



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



# Office of the Federal Ombudsman for Victims of Crime

*Meeting the needs of victims of crime in Canada*

Submission to the Department of Justice Canada for the  
Development of a Victims Bill of Rights

Submitted June 10, 2013

# Table of Contents

Introduction	2
Support for a Victims Bill of Rights	3
Setting the context	4
Recommendations for inclusion in the Victims Bill of Rights	6
Informing victims	7
Considering and protecting victims	16
Supporting victims	24
Enforcement	27
Conclusion	29
Appendix A: Recommendations for a Victims Bill of Rights from participants at the OFOVC's April 2013 Forum	30
Appendix B: Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003	32

## Introduction

The Office of the Federal Ombudsman for Victims of Crime (OFOVC) is an independent resource for victims in Canada and was created in 2007 to ensure the federal government meets its responsibilities to victims of crime.

Victims can contact the Office to learn more about their rights under federal law and the services available to them, or to make a complaint about any federal department, agency, law or policy related to victims of crime. In addition to its direct work with victims, the Office also works to ensure that policy makers and other criminal justice personnel are aware of victims' needs and concerns, and to identify important issues and trends that may negatively impact victims. The Ombudsman may also make recommendations to the federal government.

The mandate relates exclusively to matters of federal jurisdiction and enables the Office:

- to promote access by victims to existing federal programs and services for victims;
- to address victims' complaints about compliance with the provisions of the *Corrections and Conditional Release Act* that apply to victims of crimes committed by offenders under federal jurisdiction;
- to 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, 2003, with respect to matters of federal jurisdiction, among criminal justice personnel and policy makers;
- to 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
- to facilitate access by victims to existing federal programs and services by providing them with information and referrals.

## Support for a Victims Bill of Rights

Since its inception, one of the top issues victims have consistently raised with the Office 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 Canada's current system, there are very few provisions that apply directly to victims of crime. Those provisions that do exist are not generally enforceable. In comparison, offenders have a right to be treated in a certain manner, to obtain important information, to be present and/or participate in most decision-making proceedings and are often supported through various forms of programming and rehabilitation. Almost none of these same protections or supports are offered to victims and, as such, victims feel that the criminal justice system, and the related supports outside of the system, weigh *heavily* in favour of the offender—an imbalance that is increasingly stark in light of who suffered the harm.

The development of a fulsome, encompassing, enforceable Victims Bill of Rights (VBR) would mark a significant step forward for victims of crime in Canada. Beyond simply balancing the scales, providing victims with real enforceable rights would serve to strengthen the system overall. Whereas failing to recognize and act upon the needs of victims can result in victims' withdrawal from cooperation in the justice system—thereby undermining the system's effectiveness—improved responsiveness to the needs of victims of crime will enhance the effectiveness of, and public confidence in, the criminal justice system.

A greater focus on victims through the effective implementation and enforcement of a VBR will also assist in reducing the cost and impact of crime on individuals, and on Canadian society in general. Victims' access to assistance following their experience of victimization, including information, meaningful participation and tangible supports, is crucial to creating better outcomes for victims, and society as a whole.

In developing a VBR, the OFOVC encourages the Government to be inclusive and to consider the widest definition of victim. For example, those affected by criminal activity abroad or involved in cases where an accused is determined to be not criminally responsible do not necessarily have the same rights, programs or services available to them. The OFOVC recommends that the VBR be as inclusive as possible in defining "victim" for the purpose of the administration of their rights.

Finally, though it is outside the scope of this exercise, it also must be noted that over and above legislated rights for victims there is a concurrent need and opportunity to enact change through the sensitization and mobilization of key players in the criminal justice field. It is unlikely that legislation could ever provide for all of the ways that victims should be considered and treated. As such, both in tandem with and in addition to a VBR, Canada must make a conscious effort to create a culture of inclusivity and sensitivity with respect to victims of crime.

## Setting the context

### *Analysis and inclusions*

In preparing this submission, the OFOVC analyzed and drew from a number of sources, including:

- data from its own direct contact with victims as well as previous OFOVC reports and recommendations;
- the Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003;
- a review of provincial and territorial victims' rights acts and related material;
- federal Parliamentary Committee reports and publications;
- U.S. state-level constitutional victims' rights amendments;
- U.S. Crime Victims' Rights Act (2004);
- European Directive establishing minimum standards on the rights, support and protection of victims of crime (2012);
- United Kingdom Code of Practice for Victims of Crime; and
- New Zealand Victims' Rights Act 2002.

In addition to these, the OFOVC held a Forum in April 2013 bringing together more than 150 stakeholders including victims, victim-serving agencies, federal government departments, police associations and more. As part of the event, an all-participant workshop was held to determine what stakeholders felt should be included in the VBR. Facilitators worked to capture participants' responses, which resulted in the emergence of a number of themes and issues that are woven into this submission. Additionally, the ideas put forward are included in their entirety in Appendix A.

### *Jurisdiction and limitation of scope*

It is important to note that in Canada, the federal government and provincial/territorial governments share responsibility for matters related to victims. The provinces/territories are responsible for the administration of justice, including law enforcement, prosecutions, services to victims of crime and criminal injuries compensation. The federal government's role focuses on the *Criminal Code of Canada* and federal corrections and parole through the *Corrections and Conditional Release Act* (CCRA).<sup>1</sup>

While the mandate of the OFOVC relates exclusively to matters within federal jurisdiction, we hear from victims on a daily basis who share their full experiences and concerns with us. While many of the issues may not necessarily fall into the federal provisions of the CCRA or *Criminal Code*, they are issues occurring *nationally* and reflect a need for nationally consistent rights and, as victims of crime describe it, a minimum standard of care for all victims in Canada. Furthermore, many victims cite this lack of national consistency in victim services, programs

---

<sup>1</sup> Department of Justice Canada. "Victims Rights: Enhancing Criminal Law Responses to Better Meet the Needs of Victims of Crime in Canada: Discussion Document." 2013. Accessed at: <http://www.justice.gc.ca/eng/cj-jp/victims-victimes/vrights-droitsv/discuss-consult.html>

and compensation across provinces and territories as particularly problematic in cases where the crime occurred in a province/territory other than that where the victim resides.

