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Office of the Federal Ombudsman
for Victims of Crime

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

Heard. Respected. Victims First.
Écoutées. Respectées. Les victimes d'abord.



SHIFTING THE CONVERSATION

A look at refocusing Canada's justice system to
better meet the needs of victims of crime

Special Report

WHO WE ARE

Created in 2007, the Office of the Federal Ombudsman for Victims of Crime (OFOVC) is an arm's-length federal government office that works to help victims of crime and their families.

The OFOVC responds directly to phone calls, emails and letters from victims of crime, and works to ensure the federal government meets its responsibilities to victims. We:

- inform victims about the federal programs and services that exist to help them
- address complaints made by victims about federal government departments, agencies, employees, laws or policies
- refer victims to programs and services in their city or province that may be able to assist them
- identify issues that have a negative impact on victims, and make recommendations to the federal government on how it can enhance its policies and laws to meet their needs
- educate federal law makers and policy makers about the needs and concerns of victims
- promote the principles set out in the *Canadian Statement of Basic Principles of Justice for Victims of Crime* with decision makers and policy makers.

The experiences that victims and other Canadians share with the OFOVC help the Office to better understand the issues facing victims in Canada.

If you are a victim of crime, or are providing assistance to one, and have questions or a complaint about a federal law, policy, program or service, please contact us.

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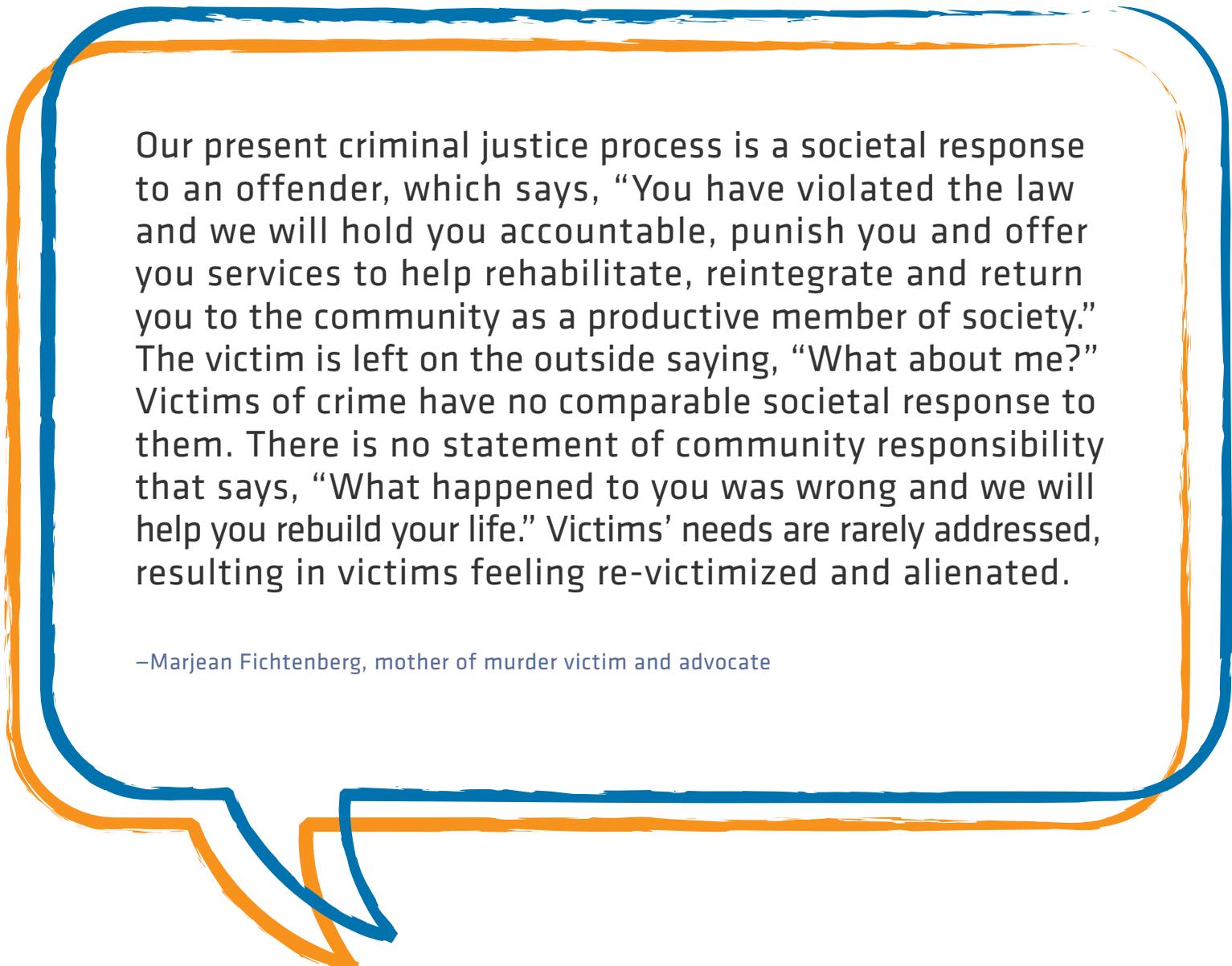




SHIFTING THE CONVERSATION

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Our present criminal justice process is a societal response to an offender, which says, “You have violated the law and we will hold you accountable, punish you and offer you services to help rehabilitate, reintegrate and return you to the community as a productive member of society.” The victim is left on the outside saying, “What about me?” Victims of crime have no comparable societal response to them. There is no statement of community responsibility that says, “What happened to you was wrong and we will help you rebuild your life.” Victims’ needs are rarely addressed, resulting in victims feeling re-victimized and alienated.

