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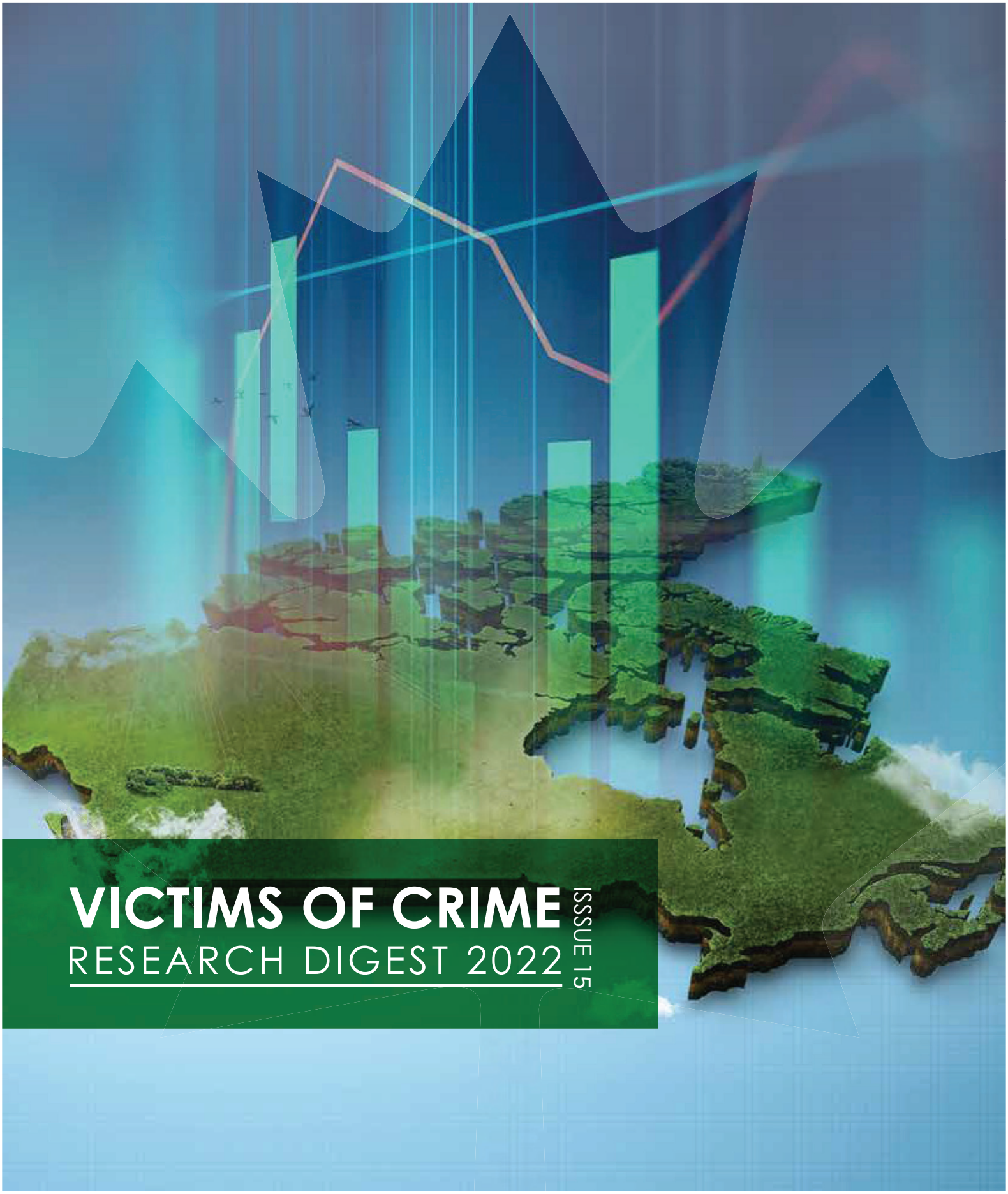

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Introduction

Welcome to Issue No. 15 of the *Victims of Crime Research Digest!* **The Power of Collaboration**, now the recurring theme of National Victims and Survivors Week, remains as relevant as ever. We know that the pandemic has made the work of victim services providers, the courts, and indeed, all public institutions more challenging. The criminal justice system itself is a shared responsibility between the federal, provincial and territorial governments with different players, such as municipal police services, all playing significant roles; many of us have had to learn new ways to collaborate effectively.

As usual, we are proud to share a broad sampling of research undertaken or supported by the Department of Justice. Collaboration strengthens our research efforts and ultimately, the results they yield. The *Digest* begins with an article about dogs supporting victims and witnesses throughout the criminal justice process, with a focus on dogs in the courtroom. In our second article, we bring you timely research from Algonquin College Professor Benjamin Roebuck and his collaborators on the impact of COVID-19 on victim services providers and their well-being. The next article is a short summary of a review of Ontario's Internet Child Exploitation Counselling Program, which is administered by BOOST & Child and Youth Advocacy Centre. Then Marie Manikis, Associate Professor in McGill University's Faculty of Law, updates us on case law related to victim and community impact statements. Our final article provides an update on restitution, the numbers of orders made and the provincial programs that are in place to support victims in the enforcement of orders.

As always, we hope you enjoy reading the *Digest* and welcome your feedback.

Susan McDonald
Principal Researcher
Research and Statistics Division

Stephanie Bouchard
Director and Senior Legal Counsel
Policy Centre for Victim Issues

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"Pawsitive" Directions:

An Update on Dogs Supporting Victims of Crime

By Susan McDonald and Naythan Poulin

In a previous issue of the *Victims of Crime Research Digest*, McDonald and Rooney (2014) explored the potential benefits of support dogs in various criminal justice settings, such as during forensic interviews with law enforcement or in preparation for court with Crown prosecutors. In particular, the authors (2014, p.18) noted that there were "no specific studies on support dogs working with victim services inside or out of the courtroom." Since 2014, a few empirical studies have been undertaken that examine the impact of animals in and outside of the courtroom.[1]

This article begins by defining relevant terminology for support dogs and by explaining the roles they can play in the criminal justice system. The article then provides an overview of recent empirical social science studies that outline the benefits of dogs in courtrooms and legal processes. The article also includes an overview of the case law that supports and establishes the role of dogs for vulnerable witnesses, and it briefly discusses standards, gaps in research, and outstanding questions.

Language matters: defining service, therapy and facility dogs

Dogs have been trained to assist human beings for decades; they may assist people with disabilities, participate in law enforcement endeavours or provide emotional support. Today, animals assisting human beings is fairly common, but confusion persists regarding their titles and roles.

A service dog is not a pet; it is a working animal specially trained to assist a person with a disability.[2] In Canada, the legal status of a service dog is regulated by provincial and territorial governments.[3] The Government of Canada is responsible for certain modes of transportation, and according to the *Accessible Transportation for Persons with Disabilities Regulations* (ATPDR)[4] a service dog in Canada: has been individually trained by an organization or person specializing in service dog training; and performs a task to assist a person with a disability with a need related to their disability.

Alternatively, therapy or emotional support animals (ESAs) are used to comfort and nurture. It is important to note that therapy dogs and ESAs may not have received any specific training and could be a personal pet. The titles therapy dog or ESA are not legally recognized in Canada, and therefore, these dogs may have limited access to public spaces (Grimm 2013; Walsh et al. 2018). Some American legal

[1] Animals other than dogs have been allowed in the Canadian criminal justice system to provide support and comfort to vulnerable witnesses. This article focuses on dogs.

[2] https://www.ementalhealth.ca/Canada/Animaux-de-travail-y-compris-les-chiens-dassistance/index.php?m=article&ID=73189

[3] For example, in Alberta, the *Service Dogs Act, SA 2007, c S-7.5*, defines "service dogs" and "disability". Access rights for those with disabilities are also guaranteed by the *Alberta Human Rights Act*. Identity cards are issued to service dog handlers. For more on provincial and territorial legislation, please see https://www.supportdogcertification.org/article/service-dog-certification-and-regulations-canada

[4] See https://canadagazette.gc.ca/rp-pr/p2/2021/2021-02-17/html/sor-dors9-eng.html

experts believe that explicit reference to a therapy dog in court can produce a bias and prejudicial effect and cause a jury to sympathize with a victim/witness who testifies with a dog (Grimm 2013).

Another related term is facility dog: "a dog that, directed by qualified staff within a designated facility, utilizes its special skills and training in animal-assisted interventions to help providers achieve specific treatment or program goals."[5] Facility dogs are trained to assist vulnerable witnesses; they may be housed on-site and cared for by staff, or live with their primary handlers[6] (Walsh et al. 2018). Specifically, facility dogs are trained to assist victims and other vulnerable witnesses experiencing heightened anxiety caused by trauma.

Although similar to a therapy dog, which may visit patients or residents at one or more facilities accompanied by its handler for a few hours a week, a facility dog lives full-time at a facility under the care and supervision of a staff member.[7] Facility dogs and therapy dogs or ESAs can detect human stress and provide support by laying their heads on the laps of victims and other vulnerable witnesses (Mariani 2020).

Facility dogs are more common in the criminal justice system of the US than in other countries (e.g. the United Kingdom and Canada) and most US states require facility dogs to receive at least two years of training from an organization such as Assistance Dogs International or one of their affiliate programs (Mariani 2020). It is important to note that the use and effectiveness of facility dogs in the criminal justice system have been contested. For instance, Walsh et al. (2018) assessed the impact of facility and therapy dogs during forensic interviews, noting that the "differences between facility and therapy dogs may not be evident to children, whose experience may be similar in both cases, having a dog to hold and pet while testifying." (p.3) Therefore, a therapy dog or ESA may be just as effective as a facility dog in reducing victims' stress and anxiety when they participate in the criminal justice system.

Most of the academic studies reviewed for this article focus on the impact of dogs on trial proceedings. Dogs, however, are also used to support victims and witnesses at other points, such as in the aftermath of a criminal event or during a forensic interview or medical exam. They can also be used during therapy or counselling. Dog handlers can have various occupations, such as law enforcement personnel, psychologists, forensic interviewers, social workers, and victim advocates (Mariani 2020).

Two other definitions are also helpful. Animal assisted activities (AAA) refers to the provision of general comfort to a victim or witness during sessions with a therapist or forensic interviewer. Animal assisted therapy (AAT) refers to the use of dogs trained for the specific task of interpreting human emotions and actively working to reduce stress, for example during short- and long-term counselling (Grimm 2013).

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[5] Excerpted from the website of Hero Dogs – Service Dogs for America's Heros. Accessed February 25, 2022 at https://www.hero-dogs.org/hero-dogs-programs/facility-dogs/

[6] Handlers are responsible for their *dog* and carry out the work for which the *dog* has been trained. They are responsible for the dog's welfare — food, sleep, exercise and general well-being. In many organizations, a dog will live with its handler.

[7] Hero Dogs – Service Dogs for America's Heros. Accessed February 25, 2022 at https://www.hero-dogs.org/hero-dogs-programs/facility-dogs/

What we know: Literature on dogs in the criminal justice system

Victims and witnesses may experience further trauma during the various stages of a criminal case. A child victim may be reluctant to talk about physical, emotional and/or sexual abuse due to associated feelings of guilt or shame, or may be afraid to face and/or testify against an accused who may have been a close relative or friend (Pantell et al. 2017). In general, the criminal justice system was not designed with a child's needs in mind, and every stage — from forensic interview to court preparation to testifying at a preliminary inquiry and trial — can heighten stress and anxiety (Holder 2013; Weems 2013; Nascondiglio 2016). Given the importance of detailed testimony, courts allow children and other vulnerable witnesses to use testimonial aids. Aids vary by jurisdiction; in most US states, a child witness can hold a comfort item such as a stuffed animal. In Canada, vulnerable witnesses may be allowed to testify by closed-circuit video or from behind a screen and accompanied by a support person (see McDonald 2018). More recently, courts have allowed witnesses to be accompanied by dogs while giving testimony. However, no legislation currently governs this practice. And no laws, regulations, policies, standards or case law dictate that dogs used in the Canadian criminal justice system must be facility dogs, therapy dogs or ESAs.

Because the use of dogs to support victims and witnesses in the criminal justice system is relatively new, it is helpful to look back to the introduction of animals to assist humans with their well-being and mental health and the research undertaken in the mental health field. In the 1960s, Dr. Boris Levinson incorporated animals into his therapy sessions and found that the presence of animals helped patients open up and trust him (Levinson 1969). Since Dr. Levinson's initial study, the use of AAT has expanded beyond clinical and psychological settings. Studies demonstrate that AAT reinforces independence, stimulates awareness and provides support to victims (Sockalingham et al. 2008). Beck (1985) maintains that AAT can aid in treating patients who are traditionally withdrawn or uncooperative when speaking about their trauma. Many studies have since assessed the general psychological and physiological effect of animals on humans. For instance, evidence suggests that the presence of animals helps to relieve symptoms of stress and anxiety by lowering and sustaining a person's heart rate, blood pressure, breathing and dissociation (Johnson 2010).

In 2012, the Canadian Agency for Drugs and Technologies in Health (CADTH) conducted a study to determine the beneficial psychological effects of both AAT and AAA with patients experiencing mental health concerns. The purpose was to determine whether dogs and horses alleviated challenges normally associated with depression, anxiety, substance abuse, Post-Traumatic Stress Disorder (PTSD), dementia and schizophrenia. The researchers analyzed pre-existing studies that used various methods, scales, and questionnaires, and acknowledged potential gaps in consistency. Overall, the researchers concluded that AAT and AAA improved mental function, quality of life and socialization (CADTH 2012).

What we learn from research on the impact of animals on those experiencing mental health concerns can be applied in a criminal justice system context. McDonald and Rooney (2014, p.19) suggest that the psychological and physiological benefits of dogs on humans "is especially important in the context of supporting victims of crime during the forensic interview or at other key stages in the criminal justice system." A few studies have evaluated the effect of using support dogs during mock police interviews. In his study, Peters (2017) tested the hypothesis that participants provided support dogs during police interviews would experience significant less anxiety. Forty-five undergraduate students completed a questionnaire prior to entering the interview room, after meeting the officer, and after the police

interview. Participants were also fitted with wireless heartrate monitors to track stress and anxiety levels. For the experiment, about half of participants were accompanied by a dog during the interview, while the other half were not. The study found that those accompanied by dogs exhibited significantly lower symptoms of anxiety. During interviews, the heart rate and blood pressure of some participants accompanied by dogs reverted to the levels recorded prior to the interviews (Peters 2017).

