



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

BACKGROUND: SHIFTING THE CONVERSATION

Over the last 15 years, Canada has made definitive progress on victim-related issues; however there still remains a significant imbalance between the rights of victims and offenders. Victims have very few legislated rights or the entitlement to certain treatment.

On February 2, 2012, the Office of the Federal Ombudsman for Victims of Crime released its third special report, *Shifting the Conversation*.

The report makes recommendations to the Federal Government for amending laws and policies to ensure more equitable and supportive treatment of victims in the criminal justice system. The recommendations focus on three main areas: information for victims, meaningful participation and tangible support for victims.

Information for victims

Victims want and need certain information about their rights, the criminal justice system and the offenders who have harmed them. This information is crucial to their ability to navigate their way through the system, plan for their safety upon the offender's release and provide relevant victim impact statements to the Parole Board of Canada as required. Currently, information available to federal victims of crime is highly restricted and victims must first register with the Federal Government in order to receive information available to them.

Shifting the Conversation recommends that:

- victims be given more information about the offender who harmed them, and any rehabilitation efforts he or she has made while incarcerated;
- all information about the offender currently deemed discretionary should be automatically be provided to registered victims, unless it poses a safety risk to an individual, an offender or an institution;
- victims have the right to be informed of release dates, the location of the penitentiary where the offender is serving their sentence, and upcoming transfers;
- victims have the ability to request a current photo of the offender; and that
- victims receive increased information about their rights within the federal justice system.

Meaningful participation

Currently, a victim's role in the corrections and parole system is very limited. They must apply like all members of the public to attend parole hearings. Should a victim be unable or choose not to attend a parole hearing, they have no options through which to review the proceedings, such as reading transcripts or listening to audio recordings. For victims who want to attend but are unable, there are no standard options for remote attendance, such as teleconference or videoconference. Finally, whether victims choose to attend or not, they are entitled to submit a victim impact statement outlining the harm done. This statement, however, must be approved before it may be submitted to the Parole Board or read aloud at a hearing.

Victim participation benefits not only victims, but the entire system. By providing unique and important insights into the crime and the full impact of the harm done, victims can help authorities make the best decisions regarding any requirements and safety considerations in the offender's early release, as well as placement in community programs. Victims are an important part of the process and must be made to feel included, rather than treated like bystanders in the process.

Shifting the Conversation recommends that:

- victims be given the automatic right to attend parole hearings, unless their attendance might cause a disturbance or security issue;
- victims be given choices in relation to how they would prefer to attend parole hearing proceedings (i.e.: either in person, by video conference, by teleconference etc.) and options for accessing recordings of the proceedings; and that
- victims be provided with up-to-date information on the offender before the deadline for submitting their victim impact statements.

Tangible supports

Recent studies estimate that the total social and economic costs of *Criminal Code* offences in Canada in 2008 were approximately \$31.4 billion. Of the total estimated costs, \$14.3 billion, or 46 percent, were borne by victims as a direct result of crime, for such items as medical attention, hospitalizations, lost wages, missed school days, and stolen/damaged property.¹

Though most compensation matters are provincial, there are two very important issues at the federal level that can assist victims: the federal victim surcharge and restitution.

Federal Victim Surcharge

The federal victim surcharge is a charge of not more than \$100 imposed by law in all cases. The proceeds of the surcharge are then turned over to the provinces and territories to support victim assistance

In theory, the surcharge can only be waived if the offender can prove that paying it would result in undue hardship. However, studies have found that the surcharge is routinely

waived without recorded reasons. Not surprisingly, this means lower anticipated revenues for provincial and territorial victim assistance programs.

Shifting the Conversation recommends that:

- the Federal Government double the federal victim surcharge and make it mandatory in all cases, without exception.

Restitution

Restitution is a discretionary order imposed by the court and paid to the victim, by the offender, to cover measurable losses. Unfortunately, restitution is under-utilized and poorly enforced in Canada, carrying a significant negative impact on victims of crime. Victims must take the offender to court, which is costly and emotionally draining. Their losses must be quantifiable and in fact, many victims are unaware of restitution. Restitution must also be calculated at the time of sentencing by the victim, which may pose significant challenges or, in some cases, seem impossible at the time.

Shifting the Conversation recommends that:

- victims be provided with detailed guidelines on how to calculate their losses for the purposes of restitution;
- the requirement that losses must be quantifiable or require judges to postpone sentencing be removed until information can be obtained or allow the amount of restitution to be determined at a later date;
- offenders be held accountable by including conditions to ensure they fulfil their court orders for restitution and federal victim surcharges; and that
- the Correctional Service of Canada be authorized to deduct reasonable amounts from an offender's earnings to satisfy outstanding restitution or surcharge orders or, where required, restitution payments to be garnished from Federal Government payments (i.e.: Employment Insurance or G.S.T. rebates).

The time has come to recognize that victims are more than bystanders in the criminal justice system and to empower them to play a stronger role. Canada must demonstrate its commitment to victims by ensuring they have the rights and entitlements they deserve to ensure fair and equitable treatment.

For more information, or to view the full report, news release and video, please visit the Office of the Federal Ombudsman for Victim of Crime's website at: www.victimfirst.gc.ca

ⁱ Ting Zhang, *Costs of Crime in Canada, 2008* (Ottawa: Department of Justice Canada, 2009).
See: http://www.justice.gc.ca/eng/pi/rs/rep-rap/2011/rr10_5/index.html