–Marjean Fichtenberg, mother of murder victim and advocate



Shifting the conversation

Over the years, and certainly over the past months, there has been much public debate about the merits and downfalls of a “tough on crime” agenda in creating true and positive change for victims of crime in Canada.

On the one hand, some argue that harsher sentences and longer jail terms will mean fewer criminals on the street and therefore fewer future victims, as well as sentences that provide justice to the victims who have suffered.

ON THE OTHER HAND, arguments are made for a model that puts more focus on prevention and rehabilitation—more programming for offenders and more emphasis on addressing mental health issues. There are questions and cautions about the logic of building a corrections model too similar to that of the United States, which, to date, has not been proven to deter crime or enhance community safety. And there are the arguments that managing offenders is not enough; that despite what is being said publicly, the true needs and concerns of victims are not being met or even seriously considered.

For all of the arguments presented on either side, the bottom line is this: despite all good intentions, the conversation about victims has been focused for the most part on offender-related issues. While these issues are important, they do not address the core of what victims need. We need to refocus and address the issue of victim treatment and support head-on, rather than coming at the issue by talking about how the management and sentencing of offenders may, or may not, address the needs of victims of crime.



Focusing on victims does not mean neglecting other parts of the system. In fact, focusing on victims can and should strengthen the overall criminal justice system. At the very least, victims who have confidence in the system may be more likely to come forward and report crimes, enabling the whole process to function more effectively. In addition, for those who do come forward, being able to participate meaningfully can serve to inform and strengthen important corrections and conditional release decisions. After all, the criminal justice system should be one that upholds the Canadian values of respect, fairness, dignity and inclusion. As part of this, we need to ask ourselves whether we're meeting those standards when it comes to victims.

No one chooses to become a victim. Once it happens, those who do choose to report the crimes are thrown into the criminal justice system without much, if any, preparation about how the process works. But unlike offenders, victims have few entitlements within the system and even fewer opportunities for meaningful participation. The very few rights they do have exist only within offender-based corrections legislation. There is no federal stand-alone legislation to address the treatment and inclusion of victims in Canada. In other words, there are no laws dedicated to ensuring that victims are treated fairly and with dignity. As a result, some victims have expressed feeling re-victimized by the process itself. It is, in effect, a system tailored to offender management and community safety and, while those are extremely important, the victim is left fighting for more information, rights, opportunities to participate in the system and support.



Building an effective federal corrections system is a key component of any safe community. Focusing on the needs of victims should not take away from this important work. But there needs to be a better balance. At a minimum, the care and rights of victims should be equivalent to that of offenders. As it stands now in Canada, this is not the case. The rights, privileges and attention accorded to offenders far outweigh those of victims. To correct that imbalance we must lend more weight to the concerns and needs of victims.

WE MUST, IN EFFECT,  THE CONVERSATION.

“Punishment for punishment’s sake is based on the notion that society must get even with the offender, regardless of whether the victim is restored or the community is made safer and stronger. Instead, the criminal justice system must be shifted towards empowering and restoring victims and communities at the same time it holds offenders accountable and promotes rehabilitation.”

–Marc Levin, Esq., *Treating Texas Crime Victims as Consumers of Justice*

(Austin, Tex.: Texas Public Policy Foundation, Center for Effective Justice, March 2010), p. 3.

See: <http://www.texaspolicy.com/pdf/2010-03-PP03-victimconsumers-ml.pdf>

Establishing priorities

So what are victims' needs and concerns?
What can be done to address them?
Where do we start?

Researchers, academics and victims' groups around the world have worked to better define victims' needs.

ALTHOUGH THESE NEEDS MAY VARY SLIGHTLY DEPENDING ON THE SOURCE, the categories developed by the International Association of Chiefs of Police provide a helpful overview:¹

- Safety
- Information
- Continuity
- Justice
- Support
- Access
- Voice

Since opening its doors in 2007, the Office of the Federal Ombudsman for Victims of Crime (OFOVC) has tracked incoming victim questions and complaints, and has talked to thousands of victims and victim-serving agencies across Canada about their concerns and frustrations with the current Canadian system, and their ideas on how to improve it.



¹ International Association of Chiefs of Police, *Enhancing Law Enforcement Response to Victims: A 21st Century Strategy* (Alexandria, Va.: IACP, 2008), Volume 1, pp. 23–24.
See: <http://www.theiacp.org/LinkClick.aspx?fileticket=ca2f39E55GE%3d&tabid=87>

Given its mandate, the OFOVC looks exclusively at matters that fall within Canadian federal jurisdiction, such as notification, the provision of information and gaps in the federal programs, services, policies and laws that apply to victims. This excludes the quality or availability of services delivered at the provincial or territorial level, such as compensation and counselling and, as such, those priorities are not reflected here. It should be noted, however, that the availability and scope of these supports continue to be a source of frustration and difficulty for victims, especially in light of the inconsistencies in victim services from one province or territory to another.

The conversations the OFOVC has had have brought a wide variety of issues and complaints to the Office's attention. While it is impossible to address all of these issues in a single report, clear themes and issues have continued to surface and resurface across the spectrum of crimes committed and individual circumstances. From those, the OFOVC has chosen to focus on the following three key areas:

1. The need for more information;
2. The desire to participate more meaningfully in the criminal justice process;
3. The importance of financial support.

