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A Cornerstone for Change

A Response to Bill C-32, the Victims Bill of
Rights from the Federal Ombudsman for
Victims of Crime



Executive Summary

Changing the landscape

The Ombudsman commends the Government of Canada for introducing Canada's first-ever Victims Bill of Rights (VBR) and for the consultative approach they took in developing the Bill from the outset.

Though there is, and will continue to be, debate about its contents, the Bill marks a significant cultural shift in Canada's legislative landscape towards a system that more fully considers and integrates victims in Canada's criminal justice system. By recognizing in law the importance of the role that victims have to play, and by moving to address their needs and concerns, the Government has taken an important step forward for victims of crime.

While the contents of the Bill are, of course, of utmost importance, it would be short-sighted to overlook the important message sent by its introduction and the fact that Canada now has a legislative cornerstone from which to *continue* moving forward in enhancing victims' rights. This step forward marks a great success for the victims and victims advocates who have worked tirelessly for years to enhance the treatment of victims of crime in Canada.

Legislative enhancements

The Bill contains a number of measures that will certainly improve the system for victims of crime and help to ensure they are informed, considered, protected and supported. At the same time, many of the measures contained could be further strengthened and many other issues impacting victims of crime were not addressed, even in part. With amendments, the VBR could be much more effective in addressing the challenges victims of crime face.

Of the nearly 30 recommendations the Ombudsman made to the Government of Canada for inclusion in its Bill, only four have been fully addressed and another ten have been partially addressed.

As the Bill moves through the Parliamentary process, the Ombudsman will make recommendations for amendments to further strengthen the Bill and to address those areas which have been neglected, including the consideration of victims needs and concerns in relation to parole hearings and on the enforcement of the rights contained within the VBR.

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Context

The Office of the Federal Ombudsman for Victims of Crime (OFOVC) was created in 2007 to ensure that victims had a voice at the federal level. The office's mandate relates exclusively to federal matters and enables the Office to:

- promote access by victims to existing federal programs and services for victims;
- address complaints of victims about compliance with the provisions of the *Corrections and Conditional Release Act* that apply to victims of crimes committed by offenders under federal jurisdiction;
- promote awareness of the needs and concerns of victims and the applicable laws that benefit victims of crime, including to promote the principles set out in the *Canadian Statement of Basic Principles of Justice for Victims of Crime* with respect to matters of federal jurisdiction, among criminal justice personnel and policy makers;
- identify and review emerging and systemic issues, including those issues related to programs and services provided or administered by the Department of Justice or the Department of Public Safety and Emergency Preparedness, that impact negatively on victims of crime; and
- facilitate access by victims to existing federal programs and services by providing them with information and referrals.

As an important part of her work, the Federal Ombudsman for Crime makes recommendations to the Government of Canada on how to enhance its laws, policies, programs and services in order to better meet the needs and concerns of victims. The Ombudsman also offers her perspective and recommendations on new legislation or policy that will impact victim of crime in Canada, in order to sensitize key players to the challenges victims face, the solutions they seek and to help build a Canada where victims of crime are informed, considered, protected and supported.

On April 3, 2014, the Government of Canada tabled Bill C-32, *An Act to enact the Canadian Victims Bill of Rights and to amend Certain Acts*, the "Victims Bill of Rights Act" (VBR).

Given the mandate of the Office of the Federal Ombudsman for Victims of Crime, the Ombudsman has put together the following analysis and response to the Bill in order to:

- provide Parliamentarians and Canadians, including victims, victim advocacy groups and other key stakeholders with an informal analysis of the Bill that they may use for their own information purposes and/or to further public discussion of the merits and gaps in the proposed legislation;
- further foster and promote public discourse on the Bill and on the needs and concerns of victims of crime in Canada; and

- further sensitize the key players in the criminal justice system to the needs and concerns of victims of crime in Canada.

OFOVC's push to enhance victims' rights

Since its inception, one of the top issues victims have consistently raised with the OFOVC is that of victim rights. Victims have repeatedly expressed their dissatisfaction with the lack of rights for victims and the subsequent need for enshrined, enforceable rights specific to victims' treatment, participation and support.