Finally, in developing a VBR, the view of the OFOVC is that the experience of the victim should be kept in mind at all times. Victims do not experience crime and its subsequent impact in terms of jurisdiction or geographical limitations. Where gaps exist, the Government should move to address them to the greatest extent possible in the federal context. This may mean, for example, amending existing legislation such as the *Criminal Code* to provide for consistent treatment and notification of victims. For those areas entirely outside of the federal authority, every effort should be made to work with the provinces and territories to develop a VBR that would enable a more seamless approach to victim treatment, inclusion and support.

*Note: This submission reflects the issues that victims' have brought to the attention of the OFOVC that could potentially be addressed in a VBR. There are further recommendations that the Office has made that address victims' concerns but which are not included here because they simply cannot be framed as rights for victims. For example, victims have shared with us how difficult it can be to prepare for parole hearings every two years and, as such, the OFOVC has recommended that the time between hearings for those serving life and indefinite sentences be extended to five years from two. Because this cannot be expressed as a right for the victim, it has not been included for consideration within this submission. To review all of the OFOVC's past recommendations for additional consideration, please visit the Recommendations for Change section of OFOVC's website.*

## Recommendations for Inclusion in the Victims Bill of Rights

When developing a VBR it is necessary to ensure that at the root of all rights and remedies is the guiding principle that victims deserve to be treated with courtesy, compassion, fairness and respect; that we should uphold their privacy and dignity; and that victims should be free from intimidation, harassment and abuse throughout the criminal justice and conditional release process.

The Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003, is a set of principles endorsed by the federal, provincial and territorial governments, which is intended to guide the development of policies, programs and legislation related to victims of crime. The Statement promotes the fair treatment of victims and includes specific direction on the treatment, information and consideration that victims should receive. Given Canada's unanimous cross-jurisdictional endorsement of the Statement, the development of a VBR should, at a minimum, ensure that it meets all of the principles outlined. Ideally, the OFOVC recommends that the Statement be included in the preamble for the VBR and, where possible, that the principles be enumerated as clear and enshrined rights.

Generally, respecting the intention of the Statement and treating victims with respect, courtesy, compassion and fairness means ensuring that they are included as an integral part of the process; that they are kept informed; that their needs, input and safety are considered; that they are protected from harm; and that they are sufficiently supported in their healing journey.

This section will provide an overview of issues that the OFOVC would like to see addressed in a VBR and emphasizes the importance of ensuring that victims are:

- informed;
- considered and protected; and
- supported.

Under each of the points above, the OFOVC has provided information and/or recommendations for victim rights in generally the chronological order of when a victim would access it. The information is therefore organized by three main periods:

- at the time of a crime;
- court; and
- post-conviction and conditional release.

Finally, while the OFOVC has provided the information in relation to various phases of the criminal justice process, it is important to recognize that not all victims are able, or choose, to remain engaged with the criminal justice system and that for many victims, their needs will extend far beyond the conditional release phase of the criminal justice process.

## Informing victims—Why is it important?

*“If victims are going to be meaningfully empowered and included within the criminal justice process, officials must undertake the additional effort to tell them all they need to know.”<sup>2</sup>*

In order to provide victims with the opportunity to participate in the criminal justice system, victims must first have access to comprehensive victim-centred information. This includes:

- information about the progress of criminal investigations and prosecutions, and the sentencing and interim release of offenders from custody;
- information about plea and pre-trial arrangements and their role in the prosecution; and
- information about the offender who harmed them, including corrections and conditional release of offenders from custody, release on parole, temporary absence or escape from custody.

Providing information to victims can significantly influence their experience and satisfaction with the criminal justice system. Victims have told the OFOVC that access to information can be integral in the prevention of secondary victimization. “Victims’ accounts of their encounters with the criminal justice system range from positive experiences resulting in feelings of satisfaction to tales of horror best described as further victimization.”<sup>3</sup>

Providing victims with information about their rights, the criminal justice process, the programs and services available to them, and the offender who harmed them, assists with:

- addressing general feelings of anxiety and isolation. When victims are thrust into an unknown and unfamiliar system it can, naturally, raise many questions. Treating victims with respect and dignity means respecting their need for information about their rights, the process, their role and any anticipated outcomes.
- ensuring victims are able to effectively exercise their rights. In order for victims to access their rights, it is first necessary for victims to know and understand what these rights are.
- preparing 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 is not only a source of frustration for victims but also affects the quality of information considered by the Parole Board of Canada (PBC) in rendering a decision. PBC states that victim statements are useful in assessing the nature and harm suffered by the victims; the risk of re-offending that the offender may pose if released; the offender’s understanding of the impact of the offence; and conditions necessary to manage the risk that might be presented by the offender.<sup>4</sup>

---

<sup>2</sup> State of California Department of Justice, Office of the Attorney General. “Marsy’s Card.” Accessed at: <http://oag.ca.gov/victimservices/marsy>

<sup>3</sup> McCabe (1982) as quoted in Beloof, Doug. *Victims Rights: A Documentary and Reference Guide*, Santa Barbara, Calif.: Greenwood. 2012. p. 48.

<sup>4</sup> Parole Board of Canada. “Fact Sheet. Victims—Providing Information.” Accessed at: <http://pbc-clcc.gc.ca/infocntr/factsh/provid-eng.shtml>

- effective safety planning. Victims need to feel safe and want to know when the offender is released from custody and, further, if the offender has made any strides toward addressing issues related to the crime they committed while incarcerated.
- healing. 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.”<sup>5</sup>

Finally, we must consider not only the content of the information, but the format and accessibility as well. Information provided to victims must be accessible, both in terms of the language used and the vehicles used to disseminate that information.

**The OFOVC recommends that victims have the right to:**

- **receive communication, both orally and in writing, that uses clear and direct language;**
- **receive information in a format that takes into account the personal characteristics of the victim, including any disability that they may have; and**
- **receive communication, to the greatest extent possible, in the method of their choice.**

→ This should include common options such as telephone, email, regular mail, as well as via secure online or automated telephone platforms that can be accessed outside business hours.

*Informing victims: At the time of a crime*

Generally, a victim’s first point of contact with the criminal justice system is with law enforcement. Information provided by police is critical to ensuring victims are aware of, and can access, their rights and services. This is especially important in cases where charges are not laid and, as a result, where victims are precluded from further participation in the criminal justice process.