To further validate its findings, in preparing this report the OFOVC sent its suggested themes and recommendations to more than 40 victim-serving agencies, advocates and victims across Canada who had indicated an interest in engaging in dialogue on future recommendations made by the Ombudsman.

The responses received by the OFOVC suggested strong overall support of the proposed themes and recommendations, which helped the OFOVC to ensure it was on track to amplify the voice of victims to the federal government.





Information for victims

One of the most basic rights we would expect a victim to have is the right to information—information about their rights, about the criminal justice system and about the offender who harmed them.

The opportunity to provide victims with information begins from the moment they are victimized. As such, police have a very important role to play in the victim experience, including providing information and referrals to victim services where possible.

ENSURING VICTIMS HAVE THIS INFORMATION early is extremely important. However, given that this report focuses exclusively on federal issues and that policing in Canada cuts across municipal, provincial/territorial and federal jurisdictions, the issue of effective police response will not be elaborated in this report. It should be noted, however, that as they are the first responders, it is essential that law enforcement agencies are provided with proper training, and with the tools and legislation necessary to provide referrals and information to victims.

For those victims who do continue to move through the system, as the offender who harmed them is convicted and sentenced to a period of two years or more, the ability to obtain information about the offender becomes heavily restricted. In fact, victims have very few rights to any information and can only have what little information they are entitled to if they first register formally as victims with the Government of Canada.



There are two main problems with this model:

1. The victim must know that they have to register, which is often not the case;
2. It is up to the victim to find the appropriate information and contact the Government to begin the process of registering.

Despite best efforts and various outreach activities, communicating to the general population that victims must register is a serious challenge. No one expects to become a victim and so this information—as it is generally not relevant to them at the time—is commonly dismissed and quickly forgotten. For those who have the misfortune of being thrown unwillingly into the criminal justice system, the process can be overwhelming. Add to this the emotional and physical stress that victims suffer and it's not difficult to see how bits of information, such as the need to register, can easily be lost.

Once victims are aware of the need to register, it is up to them to find the appropriate government department and to initiate registration. While this may not seem like an enormous burden in itself, consider adding this task to a list of growing priorities in the aftermath of a devastating loss. The prospect of more paperwork and the need to explain how you fit the definition of a “victim” can be daunting.



Those victims who do register successfully are, in the end, entitled only to very limited information:

- the offender's name
- the offence of which the offender was convicted and the court that convicted the offender
- the date of commencement and length of sentence that the offender is serving
- eligibility dates and review dates applicable to the offender in respect to temporary absences and parole.

In some cases, victims may receive additional information at the discretion of the Parole Board of Canada (PBC) or the Correctional Service of Canada (CSC). This includes:

- the offender's age
- the location of the penitentiary in which the sentence is being served
- the date, if any, on which the offender is to be released on temporary absence, work release, parole or statutory release
- the date of any hearing related to conditional release
- any of the conditions attached to the offender's temporary absence, work release, parole or statutory release, and whether the offender will be in the vicinity of the victim while travelling to that destination
- whether the offender is in custody and, if not, the reason why the offender is not in custody
- the name of the province where an offender has been transferred to a provincial correctional facility.

WHY DO VICTIMS NEED THIS INFORMATION? WHAT PURPOSE DOES IT SERVE?

Victims may need or want this information for a variety of reasons, including for the purpose of writing the most relevant and effective victim statement possible or to plan for their own safety in the event the offender is released.

Victims understand that, in most cases, the offender will eventually get out of prison and they want to understand what progress, if any, he or she has made towards rehabilitation. In the current system, this is not an option for victims. Victims are not given any information related to the offender's participation in correctional programming, or notified when their offender is subject to any disciplinary action. Generally, victims have no information about the offender's progress—whether he or she had taken any training or steps towards rehabilitation or whether he or she continues to have violent or criminal tendencies. They have no way of knowing whether the offender is making any attempt to address the reasons behind their criminal behaviour.

This kind of information is useful to victims in preparing their victim statements for parole hearings. Without up-to-date information, victims often feel as though they are working in the dark. This makes it difficult to provide the most relevant victim statement, which can be a source of great frustration for some victims who feel they must be there to give a voice to the loved one who can no longer speak for themselves.

Research shows that having this type of information can also help victims on their healing journey. Experts state that “in addition to the victim’s need to feel safe, information about the offender’s treatment plan and movement within the correctional system may promote the psychological healing of some victims, and may directly increase victim satisfaction with the justice process.”² Furthermore, “This satisfaction is explained in part through the belief that the offender’s participation in the justice process has spared an innocent victim a similar experience.”³

Victims may also want this information in order to plan for their own safety. In the current system, once an offender has been released into the community, victims are only notified when a warrant for arrest is issued, if an arrest is made, and the location of the facility where the offender is being housed. Beyond this, victims are not given any other detailed information related to the offender, such as the specific reasons for breaches of parole conditions. They also are not notified of any special instructions placed on the offender by the parole officer over and above those conditions of parole decided by the board, despite the fact that this information can often help to increase a victim’s feeling of personal safety. For example, it might help a victim to feel more at ease if they were informed of a local instruction placed on the offender that prohibited him or her from going within a certain distance of the victim’s residence.

In planning for their safety, victims also may have questions about what the offender looks like after so much time has passed. However, in the current system, victims are not entitled to see a photo of the offender.