In order to address this, the OFOVC has made dozens of recommendations to the Government on legislative and policy changes that would benefit victims of crime across Canada, including the development of a comprehensive Victims' Bill.

Most recently, as part of the Government's nation-wide consultation on the development of a VBR, the Office developed, submitted and published its recommendations for the rights and amendments that should be included in any prospective legislation.

The OFOVC's submission contained nearly 30 recommendations for inclusion in the Bill and outlined the clear reasons for, and benefits of, the changes. These recommendations stemmed from the Office's interaction with thousands of victims and the feedback and input of interested stakeholders who shared their views and wishes with the Office both over the years and in direct relation to the VBR. The submission was made available on the OFOVC's website and can be accessed [here](#).

Further historical recommendations made by the Office can be referenced in any one of its four special reports, listed below, or by visiting the "Recommendations for Change" section of the OFOVC's website at: www.victimfirst.gc.ca

- ***Moving the Conversation Forward: A Forum for Victims, Victim Advocates and Victim Serving Agencies;***
- ***Shifting the Conversation: A look at refocusing Canada's justice system to better meet the needs of victims of crime;***
- ***Towards a Greater Respect for Victims in the Corrections and Conditional Release Act;***
- ***Every Image, Every Child: Internet-facilitated child sexual abuse in Canada;***

A consultative approach: Giving victims a voice

In its daily operations, the OFOVC often hears from victims about their frustration with not being heard or included in the criminal justice process, as well as in the other areas of Canada's related systems and services that impact victims most directly.

With that in mind, the OFOVC was very pleased to see the Government of Canada make the decision to hold nation-wide consultations prior to the finalization of the Bill.

Between April and October 2013, in-person consultations were held across the country with victims of crime, front-line workers, advocates, provincial and territorial governments and more to help inform the development of a Canadian VBR. As well, an on-line consultation open to all Canadians was hosted on the Department of Justice Canada website from May to September, 2013.

The OFOVC commends the Government for their approach in this respect and hopes to see a similar approach taken in future to other significant policy or legislative changes affecting victims of crime.

VBR: A significant and positive step forward

The development and tabling of the VBR marks a historic development in Canada in the area of victims' rights in that it created, for the first time, legislation specifically and uniquely designed to enhance the treatment of victims of crime in Canada.

Historically, victims' rights – the few that existed – were contained as provisions in legislation that did not sufficiently acknowledge or make a place for the important role that victims of crime have to play in the criminal justice system.

While the following response document outlines a number of areas where further work and amendments would strengthen the Bill and help to better address the needs and concerns of victims, the Ombudsman feels it is imperative to acknowledge the significant step forward this Bill marks in helping to acknowledge and enshrine victims' role in the criminal justice system.

The tabling of this legislation provides not only some immediate benefit to victims, but has also helped to spur important public discourse and dialogue around victims issues which is, in itself, valuable. On the whole, the majority of public discussions about victims' issues have focused on either the offender and his/her treatment, or the length and severity of sentencing. Neither of these points help Canadians to truly understand and become sensitive to the day-to-day practical and emotional challenges victims face and their frustration with a system they often feel does not meet their needs or hear their voice. Whether specific stakeholders find themselves in favour of, or criticizing the Bill, what is important is the marking of a cultural shift to more fully consider and integrate victims' in Canada's criminal justice system and, jointly, the opportunity for important discourse about victims' needs and how to better address them.


Analysis

The following information reflects the views of the Federal Ombudsman for Victims of Crime and is provided from a policy perspective. The intention behind the information provided is to inform, sensitize and mobilize the Government and other key stakeholders about how the VBR may be amended to maximize its effectiveness for victims of crime in Canada.


Note that not all parts of the Bill have been discussed below; only those elements that relate directly to the types of concerns the OFOVC hears most often from victims have been addressed.

Finally, the points below have been colour-coded for ease of reference. Green indicates a provision or section of the Bill that the Office fully supports, yellow indicates sections which provide some benefit to victims but which could be further strengthened and red indicates sections where the Bill did not address an important concern or issue.

Definition of victim


 The definition of victim has been expanded to include those who experience property damage and economic loss.