Spruin et al. (2020) undertook an empirical study that assessed whether the assistance of a dog enhanced rapport building with children during police interviews and increased their credibility. The study recruited 70 police interviewers in Canada and the United States as participants while using mixed quantitative and qualitative methodologies. Based on rapport and credibility scales, 100% of participants concluded that the presence of a dog created a comfortable environment for rapport-building and enabled witnesses to feel more comfortable. Thematically, participants felt that the assistance of a dog positively altered a child's emotional state, which enhanced their ability to communicate and disclose traumatic experiences (Spruin et al. 2020).

Some scholars have conducted empirical studies to determine whether the introduction of a facility or therapy dog can alleviate stress for both the child and forensic interviewer. Krause-Parello et al. (2018) studied 24 children undergoing forensic interviews related to allegations of sexual abuse. The study included a group with a dog and a control group without a dog during the interviews. Both self-reporting and stress biomarker (cortisol levels) data were collected from the children before and after interviews. The researchers concluded that those accompanied by a dog experienced significant decreases in stress biomarkers after the interview; the children without a dog in the control group did not experience significant decreases in stress biomarkers. In another study, Walsh et al. (2018) wanted to determine whether the presence of a therapy or facility dog would reduce the symptoms of stress experienced by 230 forensic interviewers. The participants completed voluntary self-assessment surveys about how they were feeling. While 72% of participants agreed that having dogs participate in forensic interviews was a helpful tool, the study was not able to determine whether the presence of a dog helped alleviate stress and anxiety in forensic interviewers.

For many witnesses, the experience of waiting in a room prior to testimony can be stressful. Specifically, not knowing when a witness will testify can heighten feelings of fear and anxiety. Spruin et al. (2019) conducted an experiment to determine whether the presence of a dog in a court waiting room would help reduce fear and anxiety among those waiting to testify in a criminal trial. In the study, researchers recruited 117 participants who completed qualitative interviews and questionnaires. In total, 96% of participants agreed that having a dog in the waiting room created a relaxing effect and contributed towards a positive environment. As one participant noted, "I'm very nervous and scared, I don't really want to see the defendant. I came to her [therapy dog] immediately, I feel calmer already, it's amazing what an animal can do" (Spruin et al. 2019, pg. 292). Drawing again on research findings of animals supporting humans in other sectors, Dell et al. (2019) conducted a similar study in hospital emergency rooms in Canada. The results demonstrated an improvement in happiness scores and established that the dogs were able to help relieve patients' stress and anxiety in distressing situations.

In another study, Spruin et al. (2019) assessed the impact of a therapy dog in providing support to five child victims of sexual abuse who testified during trial proceedings in the UK by conducting in-depth interviews and collecting observational data. The process also incorporated the perspectives of parents and other relatives present to support the child. The first section of the study assessed the physical and

emotional impact of a dog on each child prior to testifying in court. The study concluded that the presence of the dog greatly increased feelings of happiness and calmness, and inspired confidence prior to testifying. The mother of a victim reported that since the incident of sexual abuse, her daughter had withdrawn and "doesn't talk to anyone. [But] her coming here to meet the therapy dog is more interaction than she has had in a long time. This is the only thing that got her out of the house." Spruin and al. (2019) established that most victims of sexual abuse withdraw from another person's touch, but dogs make great companions, since they offer a safe outlet to victims who benefit from the emotional and physical support the dogs can provide.

Dogs in court: Legal arguments

The literature on the use of dogs to support victims and witnesses in court is primarily from the US. This section briefly summarizes the relevant arguments made by American legal academics and practitioners. Many of the arguments are not applicable to the Canadian legal context, but are still of interest as policy and practice evolve in this area.

Some American legal experts have argued that permitting a dog to support a witness impedes a defendant's right to a fair trial, since it could create bias and elicit unwarranted sympathy from jurors, or potentially distract jurors during testimony (Grimm 2013; Bowers 2013; Nascondiglio 2016).

Burd and McQuiston (2019) tested the hypothesis of jury bias by conducting a study that used mock jurors to assess prejudice against a defendant when a child witness held a teddy bear, or there was a dog present, or there was no testimonial aid at all. The study determined that using a dog as a testimonial aid did not distract jurors or significantly change their perception of the defendant. In a Canadian MA thesis, Glazer (2018) asked Canadian legal professionals whether a dog in a court setting could produce bias. The majority of respondents stated that making such an argument would be difficult; one participant claimed that "it would be very difficult for a defence counsel to argue that a child has some kind of unfair advantage […] I think it would be hard pressed to make a valid argument" (pg. 32).

The sixth amendment to the US Constitution includes what is known as the confrontation clause,[8] which gives an accused the right to confront a witness against him or her in a criminal proceeding. Because of this, US legislation and case law on testimonial aids have developed differently than in Canada. For example, screens and testifying by closed-circuit TV are not used in the US[9] since a defendant cannot physically face their accuser (Dellinger 2009). American scholars believe that using a dog in court is more beneficial and creates less bias than other testimonial aids. For instance, a dog may be more beneficial than having a support person, since some evidence suggests that a support person may impede the credibility of a child witness. The concern is that a jury may interpret a child looking towards a support person for emotional relief as a source of influence; a support person could be perceived by the jury as coaching what a child witness will and will not say (Holder 2013; Weems 2013).

[8] See https://www.law.cornell.edu/constitution/sixth_amendment

[9] In 1990, in *Maryland v Craig* (497 US 836 (1990), the US Supreme Court ruled that closed-circuit televised testimony is acceptable when there is a "case specific finding of necessity."

In the US, the use of dogs as an accommodation in court is also preferred to testimony via closed-circuit pre-recorded testimony, since the jury can observe the victim directly reducing the likelihood that a defendant's rights would be infringed (Dillinger 2009). Note that there is very little empirical evidence to support these assertions.

In Canada, the relevant legislation and case law differ from those in the US. The *Criminal Code* explicitly allows a Crown prosecutor and victim/witness to apply to testify behind a screen, with a support person, or via closed-circuit video. When the victim/witness is a child (under the age of 18 years) or has a physical or mental disability, the court shall grant the application.[10]

Case law in Canada

At this time, there is no specific provision in the *Criminal Code* to permit an application for a dog to support a witness during testimony. When an application has been made, Crown prosecutors have used different provisions in the *Criminal Code*. In rendering a decision, the court has used specific provisions, such as section 486.1, as well as its general powers to consider the request and make an order. A review of cases across the country shows that the most significant consideration for the court is how the dog will assist in obtaining the best evidence from the witness. That is, does the dog's presence facilitate a full and candid account from the witness?

There have been several cases[11] where a dog has been permitted in the courtroom under section 486.1 of the *Criminal Code* and the dog's handler is identified as the "support person." Dallas Mack (2020) provides commentary on a number of these cases which is summarized in the following paragraphs. The author notes that:

> *Benjamin* . . . clarifies that a support dog can be part of an application under section 486.1 to have a "support person" with a complainant while they testify. In *R. v. Pine*, the judge while granting a similar application, questioned whether dogs were persons. The approach in *Benjamin* solves that issue in a reasonable and principled manner. *Second*, it recognizes the impact of the amendment to this provision and the important influence of . . . the *Canadian Victims Bill of Rights* [para.6].

In *Levac,* the court provides a thorough review of s.486.1 in allowing the dog and its handler as a support person. In the Ontario case of *R. v W. (C.),*[12] the Crown applied for the dog to accompany the witness, but not the dog's handler. The court held that in these circumstances, section 486.1 did not apply as it was restricted to "persons". Section 13[13] of the *Canadian Victims Bill of Rights* provided the court the authority to make the order, although Mack suggests that it is not clear that the section actually does (pg.5).

In *Marchand,* the Crown brought an application pursuant to section 486.7; the application was

[10] See the testimonial aids provisions (i.e. s.486(1), 486.1, 486.2, 486.3, 486.4, 486.5) in the *Criminal Code* (R.S.C., 1985, c. C-46) at https://laws-lois.justice.gc.ca/eng/acts/C-46/index.html
[11] *R. v K. (J.L.)*; *R. v Levac*; *R v Benjamin*
[12] See also *R. v K. (J.L.)*; *R. v Roper*
[13] Section 13 of the *Canadian Victims Bill of Rights* (S.C. 2015, c. 13, s. 2) states that: Every victim has the right to request testimonial aids when appearing as a witness in proceedings relating to the offence.

unopposed and could have been made under s.486.1, but Mack notes that, "it is not obvious that section 486.7 is the best fit as it requires a finding that the support is necessary for security purposes" (pg.4).

In *Roper*, the dog did not have a handler, so section 486.1 could not be used and the court relied on its inherent authority to control its proceedings to make such an order and stated:

> I note that here the animal is a pet and not a service animal. It has no special training. However, he obediently follows his owner's commands and will not be obtrusive, despite a lack of formal training. I appreciate that the judge has discretion to manage the conduct of matters in the courtroom. I am allowing the application and exercising my discretion to permit the complainant to have her pet lapdog with her while testifying. I understand the animal will ease her anxiety and assist with her testimony. In the words of s. 486.1 of the *Criminal Code*, the dog will assist in obtaining a "full and candid account from the witness of the acts complained of." (para.7)

Importantly, the dog in question was not a service dog or formal support dog, but rather the witness' pet. Mack notes that, in granting the application, which was unopposed, the court focused on the benefit to the witness and the court, not the "qualifications" of the dog (pg.5).

There were no reported cases where the court denied an application for a dog to support a witness while testifying. The key issue appears to be under what authority the court can make such an order and there seem to be different options, with section 486.1 of the *Criminal Code* — the use of a support person — being the best fit.

Standards

In Canada, there are currently no *nationally* recognized voluntary or mandatory standards or regulatory bodies governing the use of animals to assist humans. While individual organizations have developed their own standards and undertake training and testing, there are no national or regional oversight bodies. In the spring of 2021, the Canadian Foundation for Animal-Assisted Support Services posted on its website Notices of Intent to develop four voluntary National Standards of Canada (NSCs) for animal assisted services to help protect consumers in this unregulated area. The proposed NSCs would apply to all types of services — therapy, activities, assistance and crisis response. For more information, please see the website.[14]

The need for guidelines and standards extends beyond Canada's borders. For example, the International Association of Human-Animal Interactions Organizations (IAHAIO)[15] is creating international guidelines for best practice in Animal Assistance Interventions. Building on the IAHAIO *White Paper Definitions for Animal Assisted Intervention and Guidelines for Wellness of Animals Involved* (published in 2014 and

[14] See https://www.cf4aass.org/consumers-and-end-users.html

[15] For more information, see https://iahaio.org/best-practice/international-task-force-for-standards/ . IAHAIO was founded in Toronto, ON, in 1990-94. Members are organizations and at this time, there does not appear to be any organizations from Canada in the membership.

revised in 2018),[16] IAHAIO has established an international, multi-disciplinary task force called "Standards of Best Practice in Animal-Assisted Interventions and Animal Welfare".

Research gaps and outstanding questions

The use of dogs to support victims and witnesses in the criminal justice system is a relatively recent phenomenon. Relevant empirical research is in its infancy, and there are numerous gaps and outstanding questions. For instance, no empirical studies examine the relative merits of the additional training that a facility dog receives in comparison to the training received by a therapy dog or ESA. The study by Spruin et al. (2019) on the effectiveness of dogs during trial focused on therapy dogs rather than facility dogs. When the witness knows the dog, are the results more beneficial than if the witness and dog have only just met? Rigorous Canadian research, with control groups, could also investigate the benefits — and the costs — of using dogs to support witnesses in civil justice matters such as high conflict family law cases.

Much of the existing research has focused on the use of dogs with child victims of sexual abuse, but Spruin et al.'s (2019) study demonstrates that the use of dogs in waiting rooms could also be effective in easing the symptoms of anxiety and stress among adult victims and witnesses. In terms of the developing case law across the country, will applications for the use of support dogs be made under section 486.1 with their handlers? Or will there be forceful arguments supporting other provisions? What practices are in place if someone in the court has allergies or is afraid of dogs? There are still some unexplored areas of research on the benefits of dogs in the criminal justice system.

Conclusion

In conclusion, this article sought to provide an update on the current social science research and case law regarding the use of dogs to support victims and witnesses in the criminal justice system — particularly in Canada, but also in other common law countries. The studies overwhelmingly demonstrate that dogs can alleviate the stress and anxiety commonly experienced by victims and witnesses during the criminal justice process. Studies also show that the use of dogs can lead to more complete and accurate testimony. Hopefully, with more research, the use of dogs to support victims and witnesses will continue to expand in "pawsitive" directions.

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COVID-19, Victim Services, and Well-Being

By Benjamin S. Roebuck and colleagues[17]

> The pandemic has made my job more difficult. When the courts closed, our case numbers doubled because cases were not being resolved. When the courts re-opened, me and my co-workers were drowning in our work… As we are generally the only people who are accessible to victims, we bear the brunt of decisions made by people in positions far above us... I now brace myself for every phone call because it will involve listening to lengthy complaints about the justice system. It has become more challenging to stay mentally well during the pandemic, as some of my strategies for self-care were thwarted. (Victim service provider)

Introduction

At both the individual and collective levels of society, extensive stay-at-home orders have exacerbated stress levels (Di Blasi et al. 2020), increased depression and anxiety (Fountoulakis et al. 2021), and have led to increases in financial instability (Wang et al. 2021). The lockdowns mandated during the pandemic have also magnified the challenges that victim service providers (VSPs) encounter when supporting survivors of crime (Allen and Jaffray 2020). The purpose of this article is to reflect on data collected from a national study on vicarious resilience (how repeated exposure to the resilience of survivors can help service providers build their personal resiliency) to better understand the experiences of VSPs and their well-being during the pandemic.

