



Government
of Canada
Office of the Federal
Ombudsman for Victims
of Crime

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

INFORMATION AS A GATEWAY RIGHT:

Examining complaints related to the Canadian Victims Bill of Rights

January 2021

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Cat. N°: J84-9/2021E-PDF

ISSN: 978-0-660-38287-6

TABLE OF CONTENTS

BACKGROUND	2
LEGAL CONTEXT	4
CONCERNS	4
CURRENT STATUS	5
VICTIMS' VOICES – ANALYZING OFOVC DATA	6
THE NEED FOR INFORMATION	9
KEY CONSIDERATIONS	10
OTHER IMPLICATIONS	11
CONCLUSION	12
REFERENCES	13

BACKGROUND

It was not until 2015 that the rights of victims of crime were enshrined in comprehensive federal legislation in Canada through the *Canadian Victims Bill of Rights* (CVBR). This Act defined a victim as an individual who has suffered physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of an offence (CVBR 2015). It set out rights for victims that apply across the criminal justice system, from investigation and prosecution of the offence, to the corrections and the conditional release process in Canada; and through the proceedings of courts and Review Boards in respect of accused who are found not criminally responsible on account of mental disorder or unfit to stand trial (CVBR 2015). The CVBR gave all victims in the criminal justice system 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 (OFOVC 2020a). At the time, the drafters of the legislation believed it would afford victims the opportunity to have a more meaningful voice in the criminal justice system, greater information, enhanced consideration of their security and greater consideration to receive restitution (Perrin 2017).

Yet, despite the enactment of this quasi-constitutional federal statute, victims in the Canadian criminal justice system continue to report to the Office of the Federal Ombudsman for Victims of Crime (OFOVC)

that they lack adequate information about their rights and the services available to them. This clearly illustrates how the adoption of a law in the books is different from its implementation in action (OFOVC 2020a), as criminal justice personnel continue to systematically overlook or neglect victims' legitimate needs.

The right to information is a foundational, gateway right – without it, victims cannot assert or effectively exercise the other rights set out in the Act (Perrin 2017). For example, without being notified of when proceedings will occur, a victim cannot exercise their right to convey their views to the decision-maker (Perrin 2017). Research in victimology is definitive with many studies highlighting the importance of information for victims and the need for timely and concise verbal and written information relating to their rights, justice system processes and victim services. As Manikis (2015, 167) outlines, evidence has demonstrated that when victims are left uninformed about developments in their case, secondary victimization often may occur. According to the victims who have contacted the OFOVC, being kept informed about the criminal justice process remains one of their most important needs. Unfortunately, many are left uninformed as to any developments at all stages of the criminal process, and this leads to increased stress, feeling further disempowered.

What is critical to recognize is that information comes in various forms and so a victim has the right to factual information and the right to be informed

of informal aspects of the criminal justice process (Fenwick 1995; Manikis 2015). Factual information is related to the various stages of the criminal court process, such as bail hearings, sentence appeals, release and the informal aspects are more related to the explanatory information and reasoning behind the key decisions (Manikis 2015, p. 168). It is important to clarify the various forms of information so victims know what to request and what they can expect to receive from various agencies (Manikis 2015), and this helps increase clarification and decrease ambiguity for victims seeking information.

Unfortunately, under the CVBR, criminal justice authorities are not required to automatically provide victims with information about their rights or other general information about the investigation, prosecution, the accused or offender; it is provided only '*upon request*' (CVBR 2015). The burden of asking for information and to be kept informed of developments in their case is placed upon traumatized victims and survivors at every stage along their criminal justice journey. Many victims simply do not know what to ask for or they assume officials will provide them with the entitlements in the law.

Although responding to victims of crime is a shared responsibility between federal, provincial and territorial governments in Canada (Department of Justice 2015), the CVBR fails to identify which criminal justice officials are directly responsible for upholding victims' rights (OFOVC 2020a). Instead, the CVBR imposes an obligation on criminal justice officials to give effect

to victims' rights (Perrin 2017). In effect, by not identifying which officials are obligated to provide information, the obligation falls to no one. This means information about victims' legal rights is provided inconsistently in practice across Canada (OFOVC 2020a). In this paper, we will examine the most frequent complaint received from victims and survivors at the OFOVC in relation to the CVBR, which is their Right to Information not being respected.



