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## **Strengthening the Canadian Victims Bill of Rights**

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

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## **Strengthening the Canadian Victims Bill of Rights**

Strengthening the proposed Canadian Victims Bill of Rights will require ensuring that victims' rights can be enforced and victims' participatory and service rights enhanced throughout the criminal justice process. The recommendations outlined in this document aim to further strengthen the treatment of victims in the Victims Bill of Rights; their right to be informed, considered, protected and supported, and to ensure these rights are respected. In doing so, there is the potential to increase victims' confidence in the criminal justice system, while improving the system's overall effectiveness.

### **Providing victims with enforceable rights in the Victims Bill of Rights**

Two groups of rights are recognized within the Victims Bill of Rights and discussed within this document – participatory and service rights for victims. Approaches to enforce each of these groups of rights differ based on the nature of the right, and the point of the process to which it applies- time of crime, court, corrections and conditional release/parole. To provide victims with enforceable rights, our office looked at a hybrid of two distinct approaches to enforcement that could be integrated within the Victims Bill of Rights to strengthen victims' rights.

### **Exercising and Enforcing Victims' Participatory Rights.**

The Victims Bill of Rights would give every victim the right to convey their views about decisions to be made by appropriate authorities in the criminal justice system that affect the victim's rights and to have those views considered.

Victims are currently able to have their views heard and considered through the presentation of a victim impact statement and in having the court consider a restitution order. While the Victims Bill of Rights also provides the right for victims to have their safety concerns considered at bail hearings, they are not provided with a mechanism to convey their views and to have them considered by the court.

In order for victims' to enforce their participatory rights, they should be provided with a mechanism to address the court in the case of a breach of an enumerated right. This does not mean that victims are given "party status", but rather that victims would have the ability to assert their rights as they are outlined in legislation (i.e. Victims Bill of Rights, Criminal Code).

While the Victims Bill of Rights provides remedies in the form of internal complaints mechanisms, providing victims with the ability to assert their rights in the case of a possible violation is more consistent with the principles of the VBR, in providing victims the right to convey their views.

The right to be heard and considered is an important right for victims of crime because, aside from witness testimonies, victims are not recognized as participants in criminal justice proceedings. It is therefore important that victims be able to exercise this right.

- Victims have access to legal representation to address a court in order to exercise or enforce their rights under the Victims Bill of Rights

### **Protecting Service Rights**

Service rights for victims of crime refer to their rights for information and to receive a specific standard of service. These rights are tied to the responsibilities mandated to criminal justice agencies to provide information and services. This includes victims' rights to receive information about the justice system, their role within it, and the services and programs available to them.

Under the Victims Bill of Rights, each federal department or agency that is involved in the criminal justice system would be required to have an internal complaint mechanism able to review complaints, make recommendations, and notify victims of results. In the case of a breach of rights, victims would bring their complaint to the internal complaint mechanism within that specific agency. Where victims are still not satisfied, they may file their complaint with an authority that has jurisdiction to review complaints in relation to that department, agency or body.

To ensure the protection of victim's rights, internal complaint resolution processes of the various departments, agencies and bodies must be subject to proper oversight. As such, an independent entity should be granted investigative powers to compel federal government departments and agencies to produce information and documents relevant to a complaint, and recommend remedies within departments to address specific complaints and/or systemic issues.

- Identify an oversight body with statutory powers to investigate complaints within federal organizations related to breaches and to recommend remedies.

### **Enhancing victims' participatory rights in the Victims Bill of Rights – Rights to be considered, protected, and supported**

#### **Plea bargains**

The Victims Bill of Rights requires the court to inquire whether reasonable steps were taken to inform any victims of a plea bargain in cases of serious personal injury offences or murder, after the court has accepted the plea of guilty. Victims have clearly indicated a desire to be informed before a plea is entered and accepted and the opportunity to have their views heard and considered.

In the same manner that victims are able to present an impact statement at the time of sentencing, this same right should be extended to cases of a plea bargain for serious personal and indictable offences. This does not mean that victims would have any veto powers in this regard, rather it ensures that victims can exercise their right to

participation and convey their views about decisions to be made by appropriate authorities in the criminal justice system.

- In cases of serious personal injury offences or indictable offences with a maximum punishment of 5 years imprisonment or more, victims' views are heard and considered *before* a plea bargain is presented and accepted by a judge.

### **Immigration Review Board hearings**

While the Victims Bill of Right permits a victim to be notified once an offender is deported from Canada before the expiration of their sentence, victims do not have the right to attend and present a statement at Immigration Review Board hearings.

Given that criminality is a factor used to determine if an individual should be deported, victims should be able to have their voices heard in relation to the criminal offence committed against them and provide information for consideration in a decision regarding the deportation of an offender.

- Victims are permitted to attend Immigration Review Board hearings and present a statement to allow victims to express their views and have them considered in the decision to deport an offender.

### **Parole Hearings: Accessibility and Options**

The Victims Bill of Rights provides victims with enhanced access to parole hearings (e.g. automatic access to the decision registry, access to audio recordings for victims who did not attend in person), but it does not provide victims the presumptive right to attend a parole hearing nor does it provide victims options as to how they can attend and participate.

In practice, victims' applications to attend parole hearings are rarely denied. Providing victims automatic access to parole hearing acknowledges their role within the system and ensures they have access to timely information relevant to the offender who harmed them. Additionally, when a victim plans on attending a hearing, they should be given a choice in how they will attend and/or present a statement, be it in person, by video-conference, closed-circuit television or through other secure, reasonable technological means. There are currently very few provisions for victims on how they wish to attend a hearing to accommodate either their personal circumstances which may make it difficult to travel, or their personal state that may make attending in person impossible out of fear or anxiety for their safety.

- Victims are granted the presumptive right to attend a parole hearing.
- Victims are provided with options on attending and/or participating in a parole hearing.

### **Parole Hearings: Safety and security considerations**

The Victims Bill of Rights provides enhanced safety and security for victims in a number of ways, including: protecting victim information and identity during trial and testimony;

allowing testimonial aids such a support person and protections; and allowing the victim to read a statement outside of the courtroom. Similar considerations should be applied to ensure the safety and security of the victim at parole hearings. For instance, victims should have access to entrances and waiting areas separate from the offender to avoid contact with the offender or the offender's family/support person prior to the hearing.

- That appropriate measures are established to protect the victim's sense of safety when attending parole hearings, such as safe and separate waiting areas.

### **Parole Hearings: Preparing victim statements**

Currently, victims can have five days to update their statement for a parole hearing once the Victim Service Officer has been contacted by the institutional parole officer. Victims should have sufficient time to develop and update a statement prior to the offender being released on conditional release so that authorities have up-to-date information about the victim's views and concerns. Under the Victims Bill of Rights, a judge may adjourn proceedings to allow a victim to prepare an impact statement and/or fill out a request for restitution. The same option to delay proceedings should be made available for victims in relation to a decision regarding any type of release of an offender.

- That offender release decisions be postponed to allow victims sufficient time to update their information and statements on file.

### **Collecting Restitution**

The Victims Bill of Rights requires judges to consider restitution in all cases. However, under the Victims Bill of Rights, victims who do not receive their restitution in full would need to go through civil court to have the remaining amounts paid. Victims should not have to go through a civil court to have a restitution order enforced. Restitution is part of the offender's sentence, and the Victims Bill of Rights should include a collection mechanism that would alleviate the responsibility for the victim to pursue outstanding restitution payments.

- That a mechanism be put in place so that the victim is not responsible for collecting restitution amounts from offenders.

## **Enhancing Service Rights in the Victims Bill of Rights – Rights to Information**

### **Definition of Victim**

Currently, a victim is defined in the Criminal Code and the Corrections and Conditional Release Act as an individual who has suffered physical and emotional loss. The Victims Bill of Rights would extend the definition of victim to include those who experience property damage and economic loss. Under the Bill, victims who are dead or incapable of acting on their own behalf may be represented by a spouse, common law partner or a relative. It does not account for victims who are not in contact with family and who may

live in non-traditional arrangements. The partners of victims who did not cohabit with them and the close friends of victims should also be able to act on their behalf.

- That the definition of who can act on behalf of a victim be extended to include partners who do not cohabit with the victim and close friends of the victim.

### **Informing victims of their rights**

Under the Victims Bill of Rights, victims have rights to receive information about and their rights and the federal services and programs available to them, including the right to file a complaint at different stages of the criminal justice process. For instance, victims would have the right, upon request, to information about investigations, proceedings and certain information about an offender or accused. However, the Bill does not assign specific responsibilities to agencies within criminal justice system to automatically inform victims of the rights to which they are entitled. As a result, it is not clear to victims and agencies who provides what information and when it is to be provided.

- Victims are automatically provided, at the time of crime, clear information about their rights under the Victim Bill of Rights, including what information they are entitled to receive and who is responsible for providing it at what point.
- Victims receive information in the format of their choice, which takes into account their personal circumstances, including any disability that they may have.

### **Proactive information about registration**

Most victims are not aware of the need to register with Correctional Service of Canada (CSC) or the Parole Board of Canada (PBC) in order to receive information about the offender who harmed them.