Impact on victims and survivors

Stay-at-home orders have intensified factors that contribute to intimate partner violence (IPV) and victimization, such as increases in financial hardship and tension within the home, as well as isolation from support networks (Allen and Jaffray 2020), especially for those living in marginalized or rural communities (Moffitt et al. 2020; Petrowski et al. 2021; Women's Shelters Canada 2020). These orders have also placed strain on families with children in the home (Gadermann et al. 2021). Gadermann et al. (2021) found that parents were concerned about their own safety and their children's safety due to emotional or physical abuse, coercive control, and increased alcohol use by perpetrators of IPV (Brabete et al. 2021). Social distancing has also prevented social gatherings causing further isolation for survivors (Slakoff et al. 2020).

Impact on victim services and victim service providers (VSPs)

Across the country, victim service organizations have had their caseloads change in varying ways (Allen and Jaffray 2020). Adaptations to service delivery models have had cascading effects on workplace demands and well-being among VSPs. For instance, the pandemic created an increased demand for

[17] This article was written through a collaborative process and included many people: Alyssa Ferns (Victimology Research Centre, Algonquin College), Hannah Scott (Ontario Tech University), Krys Maki (Women's Shelters Canada), Jacki Tapley (University of Portsmouth), Connar Tague, Diana McGlinchey, Theresia Bedard, Amy Boileau, Katherine Thompson, Areeba Ahmad, and Eloina Rodriguez (Victimology Research Centre, Algonquin College).

victim services, and while pandemic-related relief funds from agencies like the Canada Mortgage and Housing Corporation (CMHC 2021), the Department of Women and Gender Equality,[18] or the Public Health Agency of Canada (PHAC 2020) have been welcomed by service organizations, permanent funding has generally not increased sufficiently to meet the ongoing needs of victim services (Moffitt et al. 2020; Trudell and Witmore 2020; Women's Shelters Canada 2020).

The pandemic has created many staffing challenges for VSPs. Women's Shelters Canada (2020) found that the majority (78%) of women's shelters surveyed had struggled to maintain adequate staffing, often due to workers' childcare responsibilities during lockdowns or need to self-isolate. The same study found that VSPs who had to work on-site experienced an increased workload and were often required to perform additional tasks such as following enhanced cleaning protocols. This same study also found that Shelter workers reported greater feelings of isolation and decreased levels of support due to remote work during the pandemic (Women's Shelters Canada 2020). Similarly, Wood et al. (2020) found that since the start of the pandemic, many IPV and sexual assault VSPs in the United States experienced more professional and personal stressors, a decrease in perceived client safety, and an overall lack of resources to help clients and themselves. This same study reported that increases in video conferencing for work purposes contributed to workforce strain.

While the majority of the literature points to burnout, workplace strain, and other challenges facing service providers during the pandemic, two studies from the United States have found that the pandemic has led VSPs and their organizations to become more innovative and resilient, and to find strength and support through teamwork (Garcia et al. 2021; Posick et al. 2020). Garcia et al. (2021) found that IPV advocates felt that along with its many challenges, the pandemic also increased levels of resilience within themselves, co-workers, agencies, and communities, as well as deeper connections with some clients. Advocates noted that the pandemic contributed to increased innovation by agencies because new solutions were necessary to address client needs. Some participants discussed how agencies supported workers' needs by providing additional sick time, accommodating childcare needs, and allowing for scheduling changes to accommodate self-care (Garcia et al. 2021). To explore the impact of the pandemic on VSPs in Canada, a new study was undertaken, and this paper offers preliminary results.

Methods

Vicarious Resilience and Services for Victims and Survivors of Crime is a national study funded by the Social Sciences and Humanities Research Council (SSHRC) and approved by the research ethics board at Algonquin College. The study includes an online survey, focus groups, and in-depth interviews exploring themes related to the well-being of VSPs. This paper draws on early findings from the online survey, extracted from responses provided between October 4, 2021 and January 20, 2022. The online survey was distributed across Canada to VSPs and volunteers above the age of 18 using listservs, social media, research partner networks, and a victim services database provided by the Department of Justice Canada. Survey respondents (n = 564) were asked to respond to three COVID-19 specific questions:

1. How have your workload, number of clients, level of stress, work-life balance, and overall mental health been affected by the COVID-19 pandemic? Have they decreased, increased, or stayed the same?

[18] See Supporting Canadians experiencing gender-based violence during and beyond the COVID-19 pandemic - Women and Gender Equality Canada

2. Have you spent more time working from home during the COVID-19 pandemic as a service provider?
3. Is there anything else you would like to share with us? For example, how have you been affected by the COVID-19 pandemic, thoughts about the survey content, or other things we might have missed?

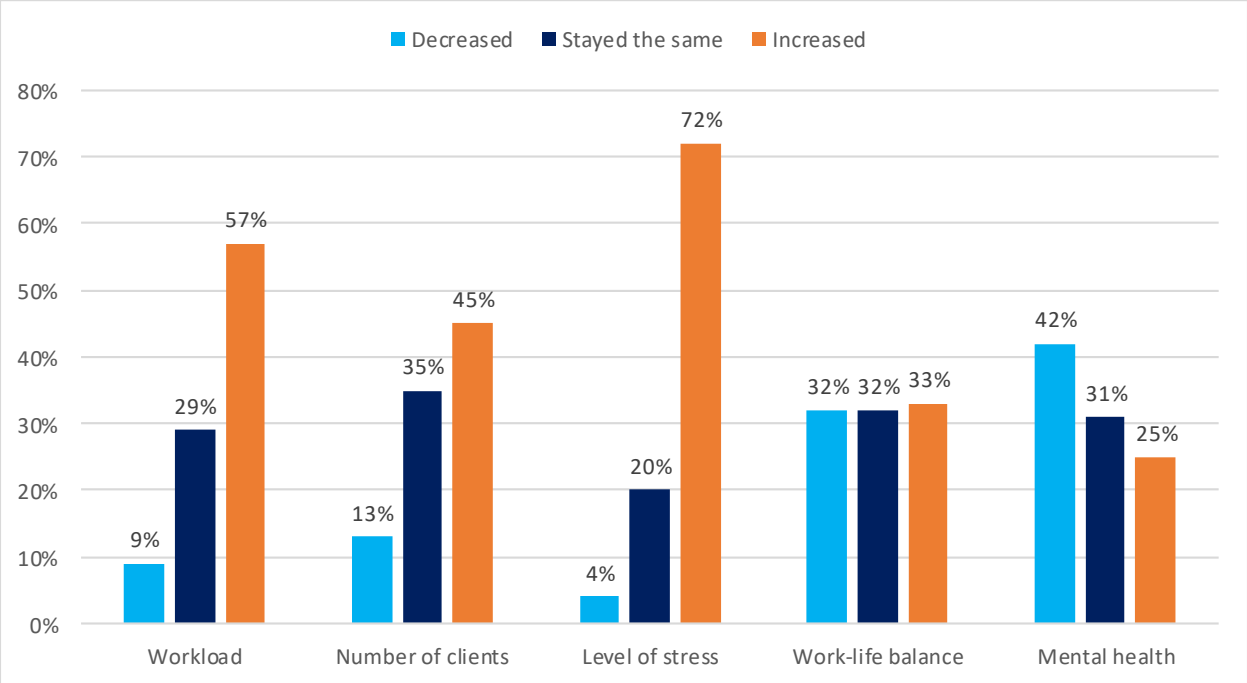
Table 1, included at the end of this article, presents an overview of the sociodemographic and organizational characteristics of study participants. Qualitative responses to open-ended questions in the survey were uploaded to ATLAS.ti and coded collaboratively by a team of five coders to allow for group discussions to strengthen reliability and improve the overall analysis (Miles et al. 2020).

Results

Analysis focused on two broad themes related to COVID-19: changes to service delivery, and how working from home has affected work-life balance and mental health. Figure 1 below highlights participants' perceptions of how the pandemic has affected their workload, number of clients, level of stress, work-life balance, and overall quality of mental health.

Figure 1

Perceived Impact of COVID-19 on Work and Wellness (n = 502)



Changes to service delivery

In the online survey, 57% of respondents indicated that their workload had increased (n = 288), and 45% said that their number of clients had increased (n = 228). Adapting to COVID-19 required a rapid shift towards online and remote service-delivery models, with some providers temporarily required to meet with clients outdoors. Participants expressed numerous challenges associated with working under these conditions. There were concerns about the quality of services available to survivors, such as reduced capacity at women's shelters or temporary relocation of clients because of COVID-19 distancing protocols, multiple court cancellations, delays in referral times, and reduced referrals to victim services by the police. Participants reported their agencies being short-staffed on busy days due to colleagues needing to self-isolate, or having to close their volunteer programs, which increased the burden on staff. One police-based VSP explained that their community-based victim advocates were no longer permitted to enter the building, effectively reducing their staff from 23 to 3 people.

Extended workloads and poor compensation

Participants also explained that their work had become more complex. One participant wrote: "COVID added a layer of complexity to every call." To make effective referrals, VSPs needed to be aware of the changes adopted by the criminal justice system and by community partners. Even shelter workers operating in facilities with reduced capacity spoke to this complexity. One shelter worker wrote:

> Although our intakes at the shelter have decreased since the pandemic, the individuals who do come in are experiencing complex issues. We don't have as many clients to work with within the shelter, but the work feels heavier and harder.

Overall, the most common safety concerns related to the toll from being chronically overextended. A manager in victim services wrote:

> COVID has reduced my and my team's resilience. We are burnt out. What is more concerning is that I don't know where or how relief is coming? How do we heal? When does the pressure let up? As a manager, I am very disheartened to have to ask my staff to continue to work this hard and for so little every day. We deserve respect, we deserve fair compensation, we deserve health and wellness, we deserve better.

This connection to the overall compensation, benefits, and support available to employees in the sector was echoed by many participants. Almost one third (30%; n = 152) of respondents working part-time or full-time reported dissatisfaction with compensation and job security. One person contextualized the highly demanding, low-paid work during the pandemic this way: "Tough work + Tough workplace + COVID 19 = Maybe I need to think about a career change." Some respondents were considering early retirement to escape the ongoing pressures of the pandemic on victim services, although at least one woman nearing her retirement age reported feeling stuck because she could not afford to retire.

One respondent described how the pandemic restrictions added complexities to the grief process of family members of homicide victims, who were not able to gather with family and friends to mourn their losses. Staff burnout had also been compounded by the losses of the pandemic. One respondent's team lead had died of COVID-19, and they described how difficult it had been for the rest of the team to

recover. VSP respondents reported feeling overburdened, tired, and feelings of disconnection between staff, volunteers, and community partners.

Several respondents commented on the inadequacy of government funding for their services. One person wrote: "The demand that has been placed on services like ours has shown how much we are relied on by the community with little to no support from government funders … the pandemic has shown a great discrepancy in government relations with transfer payment agencies." The juxtaposition of low pay with what one person described as "life-changing and life-saving" care for survivors was a common theme among comments. One participant acknowledged that government funding was made available for specific needs created by the pandemic, such as the purchase of computers and software to support virtual service delivery, but also explained that the time required to source, purchase, and set up new technology was very demanding and added to an already-increased workload.

Workplace safety

A few participants expressed concern about interacting with unvaccinated clients. One respondent wrote: "I feel I have been expected to perform my job at times in ways that made me feel unsafe." Another participant explained that clients were feeling frustrated because of pandemic-related barriers and that they were taking out their anger on staff and volunteers. One participant disclosed that they were considering leaving their position because vaccines were not mandated for workers or clients. A few mentioned disagreements with clients over the COVID-19 safety protocols of their agencies, and one respondent reported receiving death threats from a client.

Positive adaptation in the workplace

Still, some respondents acknowledged similar challenges while also expressing pride in their teams and what they had accomplished. One person wrote:

> Myself, and my crew, have worked on the front lines during the entire health crisis. Our caseload has increased by 40%, but our staffing is still the same. All of my people have stayed healthy and have been professional and loyal to our organization, themselves, and to the public.

Several people praised their teams for managing the complex changes in practices and safety protocols, and for finding ways to support each other virtually. Similarly, a few respondents highlighted how some of the pandemic-related adaptations may better meet the needs of survivors. One person explained:

> Zoom has allowed us to connect with people in honest and amazing ways, and all from the comforts of their homes, their living rooms, with their support animal or partner beside them. I hope we do not forget how powerful it is to let victims choose exactly how they want to communicate when this is all over, because I think it opened doors that had not been open in the past.

VSPs identified multiple ways that technology had removed barriers for survivors, allowing engagement from home without needing to book time off work, travel to an office, and pay for parking. A few respondents acknowledged that these adaptations may provide long-term benefits to some survivors, while not effectively meeting the needs of others, noting that a reliance on virtual service delivery

introduced different barriers, often for people with more complex needs.

How working from home has affected work-life balance and mental health

The majority of survey respondents working full-time or part-time indicated spending more time working from home during the pandemic (67%, n = 334). Almost three in ten VSPs who reported these increases also reported a decrease in their work-life balance (32%, n =159) and 42% (n = 211) reported that their overall mental health had decreased as a result of these changes. Over seven in ten (72%; n = 362) reported that their level of stress had increased. One respondent explained the increase this way:

> High turnover, pandemic-induced isolation, increasing demands and competing priorities make it difficult to work effectively and efficiently, adding to personal stress. Higher stress decreases ability to cope mentally with the psychological challenges of the job: vicarious trauma, compassion fatigue.

Respondents described how their mental health had been negatively affected by the pandemic, including feelings of isolation, disconnection, loss, and of frustration with the inefficiency of the system, and with increased levels of stress. One younger worker wrote:

> I am 24 and I have had to start going to a psychologist . . .He wants to take me off of work due to stress leave and I don't want to let my team down, so I won't. I have started depression medication and it has increased once so far in 3 months.