Impact: Fraud and financial loss is a devastating crime for many victims; recognizing that victims can experience traumatic loss in these areas is a positive step forward for victims of crime.


 The definition of who can exercise rights on behalf of a victim does not include partners who do not cohabit with the victim or close friends of the victim.

Impact: This can be overly restrictive for victims who may be disconnected from family or who have chosen not to live with their partners. This definition should be expanded to allow victims who may not be in contact with family or living in non-traditional arrangements to be represented.


Information victims receive

 The VBR provides victims with the legal means to receive information about their rights, the services and programs available to them and their right to file a complaint, upon request, at different stages of the criminal justice process. The VBR also provides victims the right, upon request, to information about the investigation and proceedings and certain information about an offender or accused.


Impact: While ensuring that victims are entitled to receive more information upon request is a very positive step forward, the VBR fails to assign specific responsibilities for information sharing with victims. In order to ensure that victims receive the information they will be entitled to, it is important that the key players in the criminal justice process understand their specific responsibilities in this regard. Without this, there is a risk that agencies may fail to provide certain information to victims, as required. It is therefore recommended that the VBR provide more clarity as to the information victims are entitled to and who is responsible for providing it. This would clarify for victims what their entitlements are and who to contact in order to request specific information, if required.

 While the VBR provides victims' the right to receive information, it does not provide a mechanism whereby victims who must register are informed of this obligation or, go further and remove that burden from victims by providing the ability for a victim's contact information to be shared with appropriate authority that can then reach out and inform them of their options.

Impact: Most victims are not aware of the need to register with the Parole Board of Canada (PBC) or the Correctional Service of Canada (CSC) in order to receive information about the offender who harmed them. While informing victims of this obligation early on the process could be beneficial, most often victims find that when they are overwhelmed or in the early stages of the aftermath of a crime they will not properly absorb or retain this type of information. As such, the system should endeavour to provide the authority and opportunity for the appropriate departments and resources to proactively reach out to victims at a more opportune time in order to inform or remind them of their rights and to facilitate their registration, should the victim choose to register.


 The VBR allows a victim, upon request, to have access to an offender's bail and/or probation order.

Impact: Many victims are very much interested in having clear information about the management and release of the offender who harmed them. In addition to formally acknowledging and addressing this need in legislation, ensuring victims have this information can assist them in any safety planning they may feel is necessary.


 Under the new legislation, the CSC may now provide information to victims pertaining to the offender's correctional plan, including information regarding the offender's progress toward meeting the objectives of the plan. This responds directly to one of the Ombudsman's recommendations for change.

Impact: Victims realize that, in most cases, the offender will eventually be released back into the community and they want to understand what progress, if


any, he or she has made towards rehabilitation. Research indicates that 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."¹ Further, "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."² Ideally, this information would be provided to victims automatically, should they wish to receive it, rather than on a discretionary basis as is indicated in the VBR.

 In line with the OFOVC's recommendation, the VBR provides victims with access to a recent photo of the offender at the time of release, upon request. Contrary to the Ombudsman's recommendation that this should occur in all cases, the VBR does not provide access to a recent photo of the offender in cases of escorted temporary absences.

Impact: A victim's safety concerns may be particularly high in situations where the offender's release destination is the same community where the victim resides or works. Providing victims' with access to a recent photo of the offender will help them to recognize the offender in order to assist in effective safety planning. This same right should apply for ETA cases as victims' may still wish to be able to recognize the offender while he/she is in their community, even while escorted.

 In line with the OFOVC's recommendation, the VBR provides victims with information about the date, conditions, destination (vicinity to the victim) of an offender's conditional release 14 days in advance, unless it is not practicable to do so.


Impact: As is understandable, victims may have a high degree of anxiety about the offender who harmed them being released into their community. Having a right to have some of the details of an offender's conditional release, such as the date, conditions and destination, acknowledges this anxiety and provides the opportunity for victims to make whatever safety planning decision they deem to be necessary.

 In line with the OFOVC's recommendation, the VBR provides victims with access to an audio recording of a parole hearing. However, the VBR restricts access to only those victims who did *not attend* a parole hearing and does not provide the opportunity for victims who did attend and may want or need to review the proceedings to be afforded the same access.