LEGAL CONTEXT

The Canadian Victims Bill of Rights (2015) delineates the following:

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.

CONCERNS

One of the central concerns with respect to the CVBR is that it does not require that victims be automatically provided with information about their rights. In contrast, under Sections 10 and 11 of the *Canadian Charter of Rights and Freedoms*, a crime suspect has immediate legal guarantees once detained or arrested, including the right to know the reasons for their arrest and to know they have the right to a lawyer.

Victims of crime, on the other hand, must ask the police and other authorities what their rights are and ask for information at every stage of the proceedings. How is a victim or survivor supposed to know they have any rights at all? Is it fair to expect a survivor, in the midst of experiencing trauma, to be aware of the complexities of the justice system or their rights within it, if the state has not proactively informed them?

CURRENT STATUS

When offenders are incarcerated or being considered for parole or other temporary release, victims who have been harmed deserve information. 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 (CSC) or the Parole Board of Canada (PBC) to receive any information about their case. The current federal policy reflects the belief that it would violate a victim's privacy (and perhaps be emotionally upsetting) to contact survivors about the offender who harmed them or about their rights, such as the right to participate in hearings or express concerns about their protection. The OFOVC believes this interpretation violates the spirit of the law and reinforces barriers to the implementation of victims' rights (OFOVC 2020a).

Not surprisingly, the number of victims who ask for information about the offender who harmed them is quite low compared with the number of individuals incarcerated in Canada. The numbers also tell us this approach does not work. For example, if we look at corrections and conditional release data from 2018-19, we know there were some 23,000 offenders under federal responsibility. However, only about 8,500 victims were registered to receive information about their case (Public Safety Canada 2019). The lack of a proactive approach to the provision of information interferes with victims' access to their rights along the criminal justice continuum (OFOVC 2020a).

Both CSC and the PBC currently require victims to self-register to receive information about the offenders who harmed them. These organizations should instead 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 at any particular time (OFOVC 2020a).



VICTIMS' VOICES – ANALYZING OFOVC DATA.....

The OFOVC is mandated to review complaints lodged by victims of crime related to their treatment in the criminal justice system, at the federal level. From the time the CVBR came into effect in 2015 until December 2020, the OFOVC received 407 complaints related to victims' rights under the CVBR (Table 1). Of those, 168 dealt with information issues, 65 with participation, 57 with protection, 30 with restitution and 87 with remedy issues.

It is not surprising then that 168 complaints relate to information, because information is a foundational or gateway right (OFOVC 2020a).

Without proper access to information, victims and survivors simply cannot exercise the other rights provided to them in the legislation, such as participation, protection and restitution because they are not aware of them. In our frontline experience working directly with survivors, many victims are simply not aware of the existence of CVBR or the rights provided to them therein. Thus, they often approach OFOVC to ask what their rights entail, especially with respect to CSC, PBC and the offender who harmed them.

TABLE 1:
Total number of complaints related to the CVBR received by the OFOVC
(April 2015 – December 2020)

Right to Information	168
Right to Participation	65
Right to Protection	57
Right to Restitution	30
Remedies	87
TOTAL NUMBER OF COMPLAINTS	407

Many survivors who contact the OFOVC voice that criminal justice authorities, such as police, courts, victim services or CSC/PBC, are not respecting their basic right to information. Table 2 outlines the criminal justice agencies about which victims have

registered complaints. The unfortunate reality is that most victims of crime also do not know about the OFOVC or the fact that they have a right to file a complaint when their rights are infringed.

TABLE 2:
Right to Information - Complaints breakdown by criminal justice agency
(April 2015 - December 2020)

Criminal justice agency	Number of Complaints
Police/RCMP	33
Courts/Trials	33
Victim Services/Compensation	52
CSC/PBC	50
TOTAL NUMBER OF COMPLAINTS	168



In Table 3 below, the OFOVC conducted a qualitative analysis of the 168 complaints related to the Right to Information, and we have outlined the most common complaints received.