Conflicting roles and responsibilities

Participants described challenges transitioning rapidly from work-related tasks to life-related tasks, both during and after the workday, particularly if children were home due to lockdowns. One participant explained:

> Working from home while parenting, teaching, maintaining a house and relationship with your partner is NOT easy. It was not fair to anyone because I was a bad parent and a bad employee. I could not do both at 100% and this was shitty. I learned to let go and accept that work was secondary and my children needed me.

Others described feeling like work was “invading” their homes. Participants described finishing an eight-hour shift and jumping directly into supper, childcare, or housework duties, leaving little time to decompress. For many, this feeling was chronic, and many expressed that they had not been able to take time for themselves to the detriment of their mental health. One person explained:

> The isolation has had a major impact on my ability to decompress after work, and to compartmentalize. It has become much harder to separate home and work life/problems, because I no longer have two separate environments, or a "time to go home" routine.

Many respondents reported that the nature of their work – which often involves interacting with people in crisis or with trauma – made it difficult to work from home. Participants described difficulties negotiating and setting boundaries, accessing effective trauma debriefing, getting away from traumatic

content, and violations of their sense of home as a "safe space." Many participants reported feeling isolated from their teams when they had been personally affected by their work. One person wrote:

> I live alone, so working all day listening to the trauma of others and then not having someone to vent/speak to immediately was difficult. In an office setting I can hang up the phone and look at a co-worker. Working from home I could not. I had to wait until someone was available and by the time they were, I no longer wanted to vent/share what was on my mind.

Many echoed the challenges of effectively debriefing with co-workers. Having to either schedule a time, or have virtual meetings contributed to feelings of distance between staff members that made it more difficult to draw on these relationships for support.

Positive adaptation working from home

One third (33%, n = 167) of respondents remarked that they enjoyed working from home and that it had improved their work-life balance. Some participants also described how the challenges of the pandemic had prompted reflection, leading to new perspectives, greater self-awareness, or changes in practice and self-care. One person described how empathy for the challenges of survivors navigating the pandemic helped her recognize her own privilege and stay focused on her work. Another person described how the isolation helped them to place greater value on connection with others. Many people described how they had found ways, with time, to adapt their routines and approaches to work through reflecting on their priorities, trying out new methods of self-care, and having vulnerable conversations with their coworkers and personal connections. One respondent summed up these changes as follows:

> While I've been more critical of systems, I've also been more hopeful of the future. I've learned and witnessed the resilience of survivors in the face of oppression. I do sometimes feel hopeless when the system continues to reproduce similar outcomes, but that also gives me reason to keep fighting for the people I support.

For some respondents with children, greater access to family was an additional benefit. One participant offered:

> Personally, the pandemic had one really positive impact on myself and my children. We had a lot of home time together and it did us a lot of good. We connected and became closer and also had the opportunity to be continuously energized.

Some reported that the flexibility of working from home had reduced the pressures of family, which one person described as being "less frantic." Many echoed the idea that they had been able to slow down, and one person said that it was nice to work in a "positive space." Some workers in jobs with better compensation and benefits indicated that they had access to additional mental health support through their employee assistance programs (EAP), while other VSPs did not have access to an EAP.

Discussion

Much of the current literature is still lacking when it comes to investigating the effects of the COVID-19 pandemic on VSPs and their well-being, especially in the Canadian context. Due to ways the pandemic has increased risk factors for victimization such as IPV (e.g., Kaukinen 2020), leading to an increased demand for victim services (e.g., Allen and Jaffray 2020), it is necessary to explore how the pandemic has affected VSPs. Respondents in this study shared different perspectives on how they had been affected by working from home, with some finding it more flexible and healthier because the work happens in "positive space," while others found it more difficult because they felt the work was "invading safe space." These differences in how VSPs experienced working from home suggest the need for flexible and diverse approaches to service delivery after the pandemic, providing greater choice for VSPs and survivors about which environments are best suited to meet their needs. Additionally, the increased use of technology has introduced the possibility of survivors meeting with VSPs or participating in the criminal justice system virtually, surrounded by the comforts of home. For some, this offers a safer and more inclusive service environment, which is worth retaining post-pandemic, while it also introduces barriers for those without access to technology.

At the same time, many VSPs reported that working remotely can make it difficult for them to make meaningful connections to their teams that can foster well-being. Care must be taken to ensure that there are opportunities to connect, debrief, and celebrate successes. Many respondents noted changes in self-care routines, either for the better (working from home meant more access to available self-care resources) or for the worse (closures of gyms and places to socialize). In the absence of structural, organizational support, individualized self-care plans may not be enough to protect worker well-being. Employees with more organizational support, better pay and benefits, and access to EAPs may be better equipped to handle the stressors of working in the field. Work is underway on a toolkit, based on the wider findings of this study, to support the well-being of VSPs.

Critically, the early findings from the online survey highlight a disparity in the resources and compensation available to VSPs working in different sub-sectors of victim services, and there continues to be a need for relief and for strengthening of workplace supports for those in the most precarious positions, who are predominantly women (Trudell and Whitmore 2020; Women's Shelters Canada 2020). The findings also suggest that future government planning for public health crises and other disasters should better anticipate secondary harms, such as increases in violence, and plan to buffer the burden on VSPs who must respond to increased workloads and other complexities. Moreover, other Canadian research suggests that permanent funding for these organizations has not increased sufficiently to meet current needs and pandemic-related emergency funds do not address the shortfall (Moffitt et al. 2020; Trudell and Witmore 2020; Women's Shelters Canada 2020). The findings from this study also suggest the need for increased, on-going financial support to ensure that victim service organizations are equipped to meet the future needs of their clients.

Table 1

Sociodemographic and Organizational Characteristics of Study Participants

Demographic Variable	Number	%
Age (2021–2022)		
18–24	28	4.96
25–34	130	23.05
35–44	129	22.87
45–54	140	24.82
55–64	99	17.55
65+	34	6.03
No response	4	0.71
Total	**564**	**100**
Gender Identity		
Woman	498	88.30
Man	51	9.04
Two Spirit	4	0.71
Non-Binary/Genderqueer	4	0.71
Prefer not to answer	4	0.71
Other (“Femme” “Queer Femme”)	3	0.53
Total	**564**	**100**
Ethnic/Cultural Origins*		
First Nations, Inuit, Metis, or Indigenous Heritage	49	8.70
White/Caucasian	481	85.44
African, Caribbean, Black	15	2.66
Latin American	7	1.24
Arab	5	0.89
Asian - East (e.g. Chinese, Japanese, Korean)	6	1.07
Asian - South (e.g. East Indian, Pakistani, Sri Lankan, etc.)	16	2.84
Asian - Southeast (e.g. Vietnamese, Cambodian, Thai, etc.)	2	0.36
Asian - West (e.g. Iranian, Afghan, etc.)	2	0.36
Prefer not to answer	10	1.78
Other (please specify)	8	1.42

Total - multiple responses allowed

Province/Territory		
Newfoundland and Labrador	12	2.12
Prince Edward Island	10	1.77
Nova Scotia	22	3.90
New Brunswick	10	1.77
Quebec	51	9.04
Ontario	197	34.93
Manitoba	12	2.12
Saskatchewan	30	5.32
Alberta	77	13.65
British Columbia	115	20.39
Yukon	6	1.06
Northwest Territories	15	2.66
Nunavut	4	0.71
Prefer not to answer	3	0.53
Total	**564**	**100**
Type of Organization		
Government (federal, provincial, territorial, municipal)	206	36.52
Non-government (community-based)	337	59.75
Indigenous government or organization	11	1.95
Don't know	5	0.87
Prefer not to answer	5	0.87
Total	**564**	**100**
Type of Community Served		
Primarily Urban	143	25.35
Primarily Rural	83	14.72
Both Urban and Rural	282	50.00
Primarily Remote/Northern	52	9.22
Prefer not to answer	4	0.71
Total	**564**	**100**
Type of Organization*		

Domestic violence shelter or program	149	26.42
Sexual assault program or crisis centre	92	16.31
Child protection or child advocacy centre	88	15.60
Victim services (community-based)	201	35.64
Victim services (police-based)	146	25.89
Victim services (court-based)	92	16.31
Victim services (federal – CSC, Parole)	40	7.09
Restorative justice	68	12.06
Advocacy organization or association	67	11.88
Indigenous service	33	5.85
Peer support	22	3.90
Policy or research	16	2.84
Healthcare	13	2.30
Other (crisis lines, housing)	34	6.03
Prefer not to answer	7	1.24
Total - multiple responses allowed		

* *Note*. Included the instruction "Mark all that apply." Totals do not add up to 100%

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Review of the Internet Child Exploitation (ICE) Counselling Program in Ontario

By Jennifer Martin, Andrea Slane, Shannon Brown and Kate Hann

Introduction

This summary, commissioned by Justice Canada, presents the findings of a review of Ontario's Internet Child Exploitation (ICE) Counselling Program. The ICE Counselling Program is funded by the Government of Ontario[19] and facilitated by Boost Child & Youth Advocacy Centre (Boost CYAC). The Program provides referrals and funding for short-term counselling of victims of online child sexual exploitation (CSE) and their impacted family members (IFMs). The Program was established in 2010 as part of Ontario's Strategy To Combat Internet Crimes Against Children and remains the only one of its kind in Canada.

The review took place between May 2021 and February 2022. Former clients, their non-offending IFMs, counsellors, and ICE Counselling Program administrators participated in the review, which sought to understand the impact of the Program. The review aims to learn from their experiences to gather suggestions and recommendations.

Methodology

This review used a mixed-methods research design, consisting of surveys and individual interviews, to explore the impact, support practices, and administration of the Program. Data collection took place between May 24 and August 19, 2021. In collaboration with Boost CYAC, former clients, IFMs, counsellors, and administrators were recruited from across Ontario. In light of the restrictions related to COVID-19, all aspects of the review, including recruitment and data collection, occurred via telephone, email, or Zoom. All participants provided written consent and their individual identities and responses remain confidential.

In total, the researchers interviewed 20 participants: three former clients (one youth and two adults); four IFMs; ten counsellors; and three administrators. Given the small sample size, the results of the review are not generalizable to the experiences of all former clients, IFMs, counsellors and administrators. All participants provided consent to record audio of interviews, which were then transcribed and subjected to thematic analysis. The analysis was inductive and focused on development of themes according to the constant comparison method.[20] The findings were analyzed via an iterative and reflexive process to define and redefine codes and themes as they emerged from the data.

A primary goal in designing the review was to ensure that former clients of the Program were not traumatized or re-traumatized. A trauma-informed framework was used that directed ethical attention to ensuring the safety of all participants. To assess the short- and longer-term impact and value of participation in the Program, former clients and IFMs were asked questions related to their counselling experiences, and about the support, communication, attitudes, and circumstances that shape service delivery. At no point during the interviews were former clients or IFMs asked questions related to their trauma. Participation in research that is conducted virtually may cause distress to former Program clients who experienced exploitation via technology. Thus, in addition to the careful adherence to a

[19] As of January 1, 2022, the program was transferred from the Ministry of the Attorney General to the Ministry of Children, Community and Social Services.

[20] Glaser, B., & Strauss, A. (1967). The Discovery of Grounded Theory: Strategies for Qualitative Research. Sociology Press.

trauma-informed framework, recruitment was restricted to former clients currently over the age of 13 years, who were deemed to be better able to decide whether to participate in an online format.

To structure the review, Justice Canada provided five questions asking about: the value of the Program; challenges, including those presented by the COVID-19 pandemic; suitability of the approaches to counselling the Program provided to victims and their IFMs, along with any best practices or guidelines for counselling, training and supervision used or recommended by counsellors; improvements that could be made to the administration of the program; and which aspects of the Program may be worthy of replication in other locations. The interview guide remained open and flexible so that participants could direct and determine the interview flow based on their own experience with the Program.

Summary of Findings

There was overwhelming support for the Program among all participants. The opportunity to address the unique harms experienced because of online CSE provided considerable value to victims and their families. Additionally, many participants praised the minimal wait time between referral and connection to a counsellor, as the wait time for other children's mental health services in Ontario is considerably longer. Counsellors, administrators, and IFMs also highlighted the importance of providing funding and counselling services to caregivers and other members of a victim's family, as it validated the significant impact that online CSE has on the family unit. Former clients, IFMs, counsellors, and administrators all shared instances where, as a result of the Program, victims and IFMs were able to establish safe and trusted relationships with their counsellors, which are vital aspects of treatment. Counsellors and administrators described many examples of how they have been able to provide highly beneficial services to clients and IFMs. As one former client stated, "it was very beneficial to me and it's forever going to have me looking at the positive and not focusing on the bad that happened in my life." IFM participants appreciated guidance on how to support their child, with one stating, "it did help…because they are showing you and explaining to you how things will work better for you if you say something or do something or show [your child] how it should be." All counsellors expressed strong support for the Program and were grateful to be a part of it.

Suggestions for addressing challenges and making improvements arose from the participants' discussion of their experiences, as well as their reflections on which aspects of the Program they would recommend if the program were ever able to be offered elsewhere. Participant suggestions included: improving awareness of the Program and its scope; requiring counsellors to work within a trauma-informed framework; providing specialized clinical training and supervision specific to trauma-focused, short-term counselling for victims of online CSE; providing optional psychoeducation and orientation to new clients and their IFMs; enhancing funding for victims and families who need more counselling; providing a choice of virtual or in-person counselling; enhancing administrative infrastructure; and improving invoicing systems.

Participants' views differed on the best approach to counselling victims of online CSE and their IFMs. Most participants indicated that clinical experience addressing trauma was essential. Many counsellors suggested that Program counsellors would benefit from additional training and guidance about how to conduct short-term counselling in a way that addresses general trauma as well as trauma experienced specifically by victims of online CSE. Several counsellors discussed the challenges related to making the best use of the limited number of sessions provided under the Program, especially for clients likely to require longer-term counselling. Some counsellors suggested better access to specialized clinical supervision and peer support: one suggested a peer network of trauma-specialized clinicians; one

suggested that supervisors should have additional crisis-intervention training; and one stated that it would be important to receive clinical supervision from supervisors who had experience with victims of online CSE.

