June 1, 2016.
- b) When an accused is found not criminally responsible or unfit to stand trial, their sentencing is diverted to a special review board pursuant to section 672.38 of the *Criminal Code*. A judge chairs these boards along with four others, one or more of whom must be licenced to practice psychiatry.
- c) The *Criminal Code* contains a number of provisions to protect young victims and witnesses under 18 years of age and make it easier for them to provide their testimony. Testimonial aids make it easier for victims and witnesses to testify in a criminal case:
- Young victims and witnesses can have a **support person** with them while they testify in order to make them more comfortable (section 486.1(1));
 - Young victims and witnesses can testify outside the courtroom by **closed-circuit TV** or inside the courtroom but behind a **screen** which would allow them not to see the accused (section 486.2 (1));
 - A lawyer can be appointed** to cross-examine young witnesses when the accused is self-represented (section 486.3 (1));
- iv) **A publication ban can be ordered** to prevent the publication, broadcast or transmission in any way of any information that could identify the victim or witness (sections 486.4-486.5);
- v) The evidence of young victims and witnesses may be videotaped before the trial and used at trial in order to spare them from repeating all of their testimony (section 715.1);
- vi) An exclusion order can be issued requiring some or all members of the public to leave the courtroom during the criminal proceedings if a judge is of the opinion that it is (section 486):
- in the interest of public morals;
 - in the interest of the maintenance of order;
 - in the interest of the proper administration of justice; or,
 - necessary to prevent injury to international relations, national defence or national security.
- d) See a complete description of Charter rights of the accused at <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd1/check/art10.html>.

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