TABLE 3:
Most common complaints raised with regard to the Right to Information:

1. Timeliness of information provided by officials, including follow up, is too late or after the fact ¹
2. Information is unclear, difficult to understand ²
3. Victims are unaware of the requirement to self-register to receive information from CSC/PBC ³
4. Communications challenges with various officials ⁴
5. Information is not provided at all to victims or it is delayed ⁵
6. Information is restricted by legislation ⁶
7. Personal information about the offender is protected/restricted from disclosure to victims, but officials must share victim information, such as impact statements, with offenders ⁷
8. Victims are not provided with information about how to follow up or enforce restitution orders that have been made in their case ⁸
9. Victims are provided very little information about removals from Canada and this process (deportation where there is criminality) ⁹
10. Changing consistency of information provided due to staff turnover ¹⁰

The fact that victims of crime are not consistently informed of their rights across Canada is a grave reality that requires immediate attention and correction by all officials involved.

¹ For example, information is shared after an accused is released from remand or after the release date of an offender on a medical pass or other temporary absence from prison, etc.

² For example, common complaints involve the Correctional Plan or annual offender progress updates sent by CSC.

³ Self-registration may cause some victims to miss the ability to participate in conditional release decisions or they find out after the fact that an offender has already been released from prison.

⁴ Victims complain about having to chase after professionals for information about their case. One victim said, in relation to communications about a parole hearing, it was “very poorly handled with little or no communication on how it will proceed.”

⁵ Complaints received often involve appeals, i.e., when offenders make court appearances to appeal a conviction or sentence.

⁶ In some circumstances, PBC is not required to provide written decisions to victims, i.e., ETAs for offenders serving a life sentence.

⁷ Victims complain that they cannot know reasons for an offender’s medical pass, as an example, but information about their personal recovery and healing is shared with the offender through victim statements.

⁸ Victims complain that various officials do not provide instructions or support to help them recover restitution that is ordered by the courts.

⁹ CSC is only mandated to inform victims once an offender has been physically removed from Canada by Canada Border Services Agency. There is no information shared prior to this with victims about the removal process, what to expect, hearing dates, timelines, appeals, etc. and no way for victims to voice their concerns throughout this process.

¹⁰ Victims complain that more information or less may be provided when new staff come into a role.

THE NEED FOR INFORMATION

Research in victimology has found that victims of crime have a need to be informed about their rights, services available to them and the timing of justice system processes (Waller 2011; Manikis 2015). Verbal and written information about their rights, justice system processes and victim services must be timely, clear, and concise.

As first responders to crime and violence, police and law enforcement officers play a particularly critical role in informing victims of their rights. We know that citizens are less marginalized when they are fully informed of their rights under the law. Information is especially empowering for victims and survivors of crime because it allows them to regain some control of their situation. Survivors can decide how they want to be involved in the justice system and what steps to pursue next (Waller 2011). Many victims choose restorative justice to access more information about what happened and why. Unfortunately, law enforcement is also in the unique position to contribute to the secondary victimization of victims when they do not provide necessary information to victims as officers go about their duties (Waller 2011). Because there is no requirement under the CVBR to automatically inform all victims of their rights, it falls to individual police officers to deliver this information, with inconsistent results across jurisdictions (OFOVC 2020a).

In other 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 Card was created to provide this critical information to victims. This card contains specific sections of the state's Victims' Bill of Rights and resources for victims. Many American states have followed California's lead and implemented Marsy's Card to ensure victims are properly informed and can exercise their rights. A Canadian example is the small CVBR wallet card developed and distributed by the British Columbia Division of the RCMP, but we lack data about how often it is being distributed to victims and whether they are better informed as a result (OFOVC 2020a).

In the immediate aftermath of a crime, providing victims with the information they need about the criminal justice system, their rights 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 (OFOVC 2020a). We must not leave victims' rights to the good will of professionals and instead mandate criminal justice authorities to provide victims and survivors with their informational rights.

KEY CONSIDERATIONS

The CVBR does not currently provide equitable access to justice for all victims of crime, primarily because officials do not automatically inform victims of their rights. The language of the legislation places the onus on victims to know, understand and assert their rights. Requiring a victim to ask for information or self-register with various agencies means they must first agree that they are a victim, not merely a person who has been traumatized (OFOVC 2020a). This is difficult for many and may only add to their already overwhelming life experience.

