

Victims' Rights in Canada

Prepared by the Canadian Resource Centre for Victims of Crime

History of Victims' Rights in Canada

Historically, the criminal justice system consisted of two parties - the offender and the victim. The victim initiated and handled the prosecution of the offender. That scenario is a far cry from the scenario we have today where the only two parties involved are the offender and the state and where the victim is at most a witness for the prosecution. Today, a crime is considered to have been committed against the state, not the victim.

Through years of determination and hard work, the voices of victims have been heard. Change began when victims themselves began to speak out about the system and its shortcomings. When police and others within the system began to validate what the victims were saying, and supporting their message, people began to take notice.

The victims' rights movement in Canada really has its foundation in the feminist movement and the results they obtained for women victimized by domestic violence and sexual assault.

In Canada, since the early 1980's, victims' organizations like Citizens United for Safety and Justice, Victims of Violence and CAVEAT have convinced various Governments that the role of the victim in the process is an important one and that it should be recognized. Changes with regards to the *Criminal Code* and victims' rights legislation is a direct result of the courage displayed by victims who have allowed society to benefit from their experiences with the system. Their influence is not limited to ensuring that victims have their rights respected throughout the process, but as well with regards to legislation that will prevent future victims.

While no one really wants to return to the days where the victim was the judge, jury and executioner, victims do want their role in the system recognized. They want their voices heard and opinions considered. They want the system and its players to recognize that they are important, and that they do have a stake in the outcome of the case.

Significant Dates in the Canadian Victim's Movement

- 1963 – New Zealand enacts first victim compensation program
- 1967 – Saskatchewan enacts victim compensation program
- 1967 – Ontario passes *Law Enforcement Compensation Act*
- 1968 – Newfoundland enacts victim compensation program
- 1969 – Alberta enacts victim compensation program
- 1969 – Ontario amends compensation act to include victims of a violent crime
- 1971 – Ontario passes *Compensation for Victims of Crime Act* (replacing *Law Enforcement Compensation Act*)
- 1971 – Manitoba enacts victim compensation program
- 1971 – New Brunswick enacts victim compensation program
- 1972 - Quebec enacts victim compensation program
- 1972 – BC enacts victim compensation program
- 1972 – First transition houses in BC and Alberta
- 1973 – Federal government began contributing to provincial compensation plans
- 1973 – First International Symposium on Victimology
- 1974 – Law Reform Commission of Canada expresses support for restitution
- 1974 – First victim-offender reconciliation takes place in Kitchener, Ontario
- 1974 – First sexual assault centres open in Vancouver
- 1976 – *Criminal Code* amended to limit questions about complainant's past sexual history
- 1977 – Federal contributions to provinces for compensation plans enhanced;

1979 – Ontario Corrections Minister raises issue of victims at the inaugural meeting of the federal provincial ministers of justice
1979 – Edmonton Police Victim Service Unit founded; Brampton Victim Witness Program established;
1980 - Throne Speech references violence against women as an issue
1980 - MADD (Mothers Against Drunk Driving) established in the United States
1980 – *R. v. Pappajohn* (Supreme Court decision regarding honest, but mistaken belief)
1980 – Wisconsin becomes first state to enact a Victims Bill of Right
1980 – National Workshop of Services to Crime Victims (Quebec does not participate)
1981 – Formation of Federal Provincial Task Force on Justice for Victims of Crime
1981 – President Reagan announces first National Victims' Rights Week
1981 – President's Task Force on Victims
1981 – Federal government forms Committee on Sexual Offences Against Children and Youth
1981 – Citizens United for Safety and Justice formed in BC
1982 – Solicitor General Robert Kaplan encourages police forces to regularly lay charges in domestic violence cases
1982 – National Victim Resource Centre established in Ottawa
1982 – Victims of Violence is formed in Ontario
1982 – Bill C-127 (husband could be convicted of raping his wife; rape changed to 3 levels of sexual assault; questions about complainant's background)
1982 – First General Social Survey (GSS) on Victimization in Canada
1983 – Release of Federal Provincial Task Force on Justice for Victims of Crime report
1983 – London Police Force first in Canada to issue mandatory charge policy regarding domestic violence cases
1983 – Federal government issues guidelines re: spousal assault to prosecutors in Territories
1984 – Badgley Committee Report makes 52 recommendations
1984 – Federal Provincial Working Group on Victims of Crime established
1985 – First National Conference on Victims of Crime in Toronto
1985 – Federal government creates Victim Assistance Fund - 2 year funding payments to provinces for victim services and programs
1985 – National Parole Board publishes handbook for victims with assistance from David Nairn, father of a murder victim
1985 – United Nations adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*;
1986 – Manitoba enacts *Justice for Victims of Crime Act*;
1987 – US Supreme Court rules Victim Impact Statements not admissible in death penalty cases
1987 – Federal government negotiates interim enhanced cost sharing agreement on compensation
1987 – New Brunswick passes *Victim Services Act*
1988 – PEI enacts victim compensation program
1988 – Bill C-15 (screens, videotape statements, publication bans, exclusion of public)
1988 – Newfoundland passes *Victims of Crime Services Act*
1988 – NWT passes *Victims of Crime Act*
1988 – PEI passes *Victims of Crime Act*
1988 – Quebec passes *An Act Respecting Assistance to Victims of Crime*
1988 – National Victim Resource Centre transferred from Solicitor General to Department of Justice;
1988 – Federal, provincial and territorial governments adopted the *Statement of Basic Principles of Justice for Victims of Crime*,¹

¹ In 1988, prompted by the United Nations Declaration of Basic Principles of Justice for Victims of Crime, all Canadian Ministers of Justice agreed to adopt a uniform policy statement of victims' rights that would be used to guide their legislative and administrative initiatives in the criminal justice area. In 2003, the ministers updated this statement:

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.*

1989 – Bill C-89 (victim impact statements, restitution (never proclaimed in force), victim fine surcharges)
 1989 – Nova Scotia passes *Victims Rights and Services Act*
 1989 – National Parole Board releases discussion paper, *Victims and the National Parole Board*
 1990 – *R. v. Lavalee* (Supreme Court upholds battered women's defence)
 1991 – *R. v. Seaboyer* (Supreme Court strikes down rape shield laws)
 1991 – Canadian Sentencing Commission recommends judges be required to consider restitution; be allowed to impose jail sentence where accused willfully defaults;
 1991 - US Supreme Court overturns previous decision and allows Victim Impact Statements in death penalty cases
 1992 – Bill C-49 (rape shield, no means no)
 1992 – Bill C-36 (*Corrections and Conditional Release Act*)
 1992 – Federal government ceases contributions for provincial compensation plans
 1992 – Newfoundland repeals compensation plan
 1993 – Yukon repeals compensation plan
 1993 – Yukon passes *Victim Services Act*
 1993 – Bill C-126 (protection for child witnesses, sex offences)
 1993 – Canadian Police Association announces creation of Canadian Resource Centre for Victims of Crime
 1994 – *R. v Daviault* (Supreme Court rules extreme drunkenness a defence to rape)
 1995 – Saskatchewan passes *Domestic Violence Act*
 1995 – Saskatchewan passes *Victims of Crime Act*
 1995 – *R. v. O'Connor* (Supreme Court allows defence access to sex assault complainants' private records)
 1995 – Bill C-37 (amended the *Young Offenders Act* to allow victim impact statements);
 1995 – National Victims' Resource Centre closed
 1995 – Ontario passes *Victims Bill of Rights*
 1996 - NWT repeals compensation plan
 1996 - Bill C-41 (sentencing principles, victim impact statements, restitution, hate crime)
 1996 – BC passes *Victims of Crime Act*
 1996 – Alberta passes *Victims of Crime Act*
 1996 – *R. v. Swietlinski* (Supreme Court rules Victim Impact Statements not relevant to judicial review hearings)
 1996 - Reform Party motion in House of Commons for creation of a National Victims' Bill of Rights;

-
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.*

- 1996 – BC Victim Advisory Committee formed (NPB/CSC)
- 1997 - Bill C-27 (child sex trade workers)
- 1997 – Bill C-45 (section 745)
- 1997 - Bill C-46 (private records of sex assault complainants)
- 1997 – BC allows victims to give oral impact statements at provincial parole hearings
- 1998 – Release of *Victims' Rights: A Voice, Not a Veto*, Standing Committee on Justice and Human Rights
- 1998 – Ontario Government creates the Office for Victims of Crime
- 1999 – *Vanscoy* decision confirms Ontario victims of crime legislation does not give victims any rights
- 1999 – Bill C-79 (Victim Impact Statements, Victim Fine Surcharge, bail, etc.)
- 2000 – Department of Justice Policy Centre for Victim Issues opens
- 2001 – Manitoba passes new *Victims Bill of Rights*
- 2001 – Victims permitted to provide oral impact statements at federal parole hearings
- 2002 – New crime victim compensation legislation comes into effect in BC; no longer compensates for pain and suffering
- 2002 – Manitoba Minister of Justice Gord Mackintosh calls for amendment to Charter to support victim's rights
- 2003 – BC government eliminates all Crown-based victim services
- 2003 – BC government repeals no-drop policy in domestic violence cases
- 2003 – Federal-provincial-territorial governments adopt new Basic Statement of Principles for Victims of Crime
- 2003 – Policy Centre for Victim Issues commissions research papers on feasibility of amendment to the Charter supporting victims' rights
- 2003 – Department of Justice victim conference
- 2004 – CAVA formed and (Canadian Association for Victim Assistance) holds its first conference
- 2004 – Canadian Centre for Justice Statistics releases report on *Victims Services in Canada*
- 2005 - Bill C-10 (VIS at mental health review board hearings)
- 2005 – Bill C-2 (expansion of protection for vulnerable witnesses)
- 2005 – Creation of fund to assist victims in attending federal parole hearings
- 2005 – Creation of National Office for Victims of Crime (CSC/NPB)

Victims' Rights

Some people are critical of the victim's role within the criminal justice system. These critics should remember that victims do not choose to be victims, whereas criminals choose to commit crime. Sexual assault victims do not choose to be raped; parents do not raise their children to be murdered; women do not enter intimate relationships to be abused. Part of the point of providing victims basic rights is a recognition that they have done nothing wrong, and they are not responsible for what happened although they may bear the burden for the rest of their lives. If the information a victim provides makes it more difficult for an offender to get parole, the difficulty is a direct result of the offender's actions.

Consider what we as a society provide to accused persons and convicted offenders: the right to a fair trial, the right to a lawyer, shelter, three meals a day, work training, education, prison wages, rehabilitation programs, etc. Victims of crime do not get work training or free lawyers and they must rehabilitate themselves. This is not to say that we as a society do not benefit when these amenities offered in prisons help an offender turn his/her life around – the best protection society can have is for an offender to change his/her behavior. It is only fair that we also pay equal attention to the victim's needs.

The sad reality is that victims have no true 'rights' in the Canadian criminal justice system.

Provincial Initiatives

While the federal government makes the law, the provinces administer it. Therefore, much of the contact victims have with the criminal justice system is determined by the provinces.

Most of the provinces and territories have enacted legislation governing victims' rights (i.e., Victims' Bill of Rights). In the mid and late 1980's, Manitoba, New Brunswick, Newfoundland, the Northwest Territories, Nova Scotia, PEI, Quebec and Saskatchewan passed provincial Bills of Rights for victims. In the mid and late 1990's, BC, Alberta and Ontario followed suit. Most provincial legislation reflects the UN Declaration (i.e. right to be treated with respect, should get information about the case, etc.).

With one exception, most provincial legislation does not give victims true 'rights'. The legislation is merely statements of what victims 'should' have. Most of the legislation is non-committal and does not provide a complaint mechanism for victims. The language of the legislation uses terms such as "victims should have access to..." or "Subject to limits..." It does not truly entrench the right of victims to receive services or be guaranteed a certain type of treatment. In 1999, several victims tried to sue the Ontario government because they argued their rights were violated under the Bill of Rights, but the court ruled the bill gave them no enforceable rights.

In 2000, Manitoba passed one of the most comprehensive pieces of victims' rights legislation in the country. It actually strengthens the 'rights' victims have and if their rights are violated, there is a complaints mechanism for victims to turn to.

Crimes compensation

All provinces (except Newfoundland and the Territories) have some form of compensation program for crime victims. The programs vary greatly, but some things victims may receive compensation for are:

- Loss caused by injury;
- Loss of income and other expenses;
- Emergency, health and counselling expenses;
- Maintenance of a child born as a result of a sexual assault; and
- Pain and suffering (only Ontario and PEI).

The victim's role at trial

When a case goes to trial, victims are often only involved as onlookers. Some victims may be called as witnesses in the case against the accused, but victims often have no formal role at court appearances. According to most provincial bills of rights, Crown Attorneys "should" inform and/or consult victims with respect to court dates, plea-bargains, compensation programs and victim services programs, but this varies from province to province.

Unfortunately, Crowns, police and service workers often disagree about who should be informing victims of their rights. Therefore, many victims are never told what their "rights" are or receive the information they should.

Victims should be encouraged to ask a lot of questions as they go through the process because they cannot count on being informed of every detail by the Crown, police or victim service providers.

The victim's role at parole hearings

Victims in Canada can participate in both provincial² and federal parole hearings by submitting victim impact statements for consideration by the Board. In order to give parole board members insight into the continuing impact of the crime, it is important for victims to submit their impact

² Provincial hearings are for offender serving less than 2 years in custody.

statements to the paroling authorities. By doing so, victims can inform the board about any concerns they have for their safety or the safety of the community.

Parole board members carefully examine these statements before releasing an offender into the community. Impact statements can be updated at each step of the offender's release into the community, i.e., unescorted temporary absences, day parole and full parole, etc. If the board does grant parole, a victim's information allows the board to place restrictions on the offender, i.e., to have no contact with the victim, not to enter a specified geographical area, etc.

Currently, victims at National Parole Board (NPB) hearings and provincial parole hearings in British Columbia and Ontario are permitted to speak. In BC, victims are allowed to repeat what is written in their victim impact statement or add information about any new developments. Victims are not permitted to attend provincial parole hearings in Quebec.

At NPB hearings, victims may also choose to make an audio or videotape of their written statement. Victims, who may be unable to attend the hearing, or for whatever reason choose not to attend, have this option available to them. It is also available to victims who are attending the hearing but may not be comfortable in reading their statement.

Normally, a victim must be age eighteen or over to present a statement in person at a NPB hearing. This is due to the nature of the subject matter commonly discussed at hearings. Exceptions will be considered on a case by case basis.

The federal government now provides financial assistance to victims who wish to attend National Parole Board hearings for the offender who harmed them. There is also a National Office for Victims to augment existing information services provided directly by CSC/NPB, by providing a centralized source of information about victims' entitlements under the *Corrections and Conditional Release Act* and by providing an avenue for complaints about federal corrections and conditional release. The office will be co-located with the Department of Justice Policy Centre for Victim Issues and will feature a new national toll-free line **(1-866-525-0554)**.

Conclusion

In addition to continuing to reform current laws to strengthen victims' rights, much of what remains to be done for victims of crime has more to do with changing attitudes than legislation. Those within the system must accept that victims have a role in the justice system and that that role must be respected. This is the biggest challenge facing the victims' rights movement, especially with respect to Crowns and judges.

Jan '06