In cases where a victim’s offender is not a Canadian resident and may face deportation, the victim’s experience is even more isolating. Essentially, when an offender is transferred from the custody of the CSC to the Canada Border Services Agency (CBSA), victims are informed of the transfer and then any communication with the victim ends. Unlike parole hearings, there is no mechanism whereby victims can attend Immigration Review Boards, or submit any kind of impact statement or feedback from the victim’s perspective. Further, victims aren’t informed when a final decision is made on whether or not to remove the offender from Canada, leaving the victim to wonder and worry. Whether information about an offender’s deportation status could be used to bring potential comfort to a victim or help them plan for their own personal safety, it is unfair that victims are disregarded. This can be especially frustrating for victims when, in many cases, this type of information is found on an almost daily basis in the news media.

² David Beatty, Dr. Dean Kilpatrick and Susan Smith Howley, “The Rights of Crime Victims—Does Legal Protection Make a Difference?” *NIJ Research in Brief* (Washington, D.C.: National Institute of Justice, U.S. Department of Justice, December 1998). See: <https://www.ncjrs.gov/pdffiles/173839.pdf>. Copies of this *NIJ Research in Brief* and the full report, *Statutory and Constitutional Protection of Victims’ Rights: Implementation and Impact on Crime Victims*, are available from the National Criminal Justice Reference Service (NCJRS).

³ Ibid.

SHIFTING THE CONVERSATION

The OFOVC has recommended—and will continue to recommend—that the Government move to make automatically available to the victim all information currently considered discretionary under the *Corrections and Conditional Release Act* (CCRA).

Even with these improvements, however, the laws that govern sharing information with victims simply aren't comprehensive enough. Victims want to know more about the offender who harmed them, including any efforts they have made towards rehabilitation or what he or she might look like at the time of his/her release.

Victims should also be afforded better access to this information. This need is already being acknowledged and addressed in the United States, where the automated Victim Notification System was implemented in 2002.

The Victim Notification System is a program of the U.S. Department of Justice, which provides information and notification to victims of federal crime. It is a free service that notifies victims about significant events during an offender's incarceration as well as throughout the arrest, arraignment and prosecutorial phases. In addition to notification letters, the Victim Notification System provides victims with a toll-free call centre and an Internet site. Individual victims are given a victim identification number and a personal identification number, which they can use to access information from the call centre or the website. Each of these services allows victims to access information, receive notifications, change contact information and/or elect to stop receiving notifications.⁴

In Canada, the CSC and PBC are responsible for informing registered victims about certain types of changes or information relating to the offender. Staff members at both Departments work diligently to help provide victims with as much information as possible within the current legislation. However, the information they can provide is limited and there is no equivalent web portal in Canada that would permit victims access to this information outside of business hours. Developing a similar system in Canada would help provide victims with more accessibility to the information to which they are entitled. As well, for some it may provide additional peace of mind to know that they can obtain this information any time, even outside regular business hours.

⁴ U.S. Department of Justice, Federal Bureau of Prisons, "Victim/Witness Notification Program" website (2011).
See: http://www.bop.gov/inmate_programs/victim_witness_notice.jsp

RECOMMENDATIONS

- Enhance information and resources available to victims of crime to help them better understand the federal criminal justice system, and their rights and role within it.
- Automatically provide all information currently considered discretionary to registered victims through the introduction of legislation, except in cases where it may threaten the safety of an offender, individual or institution.
- Provide victims with the right to receive information about an offender's progress while under the supervision of the CSC or PBC, and ensure that the information is provided at least annually throughout the duration of the offender's sentence.
- Improve the accessibility of information for victims by developing secure and automated online or telephone services that victims can access outside regular business hours.
- Give the CSC and the PBC discretion to show, upon request, a photo of the offender at the time of release to the registered victim.
- Provide victims with advance notification regarding all offender transfers between institutions, where possible.
- Give victims the right to stay informed of an offender's deportation status once the offender has been transferred to the custody of the Canada Border Services Agency.
- Provide victims with an opportunity to contribute a statement for consideration by Immigration Review Boards, and to attend the hearings of those boards as an observer if desired.





Meaningful participation by victims in the criminal justice system

In the current corrections and conditional release system, the victim's role is very limited.

Essentially victims can participate only by submitting or presenting prepared, approved victim statements at parole hearings, and even this participation is dependent on PBC or CSC approving their attendance and their statement in advance.

IN ADDITION TO THIS RESTRICTED PARTICIPATION, victims often feel as though their safety and concerns are not given enough weight in considering parole and conditional release decisions for the offender who harmed them.

As it stands now, victims must apply to attend a parole hearing following the same process as any member of the general public. Following this application, and pending necessary security checks and safeguards, the victim is normally granted permission to attend. This process, however, falls under Government policy—attendance is not a legislated right for victims. Though it would be exceptional for a victim who does not pose a threat to be denied attendance, if it were to happen—because their right to attend is not legislated—the victim would have no avenue for recourse. This can be unsettling and frustrating for victims when offenders' rights and treatment are so clearly enshrined in legislation.



Regardless of whether or not a victim attends a hearing, he or she can still submit a victim statement outlining the harm caused to them by the offender and the crime. Victims must prepare their statement well in advance of a parole hearing in order for the contents of the statement to be fully approved and/or vetted by the PBC prior to the victim reading it aloud or sharing it with the Board in any form. This is also required in order to comply with legislation that requires the statement be shared with the offender at least 15 days before the hearing.

Generally, victim statements are only ever rejected if they contain slanderous or threatening remarks. However, for many victims, not being able to describe their true feelings about the offender and what they did can feel somewhat like muzzling, especially in a scenario where the offender is free to say whatever he or she wants. Once a statement is approved, victims are required to stick strictly to the statement as submitted, and may not add new or further comments to their statement, even when they learn new information about the offender at the hearing. Ultimately, as with attending a hearing, if a victim's statement is not approved, it cannot be shared or submitted and the victim is effectively silenced in the process.

This lack of information, vetting and inability to respond to new information can often make victims feel that their contribution is not valued as it could and should be. In fact, the victim perspective can provide important insights into the crime and the full impact of the harm done. This kind of information is valuable in considering requirements and safety considerations in the offender's early release; as well as placement in community programs.⁵

As important as providing opportunities for participation is, it is equally important to create an environment to encourage that participation. This means providing options and choices for how victims can choose to participate without feeling intimidated or fearful, and without causing significant disruption to their lives and finances.

While some victims will find it important and even necessary to face their offender in person, others may find this idea intimidating or generally undesirable. Unfortunately, in the current system attending the parole hearing—either in person or through video conference in exceptional circumstances—is the only way that a victim can obtain the most complete information about the offender who harmed them and the progress they have made, if any. For those victims who are fearful of encountering their offender for any number of reasons, including fear of retaliation, there is a distinct lack of options for observing a parole hearing. Only in exceptional circumstances can victims request that they attend the hearing via video conferencing technology or closed-circuit television. Attending by secure web cast or audio feed is not an option.

⁵ E. K. Alexander and J. H. Lord, *Impact Statements: A Victim's Right to Speak, a Nation's Responsibility to Listen* (Washington, D.C.: Office for Victims of Crime, U.S. Department of Justice, 1994).
See: https://www.ncjrs.gov/ovc_archives/reports/impact/welcome.html

The OFOVC understands, through its discussions and work with the PBC, that a certain degree of the reluctance to offer these services is tied to the possibility of technical failure when further technology is introduced, and the possibility that a technical glitch could ultimately mean short-changing the victim. While these are certainly valid concerns and ones that demonstrate the PBC's dedication to assisting victims, they simply aren't enough. More effort needs to be put into exploring these options for victims and finding alternatives in the event of technological failure.

The lack of options for attending a parole hearing in and of itself wouldn't be as problematic if a victim who did not attend the hearing had choices and options for reviewing the proceedings at a later date. The reality, however, is that there are no alternatives for victims in this case; no transcripts are provided and victims cannot access an audio recording, even when it exists. The only option is for a victim to request a copy of a PBC Decision Registry, which provides a general summary of the decision rendered by the Board members, along with some contextual information. The Registry, however, is not a complete record of the hearing and may contain significantly less information about the offender's progress and his or her interaction with the Board.

For those victims who do wish to attend a hearing, cramped quarters and a lack of segregated space can be uncomfortable and intimidating. Despite the best efforts of the PBC employees, victims may find themselves using the same entrances or without a separate waiting area to avoid the offender prior to the hearing. Appropriate measures should be taken to ensure that victims' sense of personal safety is taken into account and that they have the space and facilities they need to feel protected.

SHIFTING THE CONVERSATION

Considering the breadth of rights and freedoms that offenders have to information and to express themselves, this strict limitation on victim participation shows a clear imbalance in the criminal justice system. It is time to refocus efforts on building a Canadian justice system that enables victims to participate in a meaningful way. As stated by the U.S. Office for Victims of Crime, Department of Justice, "Such policies must reflect an attitude that our justice system does not exist despite its victims, but rather, it exists because of its victims."⁶ Similarly, the same report goes on to suggest that: "In principle, a victim should be afforded at least the same guarantees as the defendant. The law provides the offender with the right to present correctional and paroling authorities information as to why parole or an early release should be granted. As such, the law should justly afford victims the same right for full disclosure as to the impact of the crime."⁷

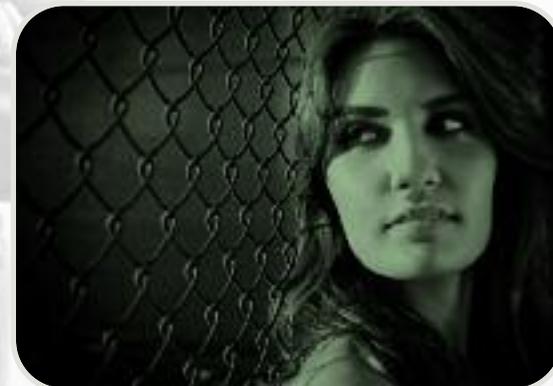
⁶ Ibid.

⁷ Ibid.

In order to build a system that recognizes victims in a meaningful way, that provides for at least equal rights and treatment of both the offender and the victim, and that helps victims to participate meaningfully by providing uncensored information relating to the impact of the crime, we have to shift the focus. We have to recognize the victim not as a bystander, but as a participant with meaningful contributions to make. And above all else, we must acknowledge that victims should never feel like they come second to the offender who harmed them in terms of treatment and rights.

Proper amenities for ensuring victim safety should include separate entrance/exit and waiting areas, seating in the hearing room at a comfortable distance from the offender, and adequate space for support victims and other victims.

As with any responsible system, there also needs to be a built-in measure of accountability and legislated recourse for victims in the event their rights are not respected. This is necessary both to ensure that the information victims have to offer is captured and used in decision-making, as well as to ensure that victims have, at a minimum, the same level of rights as the offenders who harmed them. The significance of this accountability has already been recognized in the United States, where the Office for Victims of Crime stated that: “We must also have a system of accountability if we fail to seek the information that only a victim can supply. Failure to hear from victims is not only an injustice to individual victims, but is greater disservice to society as a whole.”⁸



⁸ Ibid.

RECOMMENDATIONS

- Ensure victims have the right to face their offender by providing them with the presumptive right to attend a parole hearing, unless there is justification to believe their presence will be disruptive or threaten the security of the institution.
- Reduce victim trauma and anxiety by giving registered victims the right to attend parole hearing proceedings either in person, by video conference, by teleconference or to review proceedings by accessing recordings of the proceedings at a later date. These options should be extended to all victims and in all circumstances.
- Provide victims with up-to-date information about the progress and programming of the offender who harmed them before they have to prepare any victim statement for a parole hearing. Sufficient time should be provided between the provision of this information and the deadline by which the victim must present his/her statement.
- Postpone parole considerations in cases involving a violent act until such a time that the victim is notified in advance of the hearing and provided with the opportunity to attend the hearing and submit a victim statement.
- Allow registered victims to request that a new hearing be conducted if they did not receive proper advance notification to allow for planning to attend the hearing.

Tangible support for victims

Recent studies estimate that the total tangible social and economic costs of *Criminal Code* offences in Canada in 2008 were approximately \$31.4 billion.

Of the total estimated costs, \$14.3 billion, or 46 percent, were incurred by victims as a direct result of crime, for such items as medical attention, hospitalizations, lost wages, missed school days, stolen/damaged property.⁹

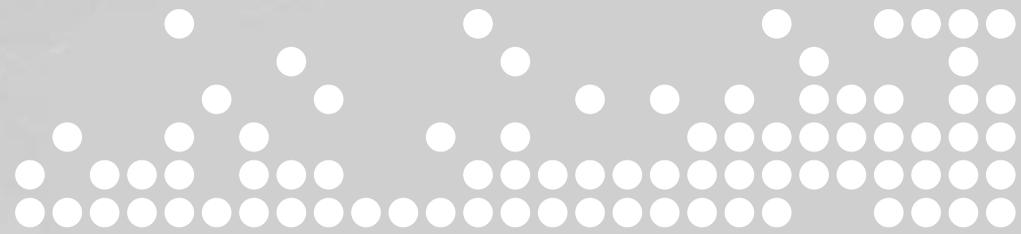
IN LOOKING AT the combined tangible and intangible costs measured in the study, the burden on victims can be even heavier—as high as 83 percent.

Clearly, victims carry a heavy burden in the wake of a crime. Not surprisingly then, one of the most common complaints and comments that the OFOVC hears from victims is the lack, or inconsistent application, of tangible supports available to them in the immediate aftermath and beyond the immediate trial, incarceration and conditional release periods.

The majority of the services that victims refer to, such as counselling, compensation and financial support, fall under provincial rather than federal jurisdiction and so are outside the scope of the OFOVC's mandate and this report. However, it is worth acknowledging that the need for tangible supports and for ongoing victim services is a real need being expressed almost uniformly across the country.

At the federal level, there are two key issues that present opportunities for improvement: the federal victim surcharge and restitution. If addressed and administered properly, these can contribute to a more supportive system both through victim services and directly.

⁹ Ting Zhang, *Costs of Crime in Canada, 2008* (Ottawa: Department of Justice Canada, 2009).
See: http://www.justice.gc.ca/eng/pi/rs/rep-rap/2011/rr10_5/index.html



FEDERAL VICTIM SURCHARGE

The federal victim surcharge was created to provide financial support to provincial and territorial victim services, and to promote a link between an offender's crime and his/her accountability to the victim.

The surcharge is typically not more than \$100, though it can vary, depending on the circumstances. Law requires that the surcharge be imposed in all cases; the only acceptable reason for waiving the federal victim surcharge is if the offender can prove that paying the federal victim surcharge would result in undue hardship to either him/her or his/her dependants. In cases where the court does decide to waive the surcharge, it is required to provide reasons why it is not being imposed and to enter the reasons in the record of the proceedings.¹⁰

Despite this, studies have found that judges are routinely waiving the surcharge and that the reasons for this are not being given. Research conducted by the Department of Justice in New Brunswick in 2005–2006 revealed that in 99 percent of cases reviewed where the surcharge was waived, there was no documentation indicating that the offender had established “to the satisfaction of the court that undue hardship... would result.”¹¹ Not surprisingly, the anticipated revenues to be generated by the automatic imposition of the federal victim surcharge were also found to be lacking.¹² These findings are generally consistent with similar studies conducted in British Columbia and Ontario.¹³

The OFOVC has written to the Minister of Justice on a number of occasions about the issue of the surcharge, and was pleased to see the Government commit to making the surcharge automatic and to doubling the required amounts during the 2011 election period.

¹⁰ *Criminal Code*, section 737(6).

¹¹ M. A. Law and S. M. Sullivan, *Federal Victim Fine Surcharge in New Brunswick: An Operational Review* (Ottawa: Department of Justice Canada, 2006).

¹² *Ibid.*

¹³ Tim Roberts, *An Assessment of Victim Fine Surcharge in British Columbia* (Ottawa: Department of Justice Canada, 1992), and Lee Axon and Bob Hann, *Helping Victims through Fine Surcharges* (Ottawa: Department of Justice Canada, 1994).

In addition to the imposition of the federal victim surcharge, some victim advocates feel that more attention must be paid to the use of the funds collected, once handed over to the provinces and territories. Though it is within the province's authority to decide how to best spend the funds (i.e., on victim services, compensation, etc.), some feel there must be accountability regarding how funds are spent and perhaps the enforcement of basic standards. Currently, provinces and territories each have their own victim assistance frameworks and services. As a result, where in Canada a victim lives and/or where the crime was committed will determine what resources and supports are available to that victim. Without any direction, there can be great disparities in how the money is spent and no way of ensuring that the money is used in a way that best meets victims' needs.