There are many factors that influence unequal treatment and access to basic justice (i.e., reporting crimes, seeking assistance and participation in criminal trials), such as low socioeconomic status, cultural and language barriers, geographic constraints, etc. (McDonald 2019; Martin 2020). We also know that certain victim populations, namely victims of gender-based violence, and Indigenous peoples are overrepresented in the justice system as both offenders and victims (Press 2019; McDonald 2019). A reluctance by victims to ask about their rights may be a result of the trauma they have experienced, but could also be because of 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 historically faced systemic and other forms of discrimination. New Canadians may also face barriers if they arrive from countries where government authority figures are seen only as oppressors to be feared, not providers of assistance and support (OFOVC 2020a).

Recent pan-Canadian research with survivors of violent crime indicates that the type of crime and victim may also play a role in the inequity survivors' experience. Participants in the *Resilience and Survivors of Violent Crime* study were generally dissatisfied with the justice system, with less than half, reporting that they were kept informed about their case, that the police or crown attorney had respected their views, or that police had protected their security, identity, and privacy (Roebuck et al., 2020). Just over half felt that the police and crown attorney believed them. Cases involving homicide had the highest likelihood of people being kept informed, while cases involving male survivors of intimate partner violence received the lowest satisfaction scores in all categories (Roebuck et al., 2020).

Ensuring equal access to justice means criminal justice officials must be accountable for informing all victims of property or personal crimes about their rights. 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 professionals working in the criminal justice system understand they have a legal obligation to keep victims informed of their rights related to information, protection, participation and restitution (OFOVC 2020a).

OTHER IMPLICATIONS

The global COVID-19 pandemic created new barriers to victim participation and access to justice. With physical distancing, travel restrictions and lockdowns put in place to stop the spread of COVID-19 in Canada, victims' rights as laid out in legislation were overlooked. For example, in March 2020, the PBC cancelled all observer attendance at parole board hearings to comply with COVID-19 prevention measures (OFOVC 2020b) which caused a public outcry. Despite victims having the right to participate in hearings and convey their views as outlined in the CVBR, PBC was slow to upgrade technology to include victims like other tribunals and courts did. With pressure from a statement released by the OFOVC, along with victim complaints and advocacy efforts, the PBC finally implemented teleconference software.

The COVID-19 public health crisis also had a negative impact on victims of gender-based sexual violence due to court delays (Dhaliwal 2020). Frontline anti-violence workers and police services reported increases in isolation-fuelled crimes, such as intimate partner violence across Canada (Barbra Schlifer Commemorative Clinic 2020); yet no large-scale pan-Canadian public education effort was made by the federal government to inform victims about the rights and services available to them, including restorative justice.

The under-use of restorative justice (RJ) in Canada may also be attributed to a lack of information about such programs being provided to victims of crime. Officials in the criminal justice system are not currently mandated to provide information on restorative justice programs to victims who report crimes (OFOVC 2020a). Again, such information is provided to victims only 'upon request' (CVBR 2015). Victims should be informed about all 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 (OFOVC 2020a).

RJ better meets the needs of victims and produces higher levels of satisfaction than experiences with the traditional court system (Department of Justice 2018). Despite high levels of awareness about RJ among criminal justice professionals and growing interest among victims, victims do not often receive adequate information or referrals to RJ programs (McDonald 2019). Thus, we continue to see an under-use of RJ, despite well-documented research suggesting positive psychological benefits, as well as increased agency and empowerment for victims (Vanfraechem et al., 2015; Wemmers 2017; Martin 2020).

CONCLUSION

Five years after the enactment of the *Canadian Victims Bill of Rights*, the Office of the Federal Ombudsman for Victims of Crime continues to receive a substantial number of complaints about how victims' informational rights are implemented in practice. Victims report not being informed about their rights or services available to them at all stages of the justice system.

Information is a foundational right for victims and survivors. Information is the gateway that enables access to justice and participation in processes that directly affect victims' safety and financial interests.

Since vulnerable and marginalized citizens most frequently become victims of crime, information from criminal justice officials can be life changing. Citizens are less marginalized when they are informed of their rights and can choose the path they wish to move forward. The act of providing information is the act of empowering citizens and criminal justice personnel must be accountable for doing so. In fact, the growing expectation is that the administration of criminal justice in Canada must occur in a manner that is respectful of victims of crime and also upholds their legal and human rights.



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