



Office of the Federal Ombudsman
for Victims of Crime

Bureau de l'ombudsman fédéral
des victimes d'actes criminels

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



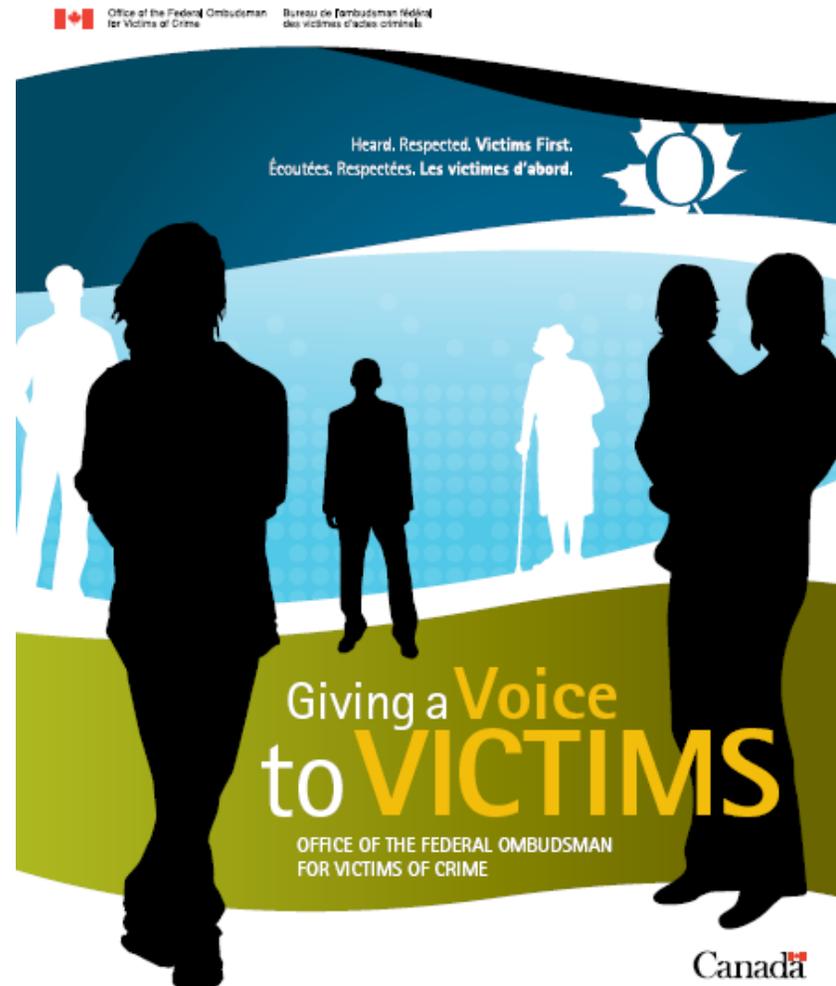
Office of the Federal Ombudsman for Victims of Crime

October 27, 2011

Canada

Office of the Federal Ombudsman for Victims of Crime

Created in 2007, the Office of the Federal Ombudsman for Victims of Crime (OFOVC) works to help victims of crime and their families.



OFOVC – What we do



The OFOVC responds directly to calls, emails and letters from victims of crime. We also:

- inform victims about the federal programs and services that exist to help them
- address complaints made by victims about federal government departments, agencies, services laws or policies

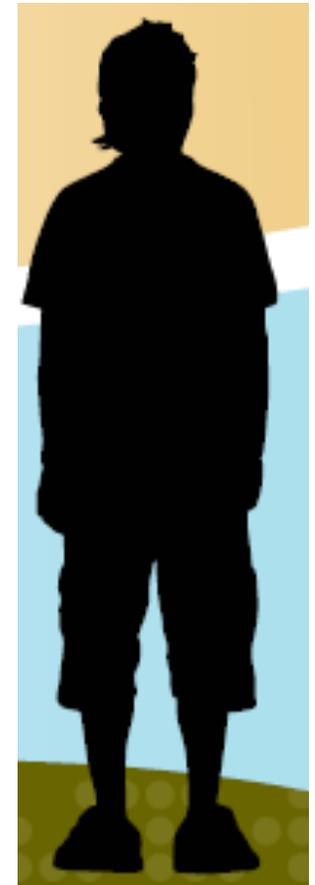


- refer victims to programs and services in their city or province that may be able to assist them

What we do continued...



- identify issues that have a negative impact on victims and make recommendations to the federal government on how it can enhance its policies and laws to meet their needs
- educate federal law and policy-makers about the needs and concerns of victims
- promote the principles set out in the *Canadian Statