

Storming the law schools: The next phase of victim advocacy

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Canadian Resource Centre for Victims of Crime (CRCVC)

- Non-profit victim advocacy group
- Incorporated in 1993
- Direct services to victims across Canada
- Lobby for victims' rights/justice reform
- Sponsored by the Canadian Professional Police Association (CPPA)

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CRCVC Programs & Services

- Provide information about the justice system
- Present interests and perspectives of victims of crime to Government, at all levels, and its various agencies
- Promote public safety
- Assist victims in obtaining case specific information
- Assist victims in understanding the sentencing and parole

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Client Profile

- Victims of violent crime - particularly homicide survivors.
- Victims who frustrated with the criminal justice system.
- Victims dealing with corrections and parole.

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Canada's legal system

- One Criminal Code for the entire country;
- Feds make the law; provinces administer law;
- Sentences of less than 2 years are provincial; more than 2 years are federal;
- Provinces responsible for most victim services (i.e. comp., trials)
- Feds responsible for victim services if offender in federal prisons

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History of Victims' Rights

- Justice consisted of two parties - the offender and the victim;
- Lawyers are the new comers;

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Victims' Rights – how far have we come?

Clifford Olson:

- murdered 11 children between 1980 and 1981
- some families notified of death by phone;
- some families learned of details by media;
- no victim services;

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Olson - 25 years later

- trained victim services;
- police and Crown met with families;
- VIS at the 2006 parole hearing;
- travel expenses to parole hearing;
- rooms to accommodate families;

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Victims' Rights Movement

- foundation in the feminist movement
- in 1980's, several families of homicide groups began grass roots victims groups;
- victimization surveys
- impact of victim movement in the US;

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FPT TASK FORCE

- In 1981, a Federal-Provincial Task Force on Victims of Crime was formed;
- 1983 report - over 75 recommendations re: return of property, restitution, compensation, statements, access to information, etc.
- "Victims are twice victimized - once by the offender and then by the justice system;"

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CRCVC review of FPT report

- In 2001, the CRCVC did a review of the FPT report for the federal Department of Justice's Policy Centre for Victim Issues;
- Despite significant legislative reform, victims were still experiencing the same problems;

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Victims' rights in Canada

- 1988 - protection for child witnesses (i.e. support person with them when they testify, screens, closed circuit televisions);
- 1989 - VIS, publication bans, victim fine surcharge, etc.
- 1992 - attend federal parole hearings, submit information to NPB and receive information about an offender;
- 1996 - VIS and restitution strengthened;

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Victims' rights in Canada

- 1999 - oral statements, judges to inquire about statements prior to sentencing, victim safety at bail, etc.
- 2001 - victims permitted to read statements at federal parole hearings;
- 2005 - federal fund to assist victims to attend parole hearings;

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Provincial victims rights

- Most have compensation program;
- Most have some kind of victim legislation;
- With exception of Manitoba, no real rights;

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Victim Impact Statements

- presented in less than 12% of cases;
- failure to contact victim twice as likely the reason for no VIS as victim choosing not to complete one (Roberts);
- only 1/3 of judges are making the inquiries about impact statements that they are legally required to make;

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Restitution

- Fewer restitution orders today than a decade ago;
- Many restitution orders never paid;
- Victims have few resources to enforce the orders;

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Victim Services

- \$400 million on victim services, criminal injuries compensation and transition houses;
- \$1.5 billion on federal corrections plus another billion more on provincial corrections;
- Most victim services rely on volunteers;
- Victims responsible for 67% of costs of crime;

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What we ask of victims:

- cooperate with police;
- provide personal information to police, Crown, court;
- be deprived of property for extended period;
- put self at risk;
- testify, sometimes more than once, in public;
- be patient as cases repeatedly adjourned
- take time off work with little or no compensation;
- wait months or years, for conclusion of case;

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What they get in return:

- Maybe compensation, depending on type of crime, if cooperated with police and are patient;
- Maybe information if you get the right Crown;
- Maybe victim services if a domestic violence or sexual assault;
- Maybe a chance to do VIS if anyone tells you;

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Limitations of justice system

- Justice system cannot make victims happy;
- Best is can do is not make it worse;

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So why bother?

- the failure to participate can result in increased feelings of inequity and can result in increased psychological harm (Beloof)
- having a voice may improve victims mental condition and welfare (Beloof)

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So why bother?

- “When members of the justice system comply with statutory requirements, victims are more likely to feel heard and feel satisfied with the justice process. Moreover, when victims are informed and treated with respect and common courtesy, they are more likely to accept the legitimacy of the outcome.” Paula Weber, Director of Minnesota Crime Victim Justice Unit, 2003-04 Annual Report

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Can victims be satisfied?

- Victims who receive explanations throughout the system more satisfied (Erez);
- Victims given more information more satisfied and more open to alternatives (Verdun-Jones);
- Victims who participate more satisfied with plea than those who did not (Tobolowsky);
- If judges cite VIS, victims more satisfied (Roberts);

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Can victims be satisfied?

- “...literature suggests that victim satisfaction is more related to process than to outcome...Being treated with dignity and respect is more important than seeing that the offender is punished...” (Young)

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Can victims be satisfied?