RESTITUTION

Restitution is a discretionary order imposed by the court and paid to the victim, by the offender, to cover quantifiable losses. It is imposed not only for the benefit of the victims, but in order to help offenders acknowledge and be held accountable for the harm they have caused to their victims. Ultimately, in addition to the direct benefit to victims, restitution serves as part of an offender's rehabilitation and as such contributes to an overall more effective corrections process.

Unfortunately, restitution is both under-utilized and poorly enforced in Canada, carrying a significant negative impact on victims of crime.

According to the Department of Justice Canada's *Victims of Crime Research Digest*, a study in Nova Scotia (conducted by Martell Consulting Services in 2002) found that, despite apparent support for restitution as a condition of sentencing, restitution could only be found on the periphery of the criminal justice system and awareness of restitution was low overall among victims. The Canadian study concluded that three main barriers to accessibility to restitution orders for victims were: (1) the lack of enforcement by the criminal justice system; (2) the costs for victims; and (3) the requirement for victims to gather information about the offender, which is needed to register a restitution order as a civil judgment.¹⁴

Another barrier to the use of restitution orders is the assertion that these orders are only considered appropriate when the amount of loss is easy to calculate and not in great dispute.¹⁵ In reality, requesting restitution is often a challenge because it can be difficult for the victim to provide the Crown with the necessary information regarding losses at the time of sentencing and, as a result, the Crown is unable to request that the court make a restitution order.¹⁶

¹⁴ Dr. Susan McDonald, "Understanding Restitution," *Victims of Crime Research Digest* (Department of Justice Canada, Issue no. 2, September 3, 2009), p. 14.

¹⁵ Ibid.

¹⁶ Canadian Resource Centre for Victims of Crime, "Restitution" (July 2009). See: <http://www.crcvc.ca/docs/Restitution.pdf>

Currently, victims who wish to have restitution orders enforced must pursue the matter civilly, which is often prohibitively costly and requires victims to spend even more time fighting to obtain that which already should have been given to them. This is a burden that should never fall to victims.

SHIFTING THE CONVERSATION

The OFOVC feels that the Government must move quickly to ensure that the federal victim surcharge is increased and made automatic, and it must find avenues for more strictly enforcing restitution orders.

One option for holding offenders accountable is to make it mandatory that they fulfil their restitution or victim surcharge orders while incarcerated, and to authorize the CSC to deduct a reasonable amount from the offender's earnings to satisfy any outstanding amounts. Similarly, as the fulfilment of a restitution order demonstrates accountability and intention to address harm on the part of the offender, the repayment of a restitution order should be considered in relation to any parole decision.

This concept is already being put into practice in the United States through the Inmate Financial Responsibility Program (IFRP). Under the program, administered by the U.S. Department of Justice, Federal Bureau of Prisons, each inmate with a financial obligation, regardless of the extent of his or her resources, is encouraged to develop a financial payment plan. Through an automated information system, staff can review an offender's financial obligations and monitor compliance. Failure to satisfy the payment plan affects an inmate's consideration for parole, housing assignments, work assignments, performance pay, release gratuities and community programs.¹⁷

The success of the program is maintained by ensuring compliance through institution-level enforcement, regional office monitoring and program reviews. As with the federal victim surcharge—with the exception of direct restitution payments to victims—most funds collected by the IFRP are deposited in the Crime Victims' Fund, and are subsequently distributed to the states for victim assistance and compensation programs.

Since implementation, millions of dollars have been collected to promote and assist victim assistance programs. Also, over the years, participation rates and collections have increased.

¹⁷ U.S. Department of Justice, Federal Bureau of Prisons, "Victim/Witness Notification Program—Inmate Financial Responsibility Program" website (2011).
See: http://www.bop.gov/inmate_programs/victim_witness_notice.jsp

To help increase the use of restitution orders, information should be gathered from the victim during the pre-sentencing investigation to estimate the amount of financial loss for use during sentencing. Victims also should be provided with detailed guidelines on how to document their losses for the purposes of restitution.

RECOMMENDATIONS

- Require judges to consider restitution in all cases involving a victim and to state reasons for not ordering restitution, similar to provisions for the federal victim surcharge.
- Alternatively, victims should be given the right to make an application for restitution and the right to appeal if an application was refused.
- Provide victims with detailed guidelines on how to document their losses for the purposes of restitution.¹⁸
- Remove the requirement that a restitution amount be readily ascertainable, or allow a court to order a “to be determined” restitution order if the costs are not fully known at the time of sentencing (i.e., require judges to postpone sentencing until information can be obtained or allow amount of restitution to be determined at a later date by a probation/parole officer, parole board, etc.).
- Examine the ability of the federal government to deduct restitution awards from federal government payments (i.e., GST rebate cheques, employment insurance payments, etc.).
- Hold offenders accountable by including conditions to ensure they fulfil their court orders for restitution and federal victim surcharges, and by authorizing the CSC to deduct reasonable amounts from an offender’s earnings to satisfy any outstanding restitution or federal victim surcharge orders.
- Double the federal victim surcharge and make it mandatory in all cases, without exception.

¹⁸For example, see: <http://www.csom.org/train/victim/4/material/Section%204%20Handout%20-%20Documenting%20Losses%20for%20Victim%20Restitution.pdf>

Moving forward— Rebalancing the Canadian criminal justice system

The time has come in Canada to shift the conversation from offender management to directly meeting victims' needs.