¹Alexander, Ellen K., and Harris Lord, Janice. "Impact Statements: A Victim's Right to Speak, A Nation's responsibility to listen." 1994. Accessed at: https://www.ncjrs.gov/ovc_archives/reports/impact/impact.htm#Increase

²Ibid.


Impact: Parole hearings provide one of the few avenues for victims to learn about what, if any, progress an offender may have made while incarcerated. For many victims, this information is extremely important. Unfortunately, prior to the VBR if a victim was unable to attend a parole hearing there was no way for them to have access to the complete information via a recording or transcript. As such, the OFOVC recommended that all victims have access to an audio recording of the hearing. While this is a positive step forward for victims, the VBR is overly restrictive in specifying that access be provided only to those victims who did not attend a hearing. The OFOVC has heard from many victims who had the ability to attend a parole hearing in person, but who found the experience of being in such close proximity to the offender and revisiting the original victimization so taxing that they could no longer recall details of the hearing. These victims should also be afforded access to the audio recordings and as such the OFOVC recommends that the VBR be amended to provide the right to all victims.

 Under the VBR, CSC will now be required to inform victims about restorative justice opportunities.

Impact: Victims cannot access the services or programs afforded them if they are not aware they exist. Requiring victims to be informed of these opportunities will benefit victims by providing them with information about the choices available to them.

 The VBR will provide victims with automatic access, upon request, to a PBC decision registry, assuming there are no safety concerns.


Impact: The decision registry provides victims with a record of certain limited information about the reasons why a particular release decision was made. Any member of the public can apply to receive a copy of a decision registry and, prior to the VBR, there was no distinction between victims and members of the general public. Providing victims with automatic access acknowledges their role within the system and ensures they have access to timely information relevant to the offender who harmed them.

 In line with the OFOVC's recommendation, the VBR provides for the CSC to inform victims when the offender who harmed them has been removed from Canada under the *Immigration and Refugee Protection Act*, before the expiration of his/her sentence.


Impact: In some cases, an offender who has committed a crime in Canada may be subject to removal from Canada. Prior to the VBR, there was nothing in place to ensure that victims are notified when an offender is deported. In some situations, this may leave a victim living in fear, despite the fact that the offender has been deported and is no longer in Canada. Now victims will be informed and can more easily make whatever personal safety decisions they feel are

necessary for their own protection. It is not clear in the VBR, however, how this will be carried out in all circumstances.


Consideration and protection of victims

 The VBR requires judges to take victim safety and security into account at various stages of the criminal justice process, including: bail, plea bargaining, sentencing, protecting against production orders, testimonial aids and measures to protect witnesses.


Impact: While it is often assumed that criminal justice personnel take victims' safety into consideration either distinctly or as part of the general public, this is not made clear to victims who often feel that their needs and fears are not considered. By enshrining this requirement into law, victims can feel confident that their safety is consistently being considered at various phases of the criminal justice process.

 The VBR introduces a mandatory, standardized form to help victims complete victim impact statements to be presented in court. Further it specifies that if a victim has not had the chance to complete a statement that court may be adjourned to allow the victim to fill out a statement.

Impact: By providing the time required and a standardized form that guides the victim toward developing a comprehensive overview of how the crime may have impacted their life, the VBR helps to ensure consistency across the country in terms of the content and thoroughness of impact statements. Ultimately, this will result in better information for use by criminal justice personnel when making offender-related decisions such as sentencing or release.


 Following the coming into force of the VBR, the PBC will be required to consider the victim's protection and safety concerns for all changes of release conditions and will also be required to make reasonable efforts to inform the victim of any changes.

Impact: Though it is likely that many PBC board members already consider victims' safety concerns, enshrining this in legislation ensures that all victims receive consistent and appropriate consideration and formally acknowledges the need for victims to be kept informed of any developments related to the offender who harmed them.


 The VBR introduces the requirement for the PBC to explain, in writing, why it has not imposed a non-communication order or geographical restriction in cases where a

victim has expressed safety concerns or stated that they do not wish to have contact with the offender.