All counsellors and administrators further stressed the need to employ a trauma-informed framework, which recognizes that clients may be traumatized or re-traumatized by treatment approaches or service provision that is not sensitive to the variable effects of trauma, particularly trauma as a result of online CSE. Counsellors and administrators all reported that they were sensitive to these requirements, and that the suggestions they offered could increase their ability to provide trauma-informed services to victims of online CSE.

Conclusion

The review provided a detailed, rich description of many aspects of the Program. It identified which elements work well and where improvement is needed, and inspired recommendations for the development of best practices. With this aspirational goal in mind and based on the findings, the researchers conclude that investing in professional development and clinical supervision for ICE counsellors is an important means to achieve the best possible outcomes for victims of online CSE and their IFMs. This would facilitate the development of a specialized community of practice able to provide specific trauma counselling to victims of online CSE. Such a community could foster the further development of an evidence base, currently lacking in both the academic and clinical literature, that would lead to establishing and confirming best practices. A strong professional support network could further serve as a means to recruit and retain counsellors to this challenging area of practice.

All participants praised Ontario's ICE Counselling Program as a crucial support in the healing process of victims of online CSE and their IFMs. The suggestions made for improvement were offered in the spirit of striving for the best possible outcomes for victims of online CSE and their families.

Impact Statements at Sentencing: Developments since the *Victims Bill of Rights*

By Marie Manikis[21]

Introduction

In Canada, while victim and community impact statements (VIS and CIS) have been around for decades, the *Victims Bill of Rights Act*[22] (VBRA) amended the *Criminal Code of Canada*[23] (the *Code*) in 2015 to add new provisions to the existing VIS regime, including forms to specify the content and form of these statements, and introduced community impact statements (CIS) within legislation. This article discusses some of the Canadian legal developments in this area since the enactment of the VBRA and provides an update of national and international developments since the 2012 and 2019 issues of the *Victims of Crime Research Digest,*[24] and a previous chapter on sentencing.[25]

1.0 Victim Impact Statements: Recent Guidance from the Courts of Appeal

1.1 Framework

The 2013 *Berner*[26] decision by the Court of Appeal of BC sets out a number of key guiding principles and limitations to VIS. Firstly, the Court emphasized that VIS must further the purpose of determining a just sentence by keeping in mind the objectives of sentencing under section 718 of the *Code*, namely denunciation, deterrence, incapacitation, rehabilitation, reparation, and acknowledgement of harm. Secondly, VIS must not contain material that distracts judges from sentencing, that appears to place value on the life of the victim over that of the offender, or that seeks to compensate grief through the imposition of a harsh sentence. The sentencing judge must be wary of the risk of valuing victims based on the strength of feelings expressed in the VIS. When such information is present, judges can either ignore it or have it excised by consent of Crown and defence.[27] Finally, since retribution (just deserts) is

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[21] The author is most grateful to Emilie Vaillancourt for her invaluable research assistance.

[22] *Victims Bill of Rights Act*, SC 2015, c. 13 The *Victims Bill of Rights Act* (VBRA) was the name of former Bill C-32 (41st Parliament, Second session), which introduced the *Canadian Victims Bill of Rights* itself, as well as the many amendments to the *Criminal Code* and to the *Corrections and Conditional Release Act.* Since it was the VBRA that introduced the changes referenced in this article, this is the statute that will be referenced.

[23] *Criminal Code*, R.S.C. 1985, c. C-46.

[24] Marie Manikis and Julian Roberts, "Victim Impact Statements: Recent Guidance from the Courts of Appeal" (2012) *Victims of Crime Research Digest,* No. 12. Ottawa: Department of Justice Canada; Marie Manikis. "Victim Impact Statements: Recent Guidance from the Courts of Appeal" (2019) *Victims of Crime Research Digest,* No. 5. Ottawa: Department of Justice Canada.

[25] Marie Manikis, "Hearing the Victim at Sentencing" in David Cole and Julian Roberts, *Sentencing in Canada: Law, Policy and Practice* (Irwin Law, 2020)

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

[27] See *R v Denny*, 2016 NSSC 76; for a successful appeal for failure to do this: *Lacelle Belec c R,* 2019 QCCA 711; In *Chaulk*, the judge specified that the VIS form prohibits the victim from complaining about any individual "who was involved in the investigation or prosecution of the offence,"[27] but does not prohibit the victim from complaining about the offender.

an important sentencing rationale in Canada, VIS and CIS are relevant tools to assess moral blameworthiness and the seriousness of the offence in crafting a just sentence.[28]

Appellate and trial courts[29] have also acknowledged the judiciary's supervisory role under section 722(2) to inquire whether reasonable steps were taken to provide the victim with an opportunity to prepare a VIS. In *Espinoza-Ortega*,[30] the Court of Appeal of Ontario made clear that the trial judge rightly inquired about whether an opportunity was provided to victims to submit a VIS and delayed sentencing to allow the Crown to give the victim this opportunity. Finally in, *Boucher*,[31] the Court of Appeal of Alberta stated that the failure of the sentencing judge to specifically refer to each aggravating and mitigating factor, including the VIS, will not require appellate interference if the sentence is otherwise fit.

1.2 A flexible approach to VIS delivery

Prior to the 2015 amendments, the mode of delivery of VIS was not legislatively specified, giving rise to variation. For instance, in *MB,*[32] an e-mail was accepted as a VIS, on the basis that the *Code* allowed for flexibility and that no party objected. In *Berner*,[33] however, the British Columbia Court of Appeal concluded that the sentencing judge and Crown erred in allowing a photograph of the child victim and a video of a school performance to be shown. The Court stated that this material heightened emotions, carried the risk of unjust sentencing, and raised the victims' expectations that the tribute will influence the length of the sentence.

The 2015 *Code* amendments introduced Form 34.2 and methods of delivery under s. 722(4). These amendments allow for a flexible approach to reading[34] and various methods of presentation.[35] In *Morgan*,[36] however, the judge made clear that anything beyond the reading of the VIS, such as the use of photographs and video presentations, requires applications, with adequate notice to defence and the judge. Further, the VIS form specifically directs victims that their VIS may include a drawing, poem or letter if this helps them express how the crime impacted them and ancillary victims. Courts have been and continue to be receptive to these different means of delivery, including letters, drawings, poems, and photographs.[37] For instance, in *Holt*, the victim wrote a poem described by the judge as "eloquently

[28] See *R v Vienneau*, 2015 ONCA 898; *Denny, supra* note 27; *R v Pettitt*, 2021 ABQB 773 in which the VIS was used in the analysis of the "seriousness of the offence" (para 92); *R v Theriault,* 2020 ONSC 6768.
[29] *R v Aklok,* 2020 NUCJ 37; *R v Reid,* 2019 ONCJ 492.
[30] *R v Espinoza-Ortega*, 2019 ONCA 545
[31] *R v Boucher,* 2020 ABCA 208.
[32] *R v MB*, 2013 ONCA 493.
[33] *Supra* note 26. The BCCA could not say if the photograph and video affected the sentence. At paragraph 28, the Court said: "Despite our finding that the additional material should not have been admitted in this case, we are unable to accept that it affected the sentence imposed on the appellant."
[34] The *Criminal Code* allows victims to deliver the statement by reading aloud, in the presence of a support person, reading outside the courtroom by CCTV or behind a screen or in any other way the judge deems appropriate.
[35] See *Criminal Code,* Form 34.2.
[36] *R v Morgan*, 2016 CanLII 60965 (NL PC).
[37] Cases where judges have allowed letters include: *FD c R*, 2016 QCCA 173; *R c Roussy,* 2017 QCCQ 1318; *R v Braun*, 2018 BCPC 169; *R v Gibb,* 2020 ONSC 3548; *R v Greenlaw,* 2020 NSSC 47; *R v JKD*, 2020 BCPC 211; *R v Makuag,* 2021 ABPC 208; It was specified that letter sent directly to the accused do not meet the definition of VIS pursuant to 722 and, if counsel objects, may not be admitted (*R v Berseth*, 2019 ONSC 888); drawings: *R v Chol,* 2017 BCSC 1709; *R v*

and graphically"[38] capturing the impact of the attack on her. Similarly, in *Bouffard,*[39] a young girl provided drawings and photographs illustrating her reaction to the loss of her sister. In *Angus,*[40] the victim provided a verbal statement to the prosecution, authorized to be presented by the prosecution and considered by all to be a VIS.

The acceptability of videos in the context of VIS remains unclear. As seen in *Berner*, judges have been reluctant to permit videos due to the heightened emotions involved. However, in *Denny* in the context of CIS, a judge exceptionally allowed the presentation of videos when necessary "to properly place before the court a window into the community and the impact of the crime on that community."[41] In the context of VIS, courts may benefit from the limited research on videos in the United States to determine the risks involved in this method's emotional appeal.[42]

Finally, further clarification about the requirements of Form 34.2 would be needed. In *Solorzano Sanclemente*,[43] the defence objected to the VIS letter suggesting it was not in Form 34.2 as required by section 722(1) and (4) of the *Code*. The judge highlighted that this was clearly not the intention of Parliament given its recent enactment of the VBRA, which supports flexibility in VIS delivery, and substance rather than form. In its decision in *Lacelle Belec*,[44] the Quebec Court of Appeal stated that section 722(4) specifies that the statement needs to be drafted with the 34.2 form with the guidance provided by the BC Court of Appeal in *Berner* (paragraphs 24-25).

1.3 VIS as aggravating and mitigating evidence?

Most courts across the country have recognized that VIS evidence can be aggravating at sentencing. Appellate courts have either used VIS evidence as an aggravating factor,[45] or determined that it is not an error in principle for a sentencing judge to determine that the impact of a crime on the victim, as

DSA, 2017 NWTSC 22; *R v DR,* 2020 NSPC 46; *R v MRR,* 2021 BCPC 207; *R v Bouffard,* 2021 ONCJ 88; *R v Simms,* 2021 ONCJ 374; poems: *R v Dillon*, 2017 BCSC 1185; *R v Andrews,* 2017 ONCJ 178; *R v DL,* 2018 ONSC 3409; *R v Holt,* 2019 BCSC 774; *R v Sohal,* 2019 BCSC 2271; *R v Scalzo,* 2020 ONSC 6063; *R v Buuck*, 2020 NLPC 1319A00706, ; *R v Christopher,* 2020 ONCJ; *R v Chaulk,* 2021 NLPC 1319A00729; *R v Sivakumaran,* 2021 ONCJ 307; photographs: *R v Morgan,* 2016 CanLII 60965 (NL PC); *R v Sillars*, 2019 ONCJ 710; *R v Bouffard*.

[38] *Supra* note 37 at para 11

[39] *Supra* note 37

[40] *R v Angus*, 2020 BCPC 151.

[41] *Supra* note 27 at para 120.

[42] For further discussion on this issue see Marie Manikis, "Victim Impact Statements at Sentencing: Towards a Clearer Understanding of their Aims," (2015) 65:2 *University of Toronto Law Journal* 85; To date, research on this issue is scarce and has focused on VIS with mock jurors in death penalty cases in the United States. See Christine M Kennedy, "Victim Impact Videos: The New-Wave of Evidence in Capital Sentencing Hearings" (2008) 26 *Quinnipiac Law Review* 1069. It suggests that in that context, the emotional impact on the process is probably higher with videos and music than when statements are read by prosecutors.

[43] *R v Solorzano Sanclemente,* 2019 ONSC 695.

[44] *Lacelle Belec c R,* 2019 QCCA 711.

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

described in the VIS, is an aggravating factor.[46] It was highlighted that if it were otherwise, VIS would have limited utility and the legislative mandate to consider them at sentencing would be meaningless.[47]

Most judgments at the trial and appellate level have relied on section 718.2(a)(iii.1)[48] of the *Code* to justify the use of VIS evidence as an aggravating factor.[49] In *Quash*, the Court of Appeal of Yukon specified that this provision requires more than an acknowledgement of harm and judges must consider evidence that the offence had a significant impact as an aggravating circumstance.[50]

Furthermore, courts in several provinces have recognized ancillary harm[51] suffered by family members (or people who were close to the victim) as aggravating.[52] Most recently, in *Friesen*, the Supreme Court of Canada recognized the relevance of VIS ancillary harm in sexual assault of children, highlighting that, "In particular, victim impact statements, including those presented by parents and caregivers of the child, will usually provide the 'best evidence' of the harm that the victim has suffered."[53]

In Alberta, the question of aggravation remains unsettled. In *Deer*,[54] the Court of Appeal found that the trial judge erred in treating VIS evidence suffered by family members after a murder as an aggravating factor. It remains unclear whether the Court rejects all use of VIS evidence as aggravating or whether this rejection relates only to ancillary harm. This lack of guidance is also present at the trial level. Some judges have found that when the harm described in the VIS is not disputed, the facts in the VIS can be relied upon as aggravating circumstances.[55] By contrast, in *Krahn*,[56] the judge interpreted *Deer* expansively as prohibiting the general use of VIS evidence as aggravating. Similarly, in *Soosay*,[57] it was highlighted that a sentencing judge must consider VIS but approach them with caution and not as an aggravating factor, citing *Deer*. It argued that sentencing should not depend on the eloquence of survivors' statements or on whether a VIS was filed at all. In *Firingstoney*, the judge interpreted *Deer*

[46] *R v AG*, 2015 ONCA 159.
[47] *Supra* note 46.
[48] The *Code* was amended in 2012 to include an additional aggravating factor of sentencing under section 718.2(1)(iii.1). This section recognizes that "evidence that the offence has had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation" is a relevant aggravating factor.
[49] See e.g. *R v* Cossentine, 2019 BCSC 2097; *R v Krahn,* 2018 ABQC 587; *R v Sayers*, 2020 ONCJ 644. The *Code* was amended in 2012 to include an additional aggravating factor of sentencing under section 718.2(1)(iii.1).
[50] *R v Quash* 2019 YKCA 8 at para 29.
[51] See *R c Cook*, 2009 QCCA 2423 (Quebec); *Vienneau, supra* note 45; *R v Stubbs*, 2013 ONCA 514 (Ontario); *R v Bourque*, 2014 NBQB 237 (NB); *R v George*, 2016 BCSC 291 (BC); *Denny, supra* note 27 (Nova Scotia); *R v MacRoberts*, 2018 PESC 7 (PEI). This type of harm is referred to as "ancillary harm" and is discussed in greater depth in Julian V Roberts and Marie Manikis, "Victim Impact Statements at Sentencing: The Relevance of Ancillary Harm" (2010) 15:1 *Canadian Criminal Law Review* 1.
[52] Although ancillary harm was generally restricted to the context of homicides, courts have recently recognized ancillary harm in the context of attempted murder (*Vienneau, supra* note 45; *Stubbs, supra* note 51) and sexual assault (*MacRoberts, supra* note 51).
[53] *R v Friesen*, 2020 SCC 9, 391, para 85.
[54] *R v Deer*, 2014 ABCA 88.
[55] See *R v Klok*, 2014 ABPC 102.
[56] *R v Krahn,* 2018 ABQC 587. Similar comments were made in Ontario, in *R v AK*, 2020 ONSC 4727 in which the judge highlights the consideration of the VIS "for the purpose set out in the *Code* and not for any aggravating purposes in determining the sentence" (para 13).
[57] *R v Soosay*, 2021 ABQB 507.

more narrowly to prohibit ancillary harm, suggesting that "a family's loss, conveyed through [VIS], cannot be treated as an aggravating factor at sentencing"[58] while specifying that this reasoning does not ignore the aggravating factor at s. 718.2(a)(iii.1).