Following the conviction of an offender, the Victims Bill of Rights should include a mechanism for informing victims of the need to register. One approach could involve allowing a victim's contact information to be shared with the proper authorities who can reach out to victims at various points of the process, and inform them of their options including registering as a victim.

- That Correctional Service Canada and the Parole Board of Canada be able to proactively contact victims in order to provide information on their rights within the federal criminal justice system and the services available to them, including registration.

### **Picture of an offender on escorted temporary absence**

The Victims Bill of Rights would allow victims access to a recent photo of the offender prior to a release or a conditional release but not an escorted temporary absence. Victims may have concerns in situations where the offender's release destination is in the same community where they reside or work, even if the offender is escorted. Providing victims' with access to a recent photo of the offender can help them to deal with the possibility of encountering an offender.

- Victims are provided with access to a recent photo of an offender prior to being released on an escorted temporary absence.

### **Access to parole hearing audio recording**

Although the Victims Bill of Rights provides victims access to an audio recording of a parole hearing, it is only available to victims who did not attend the hearing. Parole hearings are one of the few ways that victims learn about the progress of the offender while incarcerated. Although hearings may be important, many victims who attended a parole hearing in person have found the experience of being close proximity to the offender and revisiting the original victimization that they had difficulty recalling details of the hearing. Since audio recording of the hearings are available, they should be available to victims regardless of whether they attend the hearings.

- Victims have access to audio recordings of parole board hearings even in cases where a victim has attended the hearing.

### **Informing victims of an accused found not-criminally responsible**

While the Victims Bill of Rights includes victims of an accused found not-criminally responsible (NCR) within the definition of victims, NCR victims are still not provided access to the same information that is available to victims of offenders in the corrections and conditional release system. For example, victims in cases where the offender is found to be NCR should receive information about the date, and conditions of release. Without knowledge of an offender's conditions of release, such as the imposition of a non-communication order with the victim, the victim will not be afforded the same sense of security.

- Victims of an accused found not-criminally responsible have the right to the same information as victims of an offender in the corrections and conditional release system.

## Summary

- **Exercising and Enforcing Victims' Participatory Rights:** Victims have access to legal representation to address a court in order to exercise or enforce their rights under the Victims Bill of Rights
- **Protecting Service Rights:** Identify an oversight body with statutory powers to investigate complaints within federal organizations related to breaches and to recommend remedies.
- **Plea bargains:** In cases of serious personal injury offences or indictable offences with a maximum punishment of 5 years imprisonment or more, victims' views are heard and considered *before* a plea bargain is presented and accepted by a judge.
- **Immigration Review Board hearings:** Victims are permitted to attend Immigration Review Board hearings and present a statement to allow victims to express their views and have them considered in the decision to deport an offender.
- **Parole Hearings, Accessibility and Options:** Victims are granted the presumptive right to attend a parole hearing. Victims are provided with options on attending and/or participating in a parole hearing.
- **Parole Hearings, Safety and security considerations:** That appropriate measures are established to protect the victim's sense of safety when attending parole hearings, such as safe and separate waiting areas.
- **Parole Hearings, Preparing victim statements:** That offender release decisions be postponed to allow victims sufficient time to update their information and statements on file.
- **Collecting Restitution:** That a mechanism be put in place so that the victim is not responsible for collecting restitution amounts from offenders.
- **Definition of Victim:** That the definition of who can act on behalf of a victim be extended to include partners who do not cohabitate with the victim and close friends of the victim.
- **Informing victims of their rights:** Victims are automatically provided, at the time of crime, clear information about their rights under the Victim Bill of Rights,

including what information they are entitled to receive and who is responsible for providing it at what point.; Victims receive information in the format of their choice, which takes into account their personal circumstances, including any disability that they may have.

- **Proactive information about registration:** That Correctional Service Canada and the Parole Board of Canada be able to proactively contact victims in order to provide information on their rights within the federal criminal justice system and the services available to them, including registration.
- **Picture of an offender on escorted temporary absence:** Victims are provided with access to a recent photo of an offender prior to being released on an escorted temporary absence.
- **Access to parole hearing audio recording:** Victims have access to audio recordings of parole board hearings even in cases where a victim has attended the hearing.
- **Informing victims of an accused found not-criminally responsible:** Victims of an accused found not-criminally responsible have the right to the same information as victims of an offender in the corrections and conditional release system.

For a comprehensive account of the Ombudsman's recommendations and response to the Victims Bill of Rights, please refer to 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 (June 2013) and A Cornerstone for Change A Response to Bill C-32, the Victims Bill of Rights from the Federal Ombudsman for Victims of Crime (May, 2014).