Given the importance of this first contact, and in light of Canadian privacy regulations that may prohibit some victim services from proactively reaching out to victims, it is important that law enforcement provide victims with pertinent information.

Below are OFOVC’s recommendations for inclusion in the VBR in order to ensure victims are sufficiently informed at the time a crime occurs:

---

<sup>5</sup> Alexander, 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/welcome.html](https://www.ncjrs.gov/ovc_archives/reports/impact/welcome.html)

**Victims shall be provided, at the first point of contact with police, with information about their rights.**

The California Victims' Bill of Rights Act of 2008 (also known as Marsy's Law) provides an example of an effective means through which to provide victims with information related to their rights. In California, just as the accused are read their rights, victims are immediately informed of their rights provided for in the Bill of Rights, and provided with "Marsy's Card," a small foldout containing a full description of each of the rights they are entitled to, which is also available for download in 17 languages on the California Office of the Attorney General website.<sup>6</sup> The California Attorney General has published these rights, which now are utilized by every law enforcement agency in the state.

**Victims shall receive death notification based on a national standard that has been developed and implemented with victims' needs and sensitivities in mind.**

The OFOVC has heard from victims who are frustrated at the lack of a victim-centred approach to providing death notification across Canada. The standard developed should seek to ensure that police officers are trained to provide death notification in a sensitive and respectful manner.<sup>7</sup>

**Victims who indicate an interest in receiving information about the offender shall have their contact information sent by law enforcement to the appropriate corrections and parole authorities for the purpose of enabling future proactive contact regarding registration.**

The OFOVC has heard from many victims who were never made aware that following the sentencing of their offender they were required to register in order to receive information about the offender who harmed them as he/she progressed through the federal corrections and conditional release system. Though this type of information is only relevant much later in the criminal justice process, current federal privacy regulations make it impossible to proactively reach out to the victim at a later point. As such, police continue to remain the key to informing victims of the need to register. By proactively providing this information, it would remove the burden on victims of having to be aware of the need to register and of the need to initiate contact.

This system is currently in place in New Zealand, where the police are mandated to "forward a copy of the victim's address to Corrections in circumstances where the person accused of the offence or the offender is or becomes liable to be

<sup>6</sup> State of California Department of Justice, Office of the Attorney General. "Services and Information." Accessed at: <http://oag.ca.gov/victims>

<sup>7</sup> See Appendix A, Recommendations for VBR from participants at the OFOVC's April 2013 Forum.

detained in a prison in connection with the offence” in circumstances where the victim has indicated that they wish to receive information about the offender. Similarly, in cases where the accused has been determined to be not criminally responsible, the police must forward the address to health authorities if the accused is or becomes liable to be detained in a mental health hospital or facility in connection with the offence.<sup>8</sup>

### *Informing victims: Court*

Following the initial shock and trauma of a crime, victims may find themselves embroiled in court and legal proceedings, which can be overwhelming. Given that the Canadian justice system is structured in such a way that crimes are committed against the Crown and not an individual victim, victims are not necessarily informed of important decisions that can substantially affect the outcome of the proceedings. The OFOVC feels that victims are more than mere bystanders in the system, and that Canadian laws and policies should reflect this.

The following are the OFOVC’s recommendations for rights to be included in the VBR in order to address the information that victims should have the right to obtain throughout the court process:

#### **Victims shall have the right to a review of a decision not to prosecute.**

Victims often struggle when a decision is made not to pursue prosecution for a crime committed against them. The ruling in a recent case in England created a right for victims to a review of a decision. The ruling stated “as a decision not to prosecute is in reality a final decision for a victim, there must be a right to seek a review of such a decision.”<sup>9</sup> The right to such a review is consistent with the recognition that victims are not mere observers in the criminal justice process, but real participants with both interests to protect and rights to enforce. The European Union has also included this right in the Directive on minimum standards on the rights, support and protection of victims of crime, essentially providing this right to all victims of crime in the European Union.<sup>10</sup>

<sup>8</sup> Parliamentary Counsel Office, New Zealand Legislation. “Victims’ Rights Act 2002.” Accessed at :

<http://www.legislation.govt.nz/act/public/2002/0039/latest/DLM158502.html>

<sup>9</sup> BBC News UK. “Victims to get right to challenge ‘no charge’ decisions.” July 27, 2012. Accessed at:

<http://www.bbc.co.uk/news/uk-19008958>

<sup>10</sup> EUR-Lex: Access to European Law. “Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.” 2012. Accessed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32012L0029:en:NOT>

**Victims shall receive, upon request, the pre-sentence report when available to the accused, except for those portions made confidential by law.**

In some jurisdictions, victims have a right to view the pre-sentence report. These reports are significant as the court frequently uses them to help determine an appropriate sentence based on the recommendations contained within them. This is important for the accused, but also for victims, as some of the information may pertain to the victim, and the impact of the crime.<sup>11</sup>

### *Informing victims: Post-conviction and conditional release*

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."<sup>12</sup> 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."<sup>13</sup>

Currently, information provided to victims about the offender by the Correctional Service of Canada and the PBC is limited in its scope. Some of the information is provided on a strictly discretionary basis, requiring that the information be provided to registered victims *only if the victim's interest clearly outweighs the invasion of the offender's privacy.*

The following are the OFOVC's recommendations for victims' right to be included in the VBR in order to ensure they are sufficiently informed in the post-conviction and conditional release phase of the criminal justice process:

---

<sup>11</sup> Davis, Robert C., Anderson, James, M., Whitman, Julie, and Howley, Susan. *Securing Rights For Victims: A Process Evaluation of the National Crime Victim Law Institute's Victims' Rights Clinics*. Santa Monica, Calif.: Rand Corporation. 2009. p. 61.

<sup>12</sup> Alexander, 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](https://www.ncjrs.gov/ovc_archives/reports/impact/impact.htm#Increase)

<sup>13</sup> Ibid.