Impact: Putting the onus on the PBC to explain why it has not addressed a victims' expressed safety concern or need for non-communication will help to alleviate the burden on victims of wondering if their concerns were considered and on what basis the PBC decided not to impose conditions that would address the victims' fears and safety needs.

 While the VBR includes victims of an accused found to be Not Criminally Responsible (NCR) within the definition of victims, under the VBR, NCR victims still do not have access to all of the information that victims in the corrections and conditional release system are entitled to.


Impact: NCR victims should also receive information about the date, and conditions of release. For example, without knowledge of an accused's conditions pertaining to all types of release, such as the imposition of a non-communication order with the victim, the victim will not have the same sense of security.

 In cases of serious personal injury offences or murder, following the court's acceptance of a guilty plea, the VBR requires the court to inquire whether reasonable steps were taken to inform any victims of a plea bargain. In cases where the victim was not informed, the prosecutor shall, as soon as feasible, take reasonable steps to inform the victim. Similarly, in cases where a guilty plea is entered and accepted for an indictable offence with a maximum sentence of five years, the court must also inquire as to whether or not reasonable steps were taken to inform a victim, who has previously expressed a desire to be informed, of a plea bargain.


Impact: While informing victims of a plea bargain is helpful in some respects, victims have very clearly indicated a desire to be informed *before* a plea is entered/accepted and to have a chance to make their views and concerns known to the prosecutor at that time. While the OFOVC does not recommend that victims be given any veto powers in this regard, it does recommend that the Bill ensure that out of respect for the victims and their concerns that the requirement to inform a victim occur prior to the plea and that the victims have a chance to express themselves and to have their views considered.

 While the VBR provides enhanced safety and security for the victim in a number of ways, including: protecting victim information and identity during trial and testimony; allowing testimonial aids such a support person and protections; and allowing the victim to read a statement outside of the courtroom, the same considerations are not applied to ensure the safety and security of the victim at parole hearings (i.e. support person, separate waiting areas, etc.).


Impact: Despite best efforts, victims attending a parole hearing may find themselves using the same entrances and/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.

 The VBR allows a judge to adjourn proceedings to allow a victim to prepare an impact statement and/or fill out a request for restitution. The same option to delay proceedings should be available for victims in relation any decision-making process regarding offender release (of any type) in order to allow a victim time to prepare/update their statement.

Impact: Under CSC's current process, victims are given five days to update their statement once the institutional parole officer has made contact with the Victim Service Officer. Given the emotional toll this process takes, and respecting the victims' personal or professional obligations, this may be insufficient time for a victim to be able to develop a fulsome and accurate statement.

 Though the VBR does make progress in permitting victims enhanced access to the proceedings of a parole hearing (via automatic access to the decision registry and/or access to audio recordings for victims who did not attend in person), it does not provide victims with a presumptive right to attend a parole hearing. As it stands, a victim must continue to apply to attend a hearing, just like any other member of the public.

Impact: Although in practice, victims are rarely denied to attend a parole hearing, providing them with the presumptive right to attend a hearing, unless there are safety concerns, would send a strong message regarding the victims' role and importance in the process.


 While the VBR permits a victim to be notified once an offender is deported from Canada before the expiration of their sentence, it does not permit a victim to submit and/or present a statement at Immigration Review Board hearings.

Impact: Victims may want to have their safety concerns and other views heard and considered in relation to a potential deportation. Given that criminality is a factor used to determine if an individual should be deported,³ victims should be able to have their voices heard in relation to the criminal offence committed


³ Immigration Review Board. "Criminal Grounds for Removal." Accessed at: http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Documents/RoaAmr07_e.pdf

against them, and provide information for consideration in the deportation decision-making process. Furthermore, the VBR does not provide for victims to be further informed about the process. The deportation process is complicated, and given victims' potential anxieties and personal safety concerns, they deserve to be informed about the deportation process (i.e. access information about what goes on before the offender is removed/deported from Canada) as well as provided with reasons as to why the removal is taking so long (i.e. appeals, travel documents, temporary suspension of removal order).

Support for Victims

 The VBR requires that judges shall consider ordering restitution in all cases, regardless of the offender's financial situation.