Courts have confirmed that the Crown must prove contested aggravating factors beyond a reasonable doubt. In *Racco*,[59] VIS information, containing medical diagnoses and records, was contested and rejected on the grounds that it had not been proven beyond a reasonable doubt. Similarly, in *BMS*, additional evidence was required to conclude that the level of psychological harm suffered by the victim amounted to a "violent offence" for the purpose of imposing a custodial sentence to a young offender.[60]

This evidentiary burden, however, is required only when the VIS is contested or when there is evidence to the contrary. Indeed, in BRS,[61] a sexual assault case, the Court of Appeal of Alberta specified that when the impact described in the VIS is not contested and in the absence of evidence to the contrary, VIS need not be proven beyond a reasonable doubt. Judges can rely on them as evidence of the actual impact on a victim of a (sexual) offence,[62] but can also discount part of it if the judge sees credibility issues with it.[63] Moreover, in contexts of guilty pleas where the agreed statement of facts and the information obtained by the Crown prior to the guilty plea are inconsistent with the VIS, the VIS is considered disputed and aggravating facts in the VIS must be proven beyond a reasonable doubt.[64]

Case law has also made clear that defence counsel play an important role in monitoring the content of VIS and that failure to raise issues with the VIS should be seen as an acquiescence. Nevertheless, the question remains whether the judge can find credibility issues with the statement when defence does not raise any objections. In *Fisher*,[65] the Court of Appeal of BC highlighted that when defence fails to challenge the VIS's admissibility or to cross-examine victims on their VIS for strategic reasons, then it is incumbent upon the judge to consider the statement in determining an appropriate sentence.

Conversely, in *Sayers*,[66] defence counsel did not present any objections related to the VIS, yet the judge raised credibility issues with some aspects of the statement. Ultimately, the judge decided to accept the VIS as an aggravating factor at sentencing, but discounted it to some degree for these issues.

While the question of whether a VIS can be used as a mitigating factor has not been confirmed, appellate cases have considered victims' views that support mitigation. In *Guerrero Silva*,[67] a victim of domestic violence wished that her abusive spouse not be separated from their child. The Quebec Court

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[58] *R v Firingstoney*, 2017 ABQC 343 at para 35.
[59] *R v Racco*, 2013 ONSC 1517.
[60] *R v BMS*, 2016 NSCA 35. The Court of Appeal relied on the two VISs, which spoke of shame, regret, and occasional anxiety but gave "no indication of any turbulent emotion or continued distress," as well as the short length of these statements (short bullet form and less than half a page) to conclude that the VISs do not suggest any impairment of function or serious consequence upon which an inference of psychological harm or serious psychological harm could be founded.
[61] *R v BRS*, 2020 ABCA 29
[62] Id.; see e.g. *R v Sayers*, 2020 ONCJ 644.
[63] *R v Sayers*, 2020 ONCJ 644.
[64] See e.g. *R v Nickerson*, 2019 ONCJ 756.
[65] *R v Fisher*, 2019 BCCA 33.
[66] *Sayers, supra* note 63.
[67] *R v Guerrero Silva*, 2015 QCCA 1334.

of Appeal interpreted this as forgiveness and recognized that case law considers this to be a relevant factor. It nevertheless highlighted that care was needed in domestic violence cases to ensure that forgiveness is expressed without undue pressure. The Court also highlighted that sentencing also has a societal denunciatory dimension which goes beyond the interests of the offender and the victim. It ultimately found that the victim's compassion towards the offender did not stem from external pressure, but that the sentencing judge placed too much weight on her wishes, underestimating the risk of future violence.[68] Interestingly, the Court did not perceive the victim's wishes as a sentence recommendation and reminded sentencing judges that victims' opinions of appropriate sentences are irrelevant and should neither be solicited nor considered.

Further, in *HE*,[69] victims of assault and sexual assault in the context of domestic violence indicated in their VIS that they hoped the respondent would get anger counselling. They did not want him incarcerated. Despite this recommendation from some of the victims, their opinion towards mitigation was not relied upon to craft the sentence; instead, the need for denunciation was retained to justify years of incarceration.

These decisions highlight that victims' wishes are sometimes considered relevant by the courts, but are not determinative when the evidence supports a greater need for denunciation. While the 2015 *Code* amendments codify existing case law, which allows victims to provide their views on sentencing in exceptional circumstances, these circumstances are not explicitly specified in the law, which makes it difficult to know which situations may warrant victim opinions.

A favourable reception of victim recommendations can be seen in contexts where victims endorse recommended restorative justice processes within Indigenous communities. In *Lariviere,*[70] a case relating to sexual assault, a VIS endorsed the restorative justice process and stated that justice had been served by the criminal conviction without the need for imprisonment. The judge highlighted that ignoring the recommendations of participants within the restorative justice process would "render nugatory the commitment and efforts of all the participants and it would undermine the circle keepers' goals of having the complainant and Mr. Lariviere continue to work on healing their relationship and act as guides for community members about appropriate behaviour and help other victims in the community to heal."[71]

Despite the VBRA's recognition that the victim's opinion can occasionally be relevant at sentencing, some judges continue to resist the idea of allowing victim recommendations,[72] particularly when they involve disproportionately severe sentences.[73] This issue was addressed in *BP*,[74] where the judge

[68] The court highlighted that around 30 infractions related to domestic violence occurred between July 2012 and August 2013.
[69] *R v HE*, 2015 ONCA 531.
[70] *R v Lariviere,* 2021 ABQB 432.
[71] *Lariviere, supra* note 70 at para 106.
[72] For instance, although the VBR has legislatively allowed for exceptions, the judge in *R v Theriault,* 2020 ONSC 5784 cited the older case law prior to the VBR (*R v Gabriel,* [1999] OJ No 2579 (QL)), to suggest that a CIS just like a VIS "should refrain from making sentence recommendations." (para 12).
[73] *Guerrero Silva, supra* note 67.
[74] *R v BP*, 2015 NSPC 34.

highlighted that the VBRA does not create a right for victims to recommend sentences, but that recommendations may be admissible if permitted by the court.

It remains to be seen the contexts under which opinions will be relevant. In *Bard,* the victim's opinion was heard on the duration of the prison sentence before eligibility for conditional release.[75] Similarly, in *PG*,[76] a case where the victim's VIS asked for the maximum sentence, the judge stated that while, "judges must be cautious in relying upon victims' views about the quantum of sentence, our system of sentencing has long invited community input on the issue of whether to delay parole eligibility for certain violent offences (…) and jury recommendations on parole following convictions for second degree murder. In this case, the interests of both society and the victim create a compelling need to denounce the Defendant's misconduct."[77]

2.0 Community Impact Statements

The 2015 amendments to the *Code* included a new CIS statutory provision that recognized their use at sentencing. Since 2015, 77 reported decisions — all but one from trial courts — have discussed CIS.

2.1 What is a recognized community?

Although courts have not explained how to define a community or identify a community's representative for the purpose of submitting a CIS, they have suggested a generous and liberal interpretation of section 722.2 be given to admitting CIS[78] as this section is "intentionally vague as to the definition of the affected community."[79] By reviewing case law, the author has found that discernible communities can be found in case law and generally fall into one of four categories. The first defines the community in relation to a particular neighbourhood, town or geographic area[80] and its representative is often a mayor.[81] The second defines the community in relation to aspects of employment, including the victim's work colleagues[82] or the professional community affected by the offence[83] and is typically represented by a supervisor and company representative.[84] The third category defines the community as a group with a particular identity marker.[85] Representatives of these communities seem to be either

[75] *R v Bard*, 2016 NBBR 160.
[76] *R v PG,* 2020 ONCJ 596.
[77] *PG, supra* note 76 at para 40.
[78] *R v DS,* 2019 MBPC 9.
[79] *R v Jonat,* 2019 ONSC 1633 at para 50.
[80] For instance, Hamilton's East End (*R v Nicholls*, 2015 ONSC 8136), Brampton (*R v Muzzo*, 2016 ONSC 2068), Pitt Meadows (*R v Hecimovic*, 2017 BCSC 1433), Savary Island (*R v Ferreira*, 2018 BCPC 142), and the Resort Municipality of Whistler (*R v Price*, 2016 BCPC 0216) were recognized as communities.
[81] See *Muzzo, supra* note 80; *Hecimovic, supra* note 80; *Price, supra* note 80.
[82] See *Muzzo supra* note 80; *R v Kakakaway*, 2017 BCPC 342; *R v SK*, 2015 ONSC 7649.
[83] *R v Baltazar*, 2021 ABQB 879.
[84] For supervisors, see *Muzzo, supra* note 80; for company representatives, see *Kakakaway supra* note 82.
[85] For examples of: Indigenous communities, see *R v Bushby,* 2021 ONSC 4082; the Muslim community, see *R v Brazau*, 2017 ONSC 2975; the LGBT community, see *Denny, supra* note 27.

individuals[86] or organizations[87] with identity markers and experience with activism within the community.[88] The fourth understands communities as individual victims with particular vulnerabilities who cannot be heard at sentencing and thus require proxies.[89]

2.2 CIS Framework

Parliament's recognition of CIS under the *Code* intended to give sentencing courts access to broader information about the impact of a crime than what was already available with individual victims.[90] CIS can provide useful context to properly understand the unique impact of an offence on communities in matters that might not otherwise be appreciable to people who are not from the community, as well as offer a way to discuss the lived experience of certain communities in local contexts[91] and help understand their needs.[92]

Courts have relied on the VIS framework to interpret the CIS regime, particularly since both VIS and CIS forms in the *Code* are similarly drafted. As is the case with VIS, CIS must not contain assertions of fact about the offence or offender, comments on the offender's character, or make recommendations about the sentence.[93] Inflammatory or problematic comments are usually redacted.[94] Courts have refused to consider certain forms of evidence as CIS, notably documents that fail to mention anything about the harm or loss suffered by the community, only give general information about the frequency of a class of offences, and do not refer to a specific offence — thus failing to conform to Form 34.3.[95]

Similarly to VIS, courts generally recognize flexible methods of delivery and forms of evidence as CIS, highlighting that form 34.3 of the *Code* recognizes flexibility by allowing drawings, poems and letters to describe the harm suffered.[96]

In *Denny,* a local community magazine and a YouTube video montage were presented to illustrate a memorial tribute made by the local community. Despite objections by the defence, the judge accepted these modes of delivery, highlighting that to the extent possible, CIS should be prepared and presented

[86] See *Denny, supra* note 27; Chiefs or Managers in the Indigenous community context, see *R v Jongbloets*, 2018 BCSC 403; *R v EJB*, 2018 BCSC 739.
[87] See *Brazau supra* note 85; *Bushby, supra* note 85 included CIS from three Indigenous organizations.
[88] For instance, in *Denny supra* note 27, the judge noted that the individual representing the LGBTI community had advocated for this community in many capacities, had done so for a long time, and thus was recognized publicly as a flag bearer for that community.
[89] *R v Laplante,* 2021 NWTSC 29 in this case the Canadian Centre for Child Protection represented the community of individual victims of child pornography who cannot be heard at sentencing (due to their large amount, cannot be tracked, and are young).
[90] *DS, supra* note 78*; R v Bartley,* 2021 ONCJ 360.
[91] For instance, in *Bushby, supra* note 85 statements discussed the lived experience of Indigenous citizens and the impact of targeted racist behaviours; In *R v Theriault,* 2020 ONSC 5784, the importance of contextualizing harm and impact.
[92] *R v Thorn*, 2021 YKSC 30.
[93] *Denny, supra* note 27 at para 115.
[94] E.g. *Theriault, supra* 91 at para 28-29 calling police "paid assassins."
[95] *R v Ali*, 2015 BCSC 2539.
[96] *Denny, supra* note 27.

like VIS, but that circumstances may arise where one person cannot fully articulate the impact on the community or that it may be better to communicate this impact in an unorthodox matter.

Further, in *Teck Coal Limited*,[97] the judge allowed illustrations by artists to symbolize their relationship with the environment. In addition, statements that discuss systemic issues, such as racism, and calling for systemic changes are considered admissible as CIS.[98]

More recently, surveys by survivors of child sexual abuse and pornography are increasingly admitted as part of CIS to share the collective voice of certain victims,[99] enabling judges to appreciate the nature and gravity of offences and their impact.[100] For instance, in *AAJT,* despite objections by defence about the general nature of these accounts, the judge decided that it offered a fair representation of the community most directly impacted by the criminal activity and was the only practical or realistic way of getting this kind of information before the court, as survivors are unlikely to testify at sentencing hearings about the sexual abuse they suffered and the continuing dissemination of images.