**Victims shall receive, upon request, the following information automatically, except in cases where it may threaten the safety of an offender, individual or institution:**

- the offender's name (including if the offender has changed his or her name while incarcerated);
- the offence and court that convicted the offender;
- the offender's sentence start date and length of sentence;
- the offender's eligibility dates and review dates for temporary absences and parole;
- the location of the penitentiary where the offender is being held;
- the offender's participation in correctional programming and progress made towards achieving goals set out in the correctional plan, as well as any convictions for disciplinary offences. This would include whether the offender successfully completed a correctional program, whether the offender is currently wait listed or scheduled to participate in programs that they have not yet participated in (including general information about the program), and any sanctions imposed for convictions for disciplinary offences;
- the offender's progress toward meeting their court-ordered obligations (i.e. restitution, child and spousal support, federal victim surcharge);
- advance notice of the date on which the offender is scheduled to be transferred between institutions (including location and security level of the institution) and/or released on any type of scheduled conditional release or absence, and the reason for transfer; and
- reasonable and timely notice of all parole hearings and reviews.



As discussed earlier in this section, often victims wish to remain informed about the offender and their progress in the corrections and conditional release system for a number of practical reasons.

Further, in order for victims to participate in a parole hearing or update their victim statement on file, they must first be informed that a hearing or review is scheduled. For those victims who do wish to participate, advance notice becomes integral for the purposes of planning, including potential travel, childcare arrangements, time away from work, etc.

**Victims shall be informed of all conditional release procedures and receive, upon request, in a reasonable and timely manner:**

- the outcome or decision of any parole review, including dates of parole or any absence from the institution;
- any conditions attached to that release or absence (including electronic monitoring and local instructions placed on supervision by the community parole officer);
- the destination of release;
- whether the offender will be in the vicinity of the victim while travelling to that destination; and
- notice when an offender breaches the conditions of release and reason(s) for the breach.

Victims may have significant safety concerns related to the release of the offender in the community. This information and the destination of an offender's release are necessary for victims to fully understand the supervision of the offender in the community.

**Victims shall have access to view, upon request, a recent photo of the offender at the time of release.**

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. For this reason, some victims have shared that they wish to have access to view a recent photo of the offender at the time of release so that they may recognize the offender in order to assist in effective safety planning.

**Victims shall have rightful access, upon request, to listen to the audio recordings of parole hearings, regardless of whether the victim attended the hearing, or to have transcripts of the parole hearings provided at no cost.**

→ This is important for victims who may choose not to attend a hearing, or for victims who may have found it difficult to absorb all of the proceedings.

These proposals were examined in detail by the Government of Canada in the *National Consultation with Victims of Crime, 2001*.<sup>14</sup> However, victims' access to audio recordings or transcripts has yet to be accomplished.

Beyond the corrections and conditional release system, there exist two areas where significant gaps exist in the provision of victim information: offenders in the custody of the Canada Border Services Agency and accused persons who are found to be not criminally responsible. To address these areas, the OFOVC recommends the following:

**Victims shall be given advance timely notice of the status of the offender with respect to his or her deportation, detention or release while under the jurisdiction of the Canada Border Services Agency and of deportation proceedings, if applicable.**

→ In some cases, an offender who has committed a crime in Canada may be subject to removal from Canada. There is no comprehensive policy or procedure in place to ensure that victims are notified when an offender is deported, or when the offender is in detention or released into the community awaiting deportation. 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.

**Victims shall be informed, in cases where an accused is determined to be not criminally responsible, of Review Board procedures, and of their role and the process relating to those procedures.**

→ Individuals who are determined not criminally responsible by the court are diverted into provincial/territorial mental health systems. A Review Board becomes responsible for providing oversight of the treatment, rehabilitation and reintegration of the accused into society. Just as in other cases regarding victims of crime, the Review Board system and the victim's role within it can be largely unfamiliar for victims. Explaining procedures, next steps and opportunities for

---

<sup>14</sup> Government of Canada. *National Consultation with Victims of Crime, Highlights and Key Messages*. July 2001. The text is available online at <http://www.publicsafety.gc.ca/res/cor/rep/ncvc-cnvc-eng.aspx>

participation are essential in ensuring that victims stay informed and can access their rights.

**Victims shall receive advance timely notice of Review Board hearings, absences, notice of discharge decisions and conditions placed on a conditional discharge in cases where an accused is determined to be not criminally responsible.**

Victims of crime where an accused is found to be not criminally responsible should be entitled to the same types of information, including advance notification of proceedings, releases from forensic facilities, conditions of release, and breaches of release conditions. Victims also should have opportunities to present and have the impact of the crime considered, and have access to a photo of the accused at time of release, etc. The state of mind of the accused does not fundamentally alter a victim's need for information, to be considered and protected and to receive support.

## Considering and protecting victims—Why is it important?

Enshrining victims' rights to be considered and protected is necessary to ensure that:

- they play a meaningful and productive role in the criminal justice process;
- their needs and preferences are accommodated where possible; and
- their well-being and safety are addressed.

The act of considering a victim is two-fold in that, first, a victim's needs, concerns and preferences should be considered in order to ensure that their participation in the criminal justice system is accommodated as much as possible. This includes taking into account such things as their comfort level being in proximity to the offender and, where necessary, ensuring that victims are never put in situations where they feel intimidated or unsafe. If a victim has difficulty travelling, accommodations should be made to ensure their rights are met in a manner that is sensitive to their needs and limitations. Second, a victim should have opportunities to contribute to criminal justice decisions and processes, such as by making a victim statement at a parole hearing, and to have their contributions reviewed as part of the decision-making process.

When we *consider* victims, in the full meaning of the word, we show respect for their needs, safety and well-being and, in addressing those aspects, promote their ongoing participation in the criminal justice system. We also give them the opportunity to contribute in a meaningful way to important justice decisions by providing important information about the harm done and the offender.

Victims are often surprised to learn that the Crown represents all members of the public, and it is not necessarily their role to represent the interests of victims of crime.<sup>15</sup> In many cases, this leaves victims feeling like bystanders in the process despite the fact that they are the ones suffering the impact of the criminal offence. Conversely, allowing victims more opportunity to participate in the criminal justice, corrections and parole processes strengthens the system by better informing important decisions related to prosecution, sentencing and release.

Ensuring that victims are protected is also essential. After suffering devastating loss and trauma, victims may have concerns about their safety. Victims who know that they will be protected from undue intimidation or harm in their involvement with the criminal justice system may be more likely to come forward and report crime, and to continue to participate in the criminal justice process.