- “At the outcome stage, again, it appeared that process was more important than the actual result of the case...victims were often quite happy if the police did not catch the offenders, provided that they felt the police had been interested and had kept them informed... Victims were...not particularly punitive.” (Fattah).

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The future of victim advocacy

- Stronger legislation;
- Effective complaints mechanism;
- Better enforcement; AND
- Education of justice professionals;

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Are rights enough?

- “Strong legal protection...appears to be necessary but not a sufficient condition for ensuring the protection of crime victims’ rights because a host of intervening factors, such as knowledge, funding and enforcement, mediates the actual delivery of victims’ rights.” (National Institute of Justice)

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Is the Charter/Constitution the answer?

- US constitutional amendment;
- Emerging issue in Canada;
- Will it make a difference?

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What we are up against

- “Surprisingly, although some systemic difficulties could be identified, the difficulties with these practices more often resulted more often from attitudes, customs and habits, then from contingencies of the justice system itself.” (1983 FPT Report)

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What we are up against

- “We should not set up a new comprehensive tier of legally enforceable rights for victims... There should be no legally enforceable right to representation for victims... I am opposed to victims being consulted about decisions on cases...” Lord Chancellor (Paul Rock, Constructing Victims Rights)

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What we are up against

- “True victim participation will require structural reform...and structural reform is threatening to the vested interests of legal professionals.” (Young)

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What we are up against

- “The criminal justice system was never designed or intended to heal the suffering of the victims of crime.” BC Court of Appeal, R. v. Sweeney (1992)

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What we are up against

- “Legal professionals do not embrace third-party intrusion into a process which they believe was only designed for a battle between two parties - the state and the accused.”
(Young)

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What we are up against?

- “The legal culture...is one that has not made room for crime victims...Given this socialization, it is no surprise to find that when those lawyers leave law school, they become part of a legal culture unsympathetic, if not overtly hostile, to the interests of crime victims. (Cassell)

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Why law schools?

- “..there is agreement among victims’ groups that the next phase in advocacy should focus on embedding victim awareness in the education of law schools...” (PCVI)

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Why law schools?

- “Indeed, real and long lasting reform in the legal system’s approach to victims and witnesses can be effected if and only if the nation’s lawyers - through the organized bar - become involved.” (ABA)

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Why law schools?

- “The crime victims’ movement has been instrumental in making the rights of crime victims an increasingly central consideration in the administration of justice...response to those laws was less than what had been hoped, due at least in part to an entrenched legal culture that was slow to make victims’ considerations a priority.” (Texas CVI)

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Why law schools?

- “Given that virtually all law professors were trained in criminal law classes that ignored victim involvement in the criminal justice process, it is perhaps not surprising that it is considered heretical to suggest that direct participation might be warranted.” (Erin Ann O’Hara, *Victim Participation in the Criminal Process*)

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Why law schools?

- Victims rights is “the single greatest revolution in criminal procedures in twenty years... one would expect such a new and dynamic set of laws to have a prominent place in the education of law students. Yet...most law students, including those intent to practise criminal law and procedure, graduate from law schools having no significant exposure to the law of victims in criminal procedure. This state of academics is unfortunate.” (Belooof)

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Why law schools?

- “The available social science research suggests that the primary barrier to successful implementation of victims’ rights is the socialization of lawyers in a legal culture and structure that do not recognize the victim as a legitimate party in criminal proceedings.” (Cassell)

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Why law schools?

- “Victims’ rights need to be more fully integrated into justice processes and the *Criminal Code*. Legislative and systemic barriers to accessing information prevent victims of crime from full participating in the justice system.” (BC Victim Services Plan 2005/06-2007/08)

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Why law schools?

- “...crime victim attorneys...hold the keys to opening the doors of justice for many crime victims. Based on the prevalence of victims’ rights violations, it is apparent that attorneys have many opportunities to ensure compliance and enforcement of victims’ rights.” (Beloof and Gillis)

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What to teach

- Victim impact statements;
- Restitution;
- Victim fine surcharges;
- Protections for vulnerable victims;
- Family violence;
- Civil issues;
- Compensation;
- Victims' Bills of Rights;
- Restorative Justice;
- Corrections/ parole;

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It's being done

- McGeorge (California) - family violence
- Denver - domestic violence
- Baltimore - rights of crime victims
- Lewis and Clark (Oregon) - victims in criminal procedure/legal clinic
- Utah - rights of crime victims
- Arizona - victims in criminal procedure;
- Texas - domestic violence/clinic;
- Southern Cross University (Australia)- victimology

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Benefits -

- Change how we define justice
- Victims more satisfied; less victimized;
- Victims may be less critical of system;
- Maybe benefits to offenders (RJ, sentencing options, etc.)
- Better lawyers - reminded that law affects more than just the accused;
- Lawyers better understand their own clients;
- Law schools can play role in societal change;

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Challenges for advocates:

- Topic may be viewed as “soft” compared to traditional legal concepts;
- Stereotypes about victims;
- Victims not part of criminal justice system;
- Limited class time;
- Limited expertise;

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Suggestions:

- Sympathetic law professors;
- Bar Associations;
- Prosecutors' Association;
- Law Professors Association;
- Pilot project - i.e. legal clinics;
- Learn about curriculum of law school(s) in your area...where could victims fit into existing courses (start small);

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