3.0 Developments on VIS in common law jurisdictions

3.1 England and Wales

In England and Wales, *Perkins*[101] clarified the framework and limitations of VIS,[102] including their purpose, form, and content. This decision is cited authoritatively in many cases and was recently complemented by *Chall*[103] and *Panta.*[104] Similar to the Canadian approach, VIS constitute evidence and must be legally treated as such. The responsibility for presenting admissible evidence remains with the prosecution, which can be challenged in cross-examination and give rise to disclosure obligations.[105] Victims have the choice to make these statements and their absence should not be considered as absence of harm.[106]

Greater credibility and weight seems afforded to VIS when medical evidence is presented,[107] especially evidence supporting psychological harm.[108] Accordingly, statements may contain facts, expressions of a

[97] *R v Teck Coal Limited,* 2021 BCPC 118.
[98] *Theriault, supra* note 91.
[99] *R v AAJT,* 2021 MBQB 3; *R v Nepon*, 2020 MBPC 48.
[100] *AAJT, supra* 99; *Jonat, supra* note 79 at para 49.
[101] *Perkins v R*, 2013 EWCA Crim 323.
[102] In England and Wales, VIS are referred to as Victim Personal Statements and aspects of this framework can be found in the Joint Agency Guide https://www.cps.gov.uk/legal-guidance/victim-personal-statements, the Practice Direction by the Lord Chief Justice, [2013] EWCA Crim 2328, as well as the Code of Practice for Victims of Crime (London, 2021).
[103] *R v Chall*, [2019] EWCA Crim 865.
[104] *R v Panta*, [2020] EWCA Crim 633.
[105] This is also similar to the Canadian approach, although cross-examination in Canada is not automatic and limited to the air of reality test. See *R v VW*, 2008 ONCA 55.
[106] *R v Allen*, [2021] NIJB 407.
[107] *R v Sargent-Doree,* [2021] EWCA Crim 1456.
[108] *R v Baker and another,* [2020] EWCA Crim 176.

deeply personal nature, and other incontrovertible evidence.[109] The Court pointed out in *Chall* that there is always a risk that the raw emotion expressed might be exaggerated or unintentionally overstated. The Court also stated that if a judge is going to rely on a statement of this sort to justify a leap in the categorization of a sentence, then this needs to be explained in the sentencing remarks.[110] Similarly, in *Panta*, the Court made clear that judges need to explain steep increases in sentences when relying on statements that are not supported by further evidence in order to ensure that they are not afforded disproportionate weight. Failure to provide such explanations resulted in a successful appeal even if the statement was well written.

Although victim opinions regarding the sentence are irrelevant under the Crown Prosecution Service guidelines,[111] some cases have considered victims' merciful views as mitigating.[112] Similarly, in *Roche,* the Court of Appeal suggested that a court can never become an instrument of vengeance, but can "in appropriate circumstances, to some degree, become an instrument of compassion."[113] Finally, in *Perks*, the Court of Appeal stated that victims' opinions should generally not be considered, except (i) where the sentence passed on the offender is aggravating the victim's distress, and (ii) where the victim's forgiveness provides evidence that their psychological or mental suffering must be much less than would normally be the case.[114]

3.2 Australia

In Australia, recent case law has also addressed evidentiary issues related to aggravation, agreed facts, the distinct language of VIS, and the consideration of ancillary harm. On certain issues, it appears more restrictive than case law in Canada.

As in Canada, Australian courts require proof beyond a reasonable doubt when the VIS contains contested aggravating evidence.[115] When the defence does not contest, there is generally no difficulty if the Court relies on VIS information confirmed by other sources. Problems arise when the defence does not contest, but evidence is adduced that can significantly aggravate the sentence. In these situations, judges are instructed to notify the defence and allow an opportunity for challenge.[116] This greater judicial intervention departs from the adversarial model and is not seen in other common law jurisdictions.

Further, in *Gagan,*[117] the court made clear that there can be difficulties in the use of VIS where their content is the only evidence of harm — cautioning against the use of their content as an aggravating factor. The importance of corroboration was highlighted in *Hardwick.*[118] Accordingly, failure to

[109] *Panta*, *supra* note 104.
[110] *Chall, supra* note 103
[111] See footnote 102.
[112] *R v Nunn*, [1996] 2 Cr App R (S) 136, 140.
[113] *R v Roche*, [1999] 2 Cr App R (S) 105.
[114] *R v Perks*, [2001] 1 Cr App R (S) 19.
[115] *R v Tuala*, 2015 NSWCCA 8.
[116] *JWM v Tasmania*, 2017 TASCCA 22; *Hardwick v Tasmania*, 2020 TASCCA 2.
[117] *Gagan v The Queen*, [2020] NSWCCA 47.
[118] *Hardwick, supra* note 116.

corroborate with expert evidence, reports or other evidence would need to be met with a degree of circumspection, especially in matters of psychological injuries.[119] It was also argued that aggravating evidence needs to establish substantial additional harm over and above that which is inherent in the offence.[120]

In *Dimitrovska*,[121] the Court of Appeal highlighted the subjectivity of VIS and stated that they can only be used to provide information about the general effect of the injury, rather than about more specific effects. When more specific elements are adduced, such as prognoses, evidence from a qualified expert is necessary. Further, it was decided that VIS would lose much of their force and benefit if expressed in language used by lawyers. It is therefore acceptable for VIS to be imprecisely or ordinarily expressed.

Finally, as with some of their Canadian counterparts, Australian courts highlighted the importance that VIS be consistent with facts agreed to by the parties and with the charges laid.[122] They also recognized ancillary harm and expanded[123] its recognition beyond cases of homicide. Courts held that, given the broad definition of harm, the statute includes the harm suffered by a family of a young child who is the primary victim, even if death has not occurred.

3.3 United States

The American VIS regime has notable differences from most common law jurisdictions. In *Bosse*,[124] the Supreme Court considered it an error to allow victim recommendations to the jury about the sentence in a death penalty case. This question remains unsettled, since a State Supreme Court[125] held that *Bosse* does not apply to noncapital proceedings. It stated that the dangerous uses of a victim's recommendation by a jury in a capital murder trial are not present in noncapital sentence proceedings before a neutral and impartial judge. If this approach were to apply, it would differ from common law jurisdictions that generally do not allow for sentencing recommendations.[126]

Recently, in *George*,[127] and contrary to most of the common law, the judge decided that disclosure of the VIS to the defendant was not required and thus defendants are not entitled to review VIS in advance.

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[119] *Hardwick supra* note 116*;* In *BR v The Queen,* 2021 NSWCCA 279 corroboration was not mentioned.
[120] *Gagan v The Queen*, 2020 NSWCCA 47.
[121] *Dimitrovska v Western Australia*, 2015 WASCA 162.
[122] *Carter v Firth,* 2020 NTSC 62
[123] *R v GE*, 2014 ACTSC 181.
[124] *Bosse v Oklahoma*, 580 U.S. (2016); This was supported in *United States v George*, 477 F.Supp.3d 532 (2020).
[125] *Commonwealth v McGonagle*, 478 Mass. 675 (2018).
[126] See discussion above about sentencing recommendations in Canada. Although the VBR has legislatively allowed for exceptions where recommendations are allowed, *R v Theriault,* 2020 ONSC 5784 and others have cited the older case law prior to the VBR (*R v Gabriel,* [1999] OJ No 2579 (QL)), to suggest that a CIS — just like a VIS — should not include sentencing recommendations. See also discussion above about England and Wales, which generally consider opinions about the sentence to be irrelevant under the CPS guidelines and case law.
[127] *United States v George,* 477 F.Supp.3d 532 (2020).

Finally, it was recently held that a sentencing judge has broad discretion to admit and consider victim evidence in forms outside of the bounds of VIS and victim impact testimony.[128] Contrary to the ambiguity in Canada, the judge made clear that videos are part of these accepted forms.

Conclusion

In conclusion, domestic and international case law has evolved considerably since the enactment of the VBRA, which introduced the *Canadian Victims Bill of Rights* and made many amendments to the *Code*. Although courts have offered some clarity throughout the years regarding the recognition of VIS and CIS as evidence, additional guidance and greater consistency across the provinces would be helpful. Further reflections and research on conceptions of harm, assessing credibility, and the impact of emotions in the criminal process would contribute to a better understanding of victim and community participation in the criminal process.

[128] *Lopez v Maryland*, 468 Md. 164 (2018).

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Restitution: An Update on the Numbers

By Susan McDonald and Naythan Poulin

Background

The 2021 issue of *Victims of Crime Research Digest* featured an article about restitution case law from 2015 to 2020 (Dhanjal and McDonald 2021). In the article, the authors note that "restitution — or compensation, as it was previously called — has been part of Canada's *Criminal Code* since its inception in 1892." (Ibid. 45)

The *Canadian Victims Bill of Rights* (CVBR) came into force and effect in July 2015. Sections 16 and 17 of the CVBR state:

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

The authors further note that: "Since 1892, many relevant amendments have been made to the *Code,* such as: changing the term 'compensation' to 'restitution' to better distinguish elements of sentences from payments by the state; including restitution orders in conditions of probation or conditional sentences; and expanding the damages that can be claimed. In July 2015, along with the CVBR,[129] a number of amendments to the restitution provisions in the *Criminal Code* came into effect, including: requiring judges to consider all requests for restitution; requiring judges to include in their decisions the reasons for not granting requests for restitution; the establishment of a standardized form (Form 34.1 in Part XXVIII of the *Criminal Code*) that victims can use to request restitution; requiring judges to ask prosecutors if victims have been given the opportunity to request restitution; and requiring judges to ignore the offender's financial means or ability to pay when considering restitution orders."[130] (Dhanjal and McDonald 2021, 45)

The authors considered only appellate level cases heard between March 2015 and December 2020, a total of 39 cases mostly from the Courts of Appeal in Ontario and British Columbia. For the most part, the case law mentioned neither the CVBR nor the right to request restitution. The New Brunswick Court of Appeal in *Moulton v R*, however, stated that the amendments to the restitution provisions in the *Criminal Code* made "inapplicable any restraint or caution courts may have believed they needed to exercise when considering a restitution order" (paragraph 31). According to the Court, these newly enacted provisions sent a "clear legislative message" that restitution must be considered during the sentencing process and, as such, the use of caution and restraint is no longer necessary.

In the current article, data on restitution orders made at sentencing are presented to understand: their frequency before and after the CBVR came into force; for which types of offences they are ordered; and

[129] The *Victims Bill of Rights Act* was the name of former Bill C-32 (41st Parliament, Second session), which introduced the CVBR itself, as well as many amendments to the *Criminal Code* and to the *Corrections and Conditional Release Act.*

[130] This short summary does not include all the amendments to the restitution provisions. For the current restitution provisions in the *Criminal Code*, please see https://laws-lois.justice.gc.ca/eng/acts/C-46/index.html

whether there are differences across jurisdictions. In addition, this article includes descriptions of some provincial restitution programs.

A restitution order is considered a monetary penalty which a judge may impose as part of a sentence. They can be stand alone orders, or orders that are tied to probation conditions or conditional sentences. There are some key differences between the first and the latter two orders. Because the amount requested by the victim must be readily ascertainable and does not account for pain and suffering or other intangible costs, restitution is most often ordered in cases of fraud or theft. As can be seen in Table 3 below, it is less often ordered in cases of violence, or where a custodial sentence is imposed. The following section presents data to understand the effectiveness of restitution orders before and after the introduction of the CVBR.

Statistics

Statistics on restitution were provided by the Integrated Criminal Court Survey (ICCS). The ICCS combines both the Adult Criminal Court Survey and the Youth Criminal Court Survey, and is administered by Statistics Canada's Canadian Centre for Justice and Community Safety Statistics (CCJCSS). The data presented are limited to the numbers and type of restitution orders by jurisdiction (Table 1), the numbers and types of restitution orders for those with federal sentences by jurisdiction (Table 2), and by the types of offence by jurisdiction (Table 3) for fiscal years 2010–11 through 2019–20.

NOTE: Many of the jurisdictions have reported that the numbers presented in this article from the ICCS are an undercount of the restitution orders made in their jurisdiction. Future work will fully explore this undercount.

In Table 1 below, the annual numbers have been grouped into pre-CVBR and post-CVBR for ease of presentation. Please note that the CVBR came into force and effect on July 23, 2015, but the data for that fiscal year have not been adjusted and the first quarter (April-June) of 2015–16 is captured in the post-CVBR group. Nonetheless, with the exception of the Yukon and Nunavut, the number of restitution orders made in each jurisdiction in the post-CVBR time period is less than prior to the CVBR. These data show that the absolute number of restitution orders made has decreased by 17% after the introduction of the CVBR in 2015. However, by looking at the percentage of cases with and without a restitution order (data not shown), it is possible to determine that the percentage of cases with and without a restitution order remained stable over the 10 years of data

Table 1. Number and type of restitution order made by jurisdiction, 2010/11 to 2019/20

	Pre-CVBR (2010/11 - 2014/15)				Post-CVBR (2015/16 - 2019/20)			
	Stand alone order	Order with conditional sentence	Order with probation	Total by jurisdiction	Stand alone order	Order with conditional sentence	Order with probation	Total by jurisdiction
NL	528	0	0	528	493	0	0	493
PEI	304	10	518	832	203	8	521	732
NS	2,321	155	443	2,919	1,821	125	326	2,272
NB	287	224	1,533	2,044	302	169	1,068	1,539
QC	921	0	1	922	416	0	0	416
ON	15,476	24	119	15,619	12,576	12	55	12,643
MB	6	0	0	6	6	0	0	6
SK	3,443	70	42	3,555	3,017	28	24	3,069
AB	4,224	0	0	4,224	3,960	0	0	3,960
BC	1,869	0	0	1,869	1,650	0	0	1,650
YT	77	0	0	77	125	3	13	141
NT	151	0	0	151	124	0	0	124
NU	82	0	0	82	115	0	0	115
Total:	29,689	483	2,656	32,828	24,808	345	2,007	27,160

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey.