### Considering and protecting victims: Court

To ensure that victims are fully considered and protected during court proceedings, the OFOVC recommends the following:

---

<sup>15</sup> Policy Centre for Victim Issues, Department of Justice Canada. "A Crime Victim's Guide to the Criminal Justice System." Accessed at: <http://www.justice.gc.ca/eng/pi/pcvi-cpcv/guide/evaluation.pdf>

**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.**

In order to identify the specific needs of victims in relation to protection measures, victims' needs should be assessed in a way that takes into account the personal characteristics of the victim, and the nature and severity of the crime. For example, child victims should be presumed to have specific needs due to their vulnerability to intimidation and retaliation.

Victim protection measures should include such things as:

- secure waiting areas separate from those of the accused and his/her family, witnesses and friends during court;
- measures to prevent information that could lead to the identification of a child victim;
- allowance of a support person to accompany the victim;
- access to interviews conducted by a member of the same sex in cases involving gender-based violence;
- denial of bail (judicial interim release) or imposition of specific conditions of bail release—such as no contact orders—for defendants found to present a danger to the community, or to protect the safety of victims and/or witnesses;
- measures to avoid visual contact between victims and the accused during testimony, including through the use of technology;
- measures to ensure that the victim can be heard in the courtroom without being present, in particular through the use of appropriate communication technology; and
- measures to protect victims' privacy and identity.

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

Victims have shared with the OFOVC that a significant obstacle to their recovery and/or participation in criminal justice proceedings is the lack of available mechanisms to ensure that employers treat their employees with compassion by allowing them time off work following victimization without reprimand. Victims should have their job and economic status protected following a crime, to ensure their jobs are protected while they are not able to work. This should include preventing employers from firing or reprimanding a victim for taking time off to participate in the criminal justice process.

The *Canada Labour Code* was recently amended to provide some employment protection to the parents of murdered or missing children, and a corresponding income support program was also developed providing up to \$350 weekly to

parents of missing or murdered children for up to 35 weeks.<sup>16</sup> Crime victims who do not fit into the category of parents of murdered and missing children should also have access to employment protection and income support following a crime, with enough flexibility to ensure that this income support can be accessed should they choose to attend criminal proceedings.<sup>17</sup> Notably, an idea that was brought forward by Forum participants is for Employment Insurance benefits to be available to victims of crime in these circumstances, to facilitate income support both in the immediate aftermath of the crime, and to facilitate participation in criminal justice proceedings.<sup>18</sup>

**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 often feel that it is unjust that the accused is represented but that they are not. In many cases, this has left them feeling that they are without a voice in the criminal justice system. For this reason the duty to consult with victims concerning any pre-trial disposition or extradition is essential.

**Victims shall be given the opportunity to provide input with respect to the plea bargaining process.**

Currently, victims have little in the way of rights and participation in the plea bargaining process. Plea bargaining can be especially problematic for victims, who often feel that the accused should be held accountable for the crime they have committed.

A model for potential consideration would be to provide an active role for victims in the plea negotiation process without providing a right to veto such agreements. According the Department of Justice Canada, “This may be the most viable option. Such an initiative would require action by the Parliament of Canada to amend the *Criminal Code* in a manner that would provide for overt judicial regulation of plea negotiations in an open forum; for entrenchment of

<sup>16</sup> Service Canada. “Federal Income Support for Parents of Murdered or Missing Children income support grant.” Accessed at: <http://www.servicecanada.gc.ca/eng/sc/pmmc/additionalinfo.shtml>

<sup>17</sup> House of Commons, 41<sup>st</sup> Parliament, 1<sup>st</sup> Session. Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities. “Study on Bill C-44: An Act to Amend the Canada Labour Code and the Employment Insurance Act and to make Consequential Amendments to the Income Tax Act and the Income Tax Regulations. Evidence of Committee meeting, October 23, 2012.” Accessed at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5775095&Language=E&Mode=1&Parl=41&Ses=1>

<sup>18</sup> See Appendix A, recommendation 7.

the right of victims to make written or oral submissions to the court... before a plea arrangement decision is made.”<sup>19</sup>

Similarities can be drawn between the role of the victim in sentencing through the oral or written submission of a victim impact statement, and the oral or written submission of a statement in relation to plea bargaining.

**Victims shall be given the right to present a victim impact statement during sentencing, outlining the impact of the crime.**

→ A victim impact statement (VIS) is a written statement that describes the harm or loss suffered by the victim of an offence. The court considers the statement when the offender is sentenced.<sup>20</sup> The victim impact statement provides crime victims with an opportunity to have their voice heard in the criminal justice process. It allows them to participate in the sentencing of an offender by explaining to the court, and the offender, how the crime has affected them.<sup>21</sup>

**Victims shall be given the right to a speedy trial and a prompt and final conclusion of the case.**

→ The emotional, physical and financial stress of preparing for trial can be overwhelming for victims of crime. In many situations, this stress can be compounded by the postponements, which serve to prolong the traumatic experience. This can have serious consequences on the healing journey of victims, who may feel that there is no end in sight. In extreme circumstances, this may lead victims to request that charges be dropped to spare them from this ongoing emotional trauma.<sup>22</sup>

---

<sup>19</sup> Verdun Jones, Simon N., and Tijerino, Adamira A. “Victim Participation in the Plea Negotiation Process in Canada: A Review of the Literature and Four Models for Law Reform.” Policy Centre for Victim Issues, Research and Statistics Division, Department of Justice Canada. 2004. p. 55. Accessed at: [http://www.canada.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr02\\_5/p7.html](http://www.canada.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr02_5/p7.html)

<sup>20</sup> National Victims of Crime Awareness Week. “Use of Victim Impact Statements at Sentencing and Parole.” Accessed at: <http://www.victimswalk.ca/res/r58.html>

<sup>21</sup> Canadian Resource Centre for Victims of Crime. “Victim Impact Statements.” Accessed at: <http://crcvc.ca/docs/VictimImpactStatements.pdf>

<sup>22</sup> Justice League of Ohio, Crime Victims’ Rights Legal Clinic. “Denied Right to Speedy Trial and Right to be Present.” Accessed at: <http://www.thejusticeleagueohio.org/denied-right-speedy-trial-and-right-be-present>

**Victims have access to prompt redress /remedy through access to legal counsel to assert their rights in criminal proceedings.**

Rights in relation to criminal proceedings must be enforceable in order for the criminal justice system to be held accountable for the rights it will be mandated to provide.