Though corrections and community safety are an important aspect of an effective criminal justice system, they alone cannot directly address the breadth of needs and challenges that victims face in the aftermath of a crime.

WE HAVE TO RECOGNIZE that victims are more than bystanders and empower them to play a stronger role in the criminal justice process. We have to show that Canada puts victims first by giving them, at a minimum, the rights and entitlements they deserve to ensure fair and equitable treatment.

We can rebalance the justice system. It is within the Government's reach to help shift the focus to victims by making the few legislative amendments outlined in this report.

I encourage the Government of Canada, and specifically the Ministers of Justice and Public Safety, to seriously consider the views and recommendations outlined in this report and to incorporate these recommendations for positive change into an Omnibus Victims' Bill for Canada. This would demonstrate, beyond a doubt, the Government of Canada's commitment to victims, and to ensuring that the justice system—our justice system—is balanced for all. It's time.

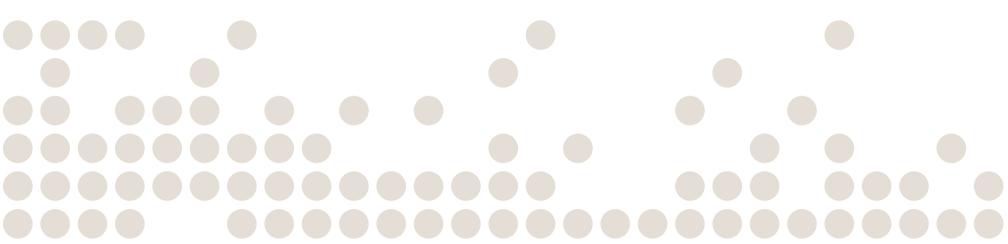
Sue O'Sullivan

Federal Ombudsman for Victims of Crime



APPENDIX A:

List of detailed
recommendations
with legislative
references



INFORMATION FOR VICTIMS

- Enhance information and resources available to victims of crime to help them better understand the federal criminal justice system, and their rights and role within it.
- Automatically provide all information currently considered discretionary to registered victims through the introduction of legislation, except in cases where it may threaten the safety of an offender, individual or institution, by amending paragraphs 26(1)(1) and 142(1)(a) of the CCRA.
- Provide victims with the right to receive information about an offender's progress while under the supervision of the CSC or PBC, and ensure that the information is provided at least annually throughout the duration of the offender's sentence.
- Improve the accessibility of information for victims by developing secure and automated online or telephone services that victims can access outside regular business hours.
- Give the CSC and the PBC discretion to show, upon request, a photo of the offender at the time of release to the registered victim, by amending subsections 26(1) and 142(1) of the CCRA.
- Provide victims with advance notification regarding all offender transfers between institutions, where possible, by amending sections 26 and 142 of the CCRA.
- Give victims the right to stay informed of an offender's deportation status once the offender has been transferred to the custody of the Canada Border Services Agency.
- Provide victims with an opportunity to contribute a statement for consideration by Immigration Review Boards, and to attend the hearings of those boards as an observer if desired.

MEANINGFUL PARTICIPATION IN THE CRIMINAL JUSTICE PROCESS

- Ensure victims have the right to face their offender by providing them with the presumptive right to attend a parole hearing—unless there is justification to believe their presence will be disruptive or threaten the security of the institution or individuals—by amending sections 26 and 142 of the CCRA.
- Reduce victim trauma and anxiety by giving registered victims the right to attend parole hearing proceedings, either in person, by video conference, by teleconference or to review proceedings by accessing recordings of the proceedings at a later date, by amending sections 26 and 142 of the CCRA.
- Provide victims with up-to-date information about the progress and programming of the offender who harmed them in advance of the victim having to prepare any victim statement for a parole hearing. Sufficient time should be provided between the provision of this information and the deadline by which the victim must present his/her statement.
- Postpone parole considerations in cases involving a violent act until such a time that the victim is notified in advance of the hearing and provided with the opportunity to attend the hearing and submit a victim statement.
- Allow registered victims to request that a new hearing be conducted if they did not receive proper advance notification to allow for planning to attend the hearing, by amending section 147 of the CCRA.

TANGIBLE SUPPORTS

- Require judges to consider restitution in all cases involving a victim and to state reasons for not ordering restitution, similar to provisions for the federal victim surcharge, by amending section 738(1) of the *Criminal Code*.
- Alternatively, victims should be given the right to make an application for restitution and the right to appeal if an application was refused, by amending section 738(1) of the *Criminal Code*.
- Provide victims with detailed guidelines on how to document their losses for the purposes of restitution.²⁰
- Remove the requirement that a restitution amount be readily ascertainable, or allow a court to order a “to be determined” restitution order if the costs are not fully known at the time of sentencing (i.e., require judges to postpone sentencing until information can be obtained or allow amount of restitution to be determined at a later date by a probation/parole officer, parole board, etc.).
- Examine the ability of the federal government to deduct restitution awards from federal government payments (i.e., GST rebate cheques, employment insurance payments, etc.).
- Hold offenders accountable by including conditions to ensure they fulfil their court orders for restitution and federal victim surcharges, by amending paragraph 133(3) of the CCRA, and by authorizing the CSC to deduct reasonable amounts from an offender’s earnings to satisfy any outstanding restitution or federal victim surcharge orders.
- Double the federal victim surcharge and make it mandatory in all cases, without exception.

²⁰ For example, see: <http://www.csom.org/train/victim/4/material/Section%204%20Handout%20-%20Documenting%20Losses%20for%20Victim%20Restitution.pdf>