Impact: Victims often experience financial hardship in the wake of a crime due to a number of factors, including legal fees, the loss of ability to work temporarily or over the long term, or self-care related costs such as counselling that may pose significant financial burdens. Requiring judges to consider the cost to the victim and the option of restitution ensures that the impacts on the victim are considered consistently.

 Under the VBR, victims who are still owed monies may enter as a judgement any amount ordered to be paid that remains unpaid under the order in any civil court in Canada.

Impact: This still puts the onus on the victim to take steps to collect the money owed to them rather than have the authorities obtain the funds. Victims should not have to go to civil court to enforce a restitution order. Restitution is part of the offender's sentence, and structures should be in place to ensure those orders are enforced.

Enforcement

As stated in its submission to the Government of Canada on what should be included in a VBR, the Ombudsman is of the view that without enforcement, there is no real mechanism to *ensure* that victims rights are respected within the criminal justice system. There is simply reliance on the cooperation of key players in the system.

 Under the VBR, victims who feel that their rights have not been respected may file a complaint with the appropriate authorities. At the federal level, all federal bodies involved in the criminal justice system will now be required to have an internal complaint mechanism that reviews complaints brought forth by victims. These same bodies must also have the power to make recommendations to remedy any infringements or denials


and must notify victims of the result of those reviews and recommendations, if any were made. Failing resolution with the department or agency, a victim may file a complaint with the appropriate authority, which may include offices such as the OFOVC.


Impact: While the availability of internal complaint resolution processes may be beneficial, and while there is clear commitment and many dedicated staff assisting victims within the federal government, victims are still not afforded enforceable rights or any representation in cases where their rights have not been met. Further, while the OFOVC has received generally good cooperation from federal departments, it has no power or authority to compel departments to produce information or documentation to facilitate a review, nor does it have the authority to enter into binding agreements with departments in order to address the complaint and/or systemic issues. It will be necessary to monitor the new processes and overall victim satisfaction as the Bill is introduced and its practical application takes place in order to review whether the measures contained in the VBR will be sufficient.


Outstanding OFOVC recommendations that were not included or addressed in the Victims Bill of Rights

- Victims should have the right to receive communication, to the greatest extent possible, in the **method of their choice** and to receive information in a **format that takes into account the personal characteristics of the victim, including any disability that they may have.**
- Victims shall receive **death-notification** based on a national standard which has been developed and implemented with victims' needs and sensitivities in mind.
- Victims shall receive, upon request, the **pre-sentence report** when available to the accused, except for those portions made confidential by law.
- Victims shall have the right to **reasonably confer with the Crown** regarding any pre-disposition of their case and/or any determination on whether to extradite the accused.
- Victims shall be given the right to a **speedy trial** and a prompt and final conclusion of the case.
- Victims have access to prompt redress /remedy through **access to legal counsel** to assert their rights in criminal proceedings.
- Victims with standing shall have **access to legal representation** to enforce their rights and resources shall be specifically allocated to ensure the availability of this access.
- Victims shall have the right to a review of a decision not to prosecute.
- Victims shall have the right to an **individual assessment** to determine their **protection needs** and, where needs are identified, victims shall have the right to appropriate protection measures.
- Victims shall have the right to **choose how they will attend** a parole board hearing and/or present a victim statement, be it in person, by video or tele-conference, via closed circuit television or through the use of other secure, reasonable and available

technological means.

 Victims shall have access to **safe and separate waiting areas** apart from the offender and his or her family or support persons at any parole hearings or proceedings.

 Victims' **employment status** shall be protected in the immediate aftermath of a crime and during court proceedings.

 Victims shall have the right to **attend Immigration Review Board** hearings, and to submit or read a statement for consideration.

Conclusion

The Bill contains a number of measures that will certainly improve the system for victims of crime and help to ensure they are informed, considered, protected and supported. At the same time, many of the measures contained could be further strengthened and many other issues impacting victims of crime were not addressed, even in part. With amendments the VBR could be much more effective in addressing the challenges victims of crime face.

As the Bill moves through the Parliamentary process, the Ombudsman will make recommendations for amendments to further strengthen the Bill and to address those areas which have been neglected.