In relation to crime victims' procedural rights a model for consideration would be that of the Crime Victims' Rights Act in the U.S., where victims are able to enforce their procedural rights if are denied them by appealing to a higher court. This is well explained by Dr. Douglas E. Beloof, founder of the National Crime Victims Law Institute and Professor of Law at Lewis and Clark Law School in the United States:

“For a victim to truly have meaningful access to their rights, the victim must be able to both *exercise* the right, and *enforce* the right. Exercising a right means the victim takes advantage of the right. For example, if the victim has a right to speak at sentencing, and the victim does speak at sentencing, the victim is exercising the right. When the victim exercises the right, he is acting as a participant in the criminal process. A victim acting as a participant is not a full party. The full parties remain the Crown and the accused. Victims are participants exercising their rights intermittently at times but not all procedural stages in the criminal process.

*Enforcing* the victim's right means something quite different than *exercising* the right. When the victim is denied the opportunity to exercise the right, enforcement means the victim can seek a ruling from a higher court authority to restore the victim's ability to exercise the right. For example, if the victim was denied the ability to exercise her right by speaking at sentencing, she would enforce her right by asking a higher court to overrule the trial court's decision. The higher court could order the trial court to allow the victim to exercise her right and conduct resentencing for the victim to exercise the right to speak.

While the victim is a participant in exercising his right before the criminal trial court, the lowest-level court, when the right is denied by that court the victim becomes a *party* to enforcement of the right in the higher courts. That is to say, when going to a higher court to enforce a right that has been violated, the victim is a full party in the higher- court proceedings.

Furthermore, victims must have *standing* in court before they can enforce the right. Standing is the ability to present to the court and have the court rule on the issue of whether the right was violated. In order to have standing, there must be a remedy that is provided by statute or that the courts can craft.”<sup>23</sup>

---

<sup>23</sup> Beloof, Doug. *Victims Rights: A Documentary and Reference Guide*. Santa Barbara, Calif.: Greenwood. 2004. p. 3. Page | 21

For the purposes of rights in criminal procedures, victims in Canada should have access to rights enforcement by seeking the ruling of a higher court authority, so that their ability to exercise the right that has been denied may be restored.

**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.**

In order for rights enforcement in criminal procedures to be implemented effectively, victims would need access to free legal representation with specific training in the area of victim rights. It is perhaps important to consider the American example where such a model of rights enforcement has been implemented, with somewhat mixed results.<sup>24</sup> When the United States' Crime Victims' Rights Act was introduced, which provided victims with enforceable rights, it was envisioned that resources would be allocated to crime victims' law centres across the United States to provide access to legal representation to victims of crime to enforce their rights. Since this act was implemented, however, there have been funding cuts to these centres, with very few remaining in operation. It is believed that this has amounted to a very significant challenge to the enforcement of victims' procedural rights throughout the country.<sup>25</sup>

### *Considering and protecting victims: Post-conviction and conditional release*

For decisions relating to the sentencing and conditional release of an offender, the consideration of victim safety and the subsequent protection of both the victim and the community are of vital importance.

The OFOVC recommends the following in order to ensure that victims are adequately considered and protected in the post-conviction and conditional release phase of the criminal justice process:

**Victims shall have the presumptive right to attend parole hearings, except in cases where it may threaten the safety of an offender, individual or institution.**

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. Given the value of a

<sup>24</sup> National Victims' Constitutional Amendment Passage. "Statement of Paul G. Cassell before the United States House Judiciary Committee, Sub-Committee on the Constitution, on the Victims' Rights Amendment." April 25, 2013. p. 11. Cassell's statement contains a quotation from a U.S. Government Accountability Office document, 'Crime Victims Rights Act' Increasing Awareness, Modifying the Complaint Process and Enhancing Compliance Monitoring will improve implementation of the Act. 2008. Accessed at: [http://www.nvcap.org/legis/113/130425\\_CassellTestimony.pdf](http://www.nvcap.org/legis/113/130425_CassellTestimony.pdf)

<sup>25</sup> Ibid. p. 14.

victim's input, and the important and unique opportunity in a parole hearing to obtain information about the offender's progress, victims should have a presumptive right, over and above the general public, to attend parole hearings.

**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.**

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. Furthermore, some victims may be unable to travel due to personal commitments, family obligations, work or illness. 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.

In order to encourage participation, we must provide options for how victims can choose to participate in parole hearings without feeling intimidated or fearful, and without causing significant disruption to their lives and finances.

**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.**

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.

**Victims shall have the right to discuss release conditions and ensure that their views and safety concerns are considered before any conditional release decision is made.**

In-person parole hearings occur only in a certain percentage of conditional release cases. Often, decisions are made by members based on a "paper review"<sup>26</sup> and victims are notified only whether an absence or release has been granted or denied. In these cases, the views of the victim are taken into account only through the victim impact statement on file, if submitted during court proceedings, or a victim statement from previous conditional release decisions

<sup>26</sup> Parole Board of Canada. "Fact Sheet. Offender Notice: Changes to Some Conditional Release Reviews." Accessed at: <http://www.pbc-clcc.gc.ca/infocntr/factsh/ssccr-eng.shtml>

already on file. As such, the statement on file may be outdated and no longer representative of the current views and safety concerns of the victim related specifically to offender absences from the institution and certain types of conditional release under review.

A requirement that release and conditions be discussed with victims before decisions are made would allow for a more comprehensive decision-making process by ensuring that the updated views and concerns of victims of crime are taken into account in all cases.

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

Immigration Review Boards may hold hearings to determine if an offender should or should not be removed from Canada. Victims may want to have their voices heard and considered in relation to their safety concerns and other views in relation to potential deportation. Given that criminality is a factor used to determine if an individual should be deported,<sup>27</sup> victims should be able to have their voices heard in relation to the criminal offence committed against them, and provide information for consideration in the deportation decision-making process.