Table 2 below presents the number of restitution orders made with federal custody sentences (those more than two years in duration) both pre- and post-CVBR.

Table 2: Number and type of restitution order for those with federal custody sentences, by jurisdiction, 2010/11 to 2019/20

	Pre-CVBR (2010/11-2014/15)			Post-CVBR (2015/16-2019/20)		
	Stand alone order	Order with probation	Total by jurisdiction	Stand alone order	Order with probation	Total by jurisdiction
NL	4	0	4	7	0	7
PEI	9	1	10	5	2	7
NS	63	2	65	44	2	46
NB	14	0	14	14	1	15
QC	5	0	5	0	0	0
ON	105	0	105	110	0	110
MB	0	0	0	0	0	0
SK	26	0	26	35	0	35
AB	71	0	71	78	0	78
BC	42	0	42	34	0	34
YT	0	0	0	0	0	0
NT	0	0	0	0	0	0
NU	0	0	0	0	0	0
Total:	339	3	342	327	5	332

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey.

According to Table 3, crimes against property represent the most common type of offence for which restitution orders are made (n=48,321, 80%), followed by crimes against the person (n=5,288, 9%), administration of justice (n=2,985, 5%), other *Criminal Code* offences (n=2,958, 5%) and federal statutes (n=342, 1%). Fraud and theft fall into the broad category of crimes against property; across all jurisdictions, these two offences consistently have the largest numbers of restitution orders. These statistics are consistent with previous Canadian analyses of restitution orders by type of offence. For example, McDonald (2009) looked at restitution orders made between 1994 and 2007, and found that crimes against property also represented 80% of all orders.

Table 3: Number of restitution orders by type of offence by jurisdiction, 2010/11 to 2019/20

	Crimes against property	Crimes against the person	Admin of justice	Other Criminal Code offenses	Other federal statutes	Total by jurisdiction
NL	929	34	11	40	7	1,021
PEI	1,333	99	51	65	3	1,551
NS	3,962	515	414	279	10	5,180
NB	2,869	328	213	156	9	3,575
QC	693	246	152	83	162	1,336
ON	23,083	2,621	1,000	1,503	46	28,253
MB	5	1	4	2	0	12
SK	5,260	391	635	255	44	6,585
AB	6,678	710	364	375	42	8,169
BC	2,959	285	112	148	13	3,517
YT	137	34	11	40	1	223
NT	240	13	15	6	1	275
NU	173	11	3	6	4	197
Total:	48,321	5,288	2,985	2,958	342	59,894

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey.

Restitution Programs in Canada

The provinces and territories are responsible for the administration of justice and this, in general, includes the collection of monetary penalties such as fines, restitution, and federal, provincial and territorial surcharges. With stand-alone restitution orders, however, victims are normally responsible for directly obtaining payments from offenders, since restitution orders are made out to victims rather than to the state. In cases where restitution orders are part of the conditions of probation or of a conditional sentence, provincial and territorial probation and community correction officers can supervise the payment of restitution to the court, which then forwards the payment to the victim. Additionally, an offender who has a restitution order tied to probation or a conditional sentence may face further criminal prosecution if they breach any of the conditions, meaning if they do not pay their restitution orders (McDonald et al. 2010). Victims can file their restitution orders in civil court and pursue payment through civil-enforcement tools such as garnishing wages, seizing property or putting a lien on a property.

A bit of history helps to understand why victims must resort to civil justice to pursue their restitution. In 1988, former Bill C-89 sought to create a criminal enforcement scheme for restitution orders. After much study, it was determined that the costs and operational implications of former Bill C-89 would outweigh its potential benefits. Former Bill C-89 never came into force; Parliament decided to expand and support existing civil enforcement schemes (McDonald 2009).

The enforcement of restitution through civil courts can be a stressful, time-consuming and financially strenuous experience for victims. According to a Dutch study, civil litigation as a means for obtaining restitution was overall a disappointing experience for 36 victims who sought payments from offenders. In the study, victims listed the high estimated legal costs, the relatively low probability of a successful payment, and the emotional burden associated with civil court as major deterrents for proceeding with civil cases. Ultimately, the study found that civil litigation created "severe obstacles and limited chances of effective recovery" and that the desire for victims to participate in the process of recovering restitution from offenders decreased considerably when civil litigation was the only option provided (Hebly, Dongen and Lindenbergh 2014).

The obstacles encountered by victims and the limited effectiveness of payment recovery by civil litigation is also reflected in statistical findings. In the United States, federal judges issued approximately $33.9 billion in restitution orders between 2014–2016. Out of the total amount, only $2.95 billion has been collected, which represents a collection rate of 9% (Waterman 2021). Comparatively, a study of restitution initiatives in Saskatchewan found that the average collection rate in the province was 24% between 2003–2008 (McDonald et al. 2010). The limited research shows that without adequate support, obtaining payments through civil procedure can be an arduous and disappointing experience.

Restitution programs operate by providing a coordinator or liaison between victims, offenders and various agencies to support active communication and supervision regarding the progress of restitution payments. Additionally, most provincial restitution programs waive any cost of filing orders in civil court and some programs offer reasonable recovery methods. Those seeking restitution must submit all forms to the appropriate agencies as soon as possible after an individual has been charged with a crime. A Statement on Restitution cannot be accepted by a judge *after* sentencing; however, the issuance or non-issuance of a restitution order does not limit an individual from seeking damages in civil court.

At this time, five provinces have restitution programs: British Columbia, Alberta, Saskatchewan, Nova Scotia and Prince Edward Island.[131] Other provinces, such as New Brunswick,[132] may have public legal education materials on restitution for victims. The following section presents information and procedures regarding restitution programs in these jurisdictions.

British Columbia

In British Columbia, a victim seeking restitution must complete a Statement on Restitution provided by the province. In most cases, the Ministry of Attorney General mails a Statement on Restitution form directly to victims, who use the form to document their losses, supported with receipts.

[131] Under the Federal Victims Strategy, the Victims Fund provides funding to provinces and territories to address gaps in services for victims in their specific jurisdiction. The Victims Fund has supported the development of the restitution programs in four of the jurisdictions.

[132] Provincial Victim Services provides information to victims about restitution, and has developed PLEI material: Restitution_EN.pdf (legal-info-legale.nb.ca)

If an offender does not pay a restitution order, the victim may file their restitution order in civil court and initiate enforcement. At any point after a restitution order, a victim can also contact the Restitution Program to request assistance on stand alone restitution orders and on restitution ordered as part of a conditional sentence, probation order or peace bond. The Restitution Program supports victims by answering their questions and facilitating the transfer of payments. On active files, Restitution Program caseworkers encourage offenders to comply with restitution orders, assist offenders with developing voluntary payment schedules, provide payment reminders and follow up on missed payments. Caseworkers also liaise with probation and parole officers, and provide file updates to victims. Victims and offenders can voluntarily apply to the Restitution Program and program staff seek to ensure that all clients experience respect, dignity and empathy through a process of restitution that contributes to healing the harms caused by the commission of criminal offences.[133]

Alberta

Victims seeking restitution in Alberta must fill out a two-page Statement on Restitution form, and claim only damages and losses directly related to the crime. Alberta considers the following to be eligible for restitution: loss of wages; moving costs; damage and theft to property; costs to get help for physical or psychological harm; and costs associated with fixing identity and credit ratings. The victim must clearly describe the damages and losses, and support their claims with documents such as bills, receipts and/or repair estimates. The victim submits a completed Statement on Restitution by email, letter mail, or by delivering it to the Crown Prosecution Office.

The Restitution Recovery Program (RRP) in Alberta addresses stand alone orders of restitution in the adult portion of the criminal justice system. The RRP does not address restitution that is a condition of probation, a conditional sentence order, or orders from youth court. Victims must choose to participate in RRP and can do so before the accused is sentenced. Page 2 of the Statement on Restitution form describes how to participate in the RRP. The RRP enables the state to better assist victims and hold offenders accountable through restitution. Should an offender not pay the court-ordered amount by the specified due date, the RRP locates the offender and takes whatever action is required to secure payment, such as filing writs, garnishing wages, applying liens and seizing property. Once a victim has opted-in to the RRP, there are no costs for the victim.[134]

Saskatchewan

In 1975, the province established a restitution program within its adult corrections programming to supervise the enforcement of restitution orders. In 2005–2006, the province transferred the program to the Victims Services Branch within its Ministry of Justice and Attorney General. The transfer was designed to broaden the scope of restitution recovery by not only increasing the monitoring of offenders and payments, but also by providing information to victims and by eventually increasing services to victims through the program's enforcement mechanisms.

[133] For more information or for direct access to forms on restitution in British Columbia, please see: https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/if-you-are-a-victim-of-a-crime/victim-of-crime/victim-restitution

[134] For more information or for direct access to forms on restitution in Alberta, see: https://www.alberta.ca/victim-restitution-and-recovery.aspx

To apply to the program, a victim must complete a one-page Statement on Restitution form and can also submit a Victim Impact Statement. In the Statement on Restitution, the victim provides a detailed account of damages and losses of property, losses due to physical injury, expenses incurred for temporary housing and financial losses due to fraud. All damages and losses of property must be supported by invoices or receipts. While both forms should be sent to the nearest agency as soon as possible, both can only be processed upon conviction of an accused and prior to sentencing.

If the accused is found guilty, a judge will review the Statement on Restitution and determine if a restitution order is necessary. If a restitution order is issued, the victim will be notified of the amount and repayment terms. Eligible victims can join Saskatchewan's Restitution Civil Enforcement Program (RCEP) by contacting the Program and registering their restitution order with the Ministry of Justice and Attorney General (free of charge). Once a restitution order is registered, collection officers attempt to locate the offender and set up a repayment plan and payments are processed through provincial court and remitted to the victims. Collection officers may also register the restitution order with the Court of Queen's Bench, Judgements Registry and with the Information Services Corporation. If eligible assets are identified, the collection officers work in conjunction with the Sheriff's Office to serve the appropriate documents and process seizures.[135]

Nova Scotia

Nova Scotia's Victim Services Restitution Program requires victims to apply by completing a one-page Request for Restitution form documenting losses and expenses caused by the criminal incident.

If an offender refuses to pay a stand alone restitution order by the established deadline, the victim must pursue civil enforcement to receive payment. Probation officers can enforce restitution orders that are part of a probation or conditional sentence order. Provincial Victim Services provides information about restitution and civil litigation, but is not authorized to collect money or property; victims are responsible for enforcing orders and collecting payments.

With the assistance of a Victim Services Restitution Coordinator, a victim can seek civil enforcement by following five steps:

1. Gather as much information as possible about the offender, including full legal name and address, and names of bank and lawyer.
2. File the restitution order as a judgement with the Nova Scotia Supreme Court. The victim must first obtain a certified copy of a restitution order from a clerk at the court that issued the order, then file it at the Administrative Office of the Nova Scotia Supreme Court.
3. Complete and submit the Certificate of Judgement and Executive Order forms; both are available online and from the Administrative Office of the Nova Scotia Supreme Court. Completed copies must be submitted to the Administrative Office.
4. File the Certificate of Judgement at a local Land Registry Office, which will register it in the Personal Property Registry and the Judgement Roll. This enables a sheriff to seize personal property from offenders. Victims can also gain restitution from the sale and mortgage of land owned by the offender.

[135] For more information or for direct access to forms on restitution in Saskatchewan, see: https://www.saskatchewan.ca/residents/justice-crime-and-the-law/victims-of-crime-and-abuse/victim-impact-statement-and-restitution

5. After all filings are complete, an executive order authorizes a sheriff to seize the personal property of offenders, which can include money from banks accounts and vehicles.[136]

Prince Edward Island

In 2016–2017, PEI established a Sheriff Restitution Officer to facilitate the enforcement of stand alone (s.738) restitution orders. Once a judge issues a stand alone order, the court prepares the necessary civil documents and forwards copies to both the Sheriff Restitution Officer and the victim.[137] The Sheriff Restitution Officer then starts the collection process. Under the process, the offender is known as the debtor.

The Sheriff Restitution Officer renews writs annually prior to their expiration to avoid undue delays in collection and updates debtors regularly. Through ongoing discussions with police, and probation, correctional services and court staff, the Sheriff Restitution Officer maintains current information about debtors (i.e., address, employment, release dates, etc.) and updates files.

Restorative Justice Programs

Restorative justice (RJ) refers to "an approach to justice that seeks to repair harm by providing an opportunity for those harmed and those who take responsibility for the harm to communicate about and address their needs in the aftermath of a crime." (FPT 2018) RJ processes can occur at any point in the criminal justice process: pre-charge, post-charge or post-sentencing. Restitution may be requested by a victim, or offered by an offender, during a RJ process (Wemmers et al. 2017). Since participation in a RJ process is voluntary for all parties, offenders tend to comply with restitution agreements. Additionally, studies conducted by Umbreit et al. (2001) have found that restitution is often inseparable from RJ processes, meaning that restitution is often part of the outcome.

Research Gaps and Outstanding Questions

Very little research on restitution has been done in Canada. Important questions remain unanswered, such as: How many victims request restitution? What is the collection rate of restitution payments before and after the implementation of a restitution program? How many restitution orders are filed in civil court each year?

There is also interest in being able to track the effectiveness of restitution in RJ programs. Overall, knowing which interventions facilitate the full payment of restitution might lead to increased use of this monetary penalty.

Conclusion

This article presented the numbers and types of restitution orders across jurisdictions based on ICCS data for 2011–12 to 2019–20. While there are some limitations to the ICCS data, the total numbers of orders made decreased in all but two jurisdictions pre- to post-CVBR, while the percentages of cases

[136] For more information or for direct access to forms on restitution in Nova Scotia, please see: https://novascotia.ca/just/victim_services/_docs/VSRestitutionBookletScreen.pdf
[137] The information booklet is not available online.

with or without orders remained stable. The article also outlined current restitution programs in Saskatchewan, Alberta, Nova Scotia and British Columbia.

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