---

<sup>27</sup> Immigration Review Board. "Criminal Grounds for Removal." Accessed at: [http://www.irb-cisr.gc.ca/Eng/brdcom/references/legjur/documents/RoaAmrChap07\\_e.pdf](http://www.irb-cisr.gc.ca/Eng/brdcom/references/legjur/documents/RoaAmrChap07_e.pdf)

## Supporting victims—Why is it important?

Crime can have a devastating toll, changing lives forever. Many crime victims report feeling anger, panic and/or anxiety, experiencing nightmares and sleep pattern changes, feeling self-doubt or shame, reliving what happened, suffering from depression, having difficulty concentrating, and feeling an increased concern for personal safety and the safety of their family.<sup>28</sup> This can result in time away from work, medical and treatment expenses, and lost productivity, carrying significant financial consequences. Many victims continue to have these responses for some time after the crime and may require support to move forward.<sup>29</sup>

Victim services can provide essential support from the time of the crime to the court process, through post-conviction and conditional release and beyond. Particularly vulnerable victims, including children and victims of specific types of crimes such as sexual assault and human trafficking, may require tailored support services aimed specifically at addressing their unique challenges and needs. Victim services may include such things as:

- help with the preparation for participating in court proceedings by coordinating translation services and providing information about transportation and child care;
- accompanying victims to court and parole hearings, and explaining the processes, which are often unfamiliar and confusing experiences for victims; and
- providing meaningful and appropriate referrals to much needed services including counselling and criminal injuries compensation, which can be essential in supporting victims following a crime.

Without these types of supports, victims may be unable or choose not to participate in the criminal justice system. As such, timely access to support through victim services is an integral component to ensuring that victims are able to access any rights that may be outlined in the VBR. In view of this, rights to access services and receive support from services should also be included in the VBR.

Recognizing that victim services fall under the jurisdiction of the provinces and territories, and that provincial and territorial governments have the authority to determine the programs and services offered, it is worth noting that many victims are calling for a nationally consistent minimum standard of care to ensure that all victims, no matter where they live in Canada, are assured basic and necessary supports. From the perspective of victims of crime, the province or territory in which you reside should not dictate whether or not you are able to access a much needed service.

Support is integral to a victim's recovery. Victims need support not only in the immediate aftermath of a crime, but over the longer term. The OFOVC has found that one of the supports most commonly cited by victims as necessary is access to funded counselling, preferably to

---

<sup>28</sup> Office of the United States Attorneys. "Services to Crime Victims."

[http://www.justice.gov/usao/briefing\\_room/vw/services.html](http://www.justice.gov/usao/briefing_room/vw/services.html)

<sup>29</sup> Ibid.

counsellors trained in helping those who have experienced trauma. Just as offenders are provided with rehabilitation services in the correctional context to successfully re-integrate into society, so, too, should victims be provided with services and counselling in order to assist them to adapt and lead productive lives.

The OFOVC recommends the following in order to ensure that victims have the supports they need:

**All Canadian victims, including cases where the crime occurred abroad, shall have the right to access and receive, at least, a minimum standard of nationally consistent victim services and supports.**

For those victims where criminal prosecution is sought, this access and support should be available from the time of the crime, through court, corrections and conditional release, if applicable. Support services should also be available from the time of the crime and over the longer term for victims regardless of whether charges are laid or prosecution occurs, whether there was a conviction, or if the crime committed against a Canadian occurred abroad. Access to, and support from, victim services should be fundamental rights provided to Canadians when they are victimized by crime.

**Victims shall have the right to restitution from the offender who harmed them.**

In addition to support from victim services, access to and enforcement of restitution can also be very important for victims of crime from a financial perspective. It is currently estimated that victims bear 83% of the total cost of crime in Canada.<sup>30</sup> In light of this, access to financial reparation can be significant.

Restitution is currently 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 in terms of recovering losses resulting directly from the crime, 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.

<sup>30</sup> Zhang, Ting. *Costs of Crime in Canada, 2008*. Ottawa: Department of Justice Canada, 2009. Accessed at: [http://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/rr10\\_5/index.html](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/rr10_5/index.html)

**Victims who have restitution orders in place shall be entitled to the enforcement of those orders by the courts and/or another designated authority.**

Currently, victims who wish to have restitution orders enforced must pursue the matter civilly, which is cost prohibitive and requires victims to spend more time fighting to obtain money that has been ordered by a judge to be provided to them. This is a burden that should not fall to victims.

This could include measures to ensure that federal offenders are taking reasonable steps to satisfy their restitution orders, such as including conditions to ensure offenders fulfil their restitution orders, and by deducting reasonable amounts from an offender's earnings or institutional accounts to satisfy outstanding restitution orders. Other options include deducting unpaid restitution awards from federal government payments (i.e. income tax, Employment Insurance payments, and to implement provincial/territorial restitution enforcement programs, such as the *Saskatchewan Civil Enforcement Program* whereby collection officers are assigned to act on the victim's behalf to attempt to collect unpaid restitution.<sup>31</sup>

---

<sup>31</sup> Government of Saskatchewan. "Restitution Civil Enforcement Program."  
<http://www.justice.gov.sk.ca/Default.aspx?DN=4d661e21-d242-455e-8b6a-d34f6a148d2a>

## Enforcement

During its April 2013 Forum and throughout its discussions with victims and relevant stakeholders, the OFOVC has found there to be a clear, strong desire for the final VBR to include legislated and enforceable rights for victims.

Earlier in this submission, in the section entitled *Considering and protecting victims—Court*, the concept of offering victims a form of standing—a method of ensuring that their procedural rights were respected during court proceedings—was discussed. But what about the enforcement of the remaining rights in a VBR? Without enforceable rights, there is no real mechanism to *ensure* that victims are treated with respect within the criminal justice system. There would be, as there is now, reliance on the cooperation of key players in the system.

Currently, the rights for victims of crime in Canada are generally not enforceable. Victims who feel that their rights have not been respected may file a complaint with the federal department or agency responsible. Failing resolution with the department or agency, a victim may file a complaint with the OFOVC, whose mandate includes addressing complaints related to victims' provisions under the *Corrections and Conditional Release Act (CCRA)*. While there is clear commitment and many dedicated staff assisting victims within the federal government, victims should not be reliant on the good will of an organization; instead, victims' rights should be enshrined and ensured.

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 an investigation, nor does it have the authority to enter into binding agreements with departments in order to address the complaint and/or systemic issues.

Should the Government move to make the VBR enforceable, the following points bear consideration:

- What powers of investigation would be necessary to ensure adequate reviews of potential non-compliance?
  - In order to facilitate investigation, certain powers to compel records and information would be necessary. The powers and structure of the Office of the Correctional Investigator could be a relevant basis for comparison.
- What mechanisms should be used to promote compliance with victims' rights? What compliance frameworks are appropriate in the context both of enhancing victim services and rights within the federal context?
  - Given the strictly federal context, typical disincentives such as monetary penalties may not be appropriate; rather other avenues such as the ability to enter into binding compliance agreements with institutions and/or to compel institutions to amend policies and procedures within a given time frame could be more effective.
- Should compliance focus on remedies in cases of specific or individual cases, or would it be more advantageous to focus on systemic issues that would provide value to the widest group of victims?

- There are a variety of models that focus on providing remedy at one or both of these levels.
- Which federal government body would be appropriate to act with authority in promoting and investigating compliance?
  - Given its already established role as Ombudsman for Victims and its experience to date receiving and addressing victim complaints, the Office of the Federal Ombudsman for Victims of Crime could be an appropriate office to take, investigate and address complaints related to victims in the post-conviction and conditional release phase of the criminal justice process. However, appropriate oversight would also be needed to investigate and review complaints relating to rights for victims at the time a crime occurs, if applicable.
  - It is recommended the Government consider that the organization(s) tasked with overseeing the enforcement of the VBR be given statutory powers, and that the powers of investigation and correction be clearly defined in enabling legislation. Alternatively, or additionally, the head of that organization could be conferred the powers of a Commissioner, as defined under Part II of the *Inquiries Act*.

## Conclusion

In conclusion, the OFOVC respectfully submits the included recommendations for consideration in the development of an inclusive, enforceable Victims Bill of Rights.

The OFOVC was created to help identify issues that negatively impact victims of crime and, as part of that work, has raised those issues in this submission. The information contained within this submission reflects the OFOVC's contact with victims over the past five years, as well as the information most recently gathered from more than 150 participants at the Office's April 2013 Forum, and an analysis and review of international best practices.

In short, in order to effectively address their needs, we need to ensure that victims of crime have enshrined and enforceable rights to be:

- informed;
- considered and protected; and
- supported.

The development of this Bill is an important opportunity to make significant change for victims, and the OFOVC strongly encourages the Government to be inclusive, ambitious and exhaustive in its creation and drafting of the legislation.

## **Appendix A: Recommendations for VBR from participants at the OFOVC's April 2013 Forum**

*This section summarizes participant responses to the question: What recommendations would we make for a Bill of Victims Rights?*

### **1. Enforceable and usable**

- Critical to have the rights of victims enshrined in law and enforceable, accessible for victims.
- The concept of justice expanded from an exclusive focus on convicting individuals of crimes to include a full response to the needs of victims; justice is seen to be done when the offender is held accountable and the victim restored to the maximum extent possible.
- Should include accessible knowledge through data collection and dissemination (with privacy considerations) to enable the community to monitor and evaluate equality, progress and effectiveness.

### **2. Integrated, accessible and simple services and resources with minimum standards across the country.**

- Process for accessing funds and resources should be simple, accessible and integrated across the country. Victims should be offered support at the earliest opportunity rather than having to seek out services. All services should be trauma-informed.
- Oversight for equity and consistency from a federal body.

### **3. Inclusive definition of victim to include anyone in Canada harmed by crime.**

- Recognizes the rights of all Canadians, no matter where in the world the crime has been committed, whether the perpetrator is identified, prosecuted, convicted or not; whether a body has been recovered or not.
- Clarity about who is affected by crime—witnesses, family members.

### **4. Equitable, respectful and individualized**

- Victims granted equitable rights to the offender—health care, psychological supports, education, financial support, information, voice and standing in the justice system.
- Responsive to unique needs of an individual and his/her family.
- All victims should be treated with courtesy, compassion and respect, by all members of the justice system.
- Consistent services across the country.

### **5. Voice and standing**

- Rights to: transcripts of the trial, have status in court, representation by legal counsel, be present in the trial room, show the victim's photograph in the case of murder.
- Right to be notified, included and heard in every hearing related to the crime committed.

## **6. Right to information**

- Right to up-to-date, specialized and accessible information and services.
- Provision of parole hearing transcripts at no cost.

## **7. Financial protection and support**

- Sustainable funding, including compensation (adequate to meet needs, e.g. housing)
- Victims have the right to resources to support recovery and rehabilitation in order to create strong and healthier individuals and communities.
- Job protection and compensation for victims: EI paid for victims to attend court and trial proceedings; job protection, i.e., cannot be laid off or replaced while away from work for reason of victimization.

## **8. Psychological support and resources**

- Funded, ongoing long-term psychological support provided by trained trauma counsellors throughout the justice process and after proceedings have concluded, if support is needed.
- Mental health of victims must be included: who will cover which costs, jurisdictional issues.

## **9. Limit opportunities for offenders to profit from crimes or re-offend**

- Proceeds of crime to be put toward victims' services, similar to U.S. system.
- Prevent people found not criminally responsible (NCR) from financially benefitting from their actions; protect the public from re-offending by the same perpetrators; change NCR to "not psychologically accountable," which would carry a criminal record.

## **Appendix B: Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003**

1. Victims of crime should be treated with courtesy, compassion, and respect.
2. The privacy of victims should be considered and respected to the greatest extent possible.
3. All reasonable measures should be taken to minimize inconvenience to victims.
4. The safety and security of victims should be considered at all stages of the criminal justice process and appropriate measures should be taken when necessary to protect victims from intimidation and retaliation.
5. Information should be provided to victims about the criminal justice system and the victim's role and opportunities to participate in criminal justice processes.
6. Victims should be given information, in accordance with prevailing law, policies, and procedures, about the status of the investigation; the scheduling, progress and final outcome of the proceedings; and the status of the offender in the correctional system.
7. Information should be provided to victims about available victim assistance services, other programs and assistance available to them, and means of obtaining financial reparation.
8. The views, concerns and representations of victims are an important consideration in criminal justice processes and should be considered in accordance with prevailing law, policies and procedures.
9. The needs, concerns and diversity of victims should be considered in the development and delivery of programs and services, and in related education and training.
10. Information should be provided to victims about available options to raise their concerns when they believe that these principles have not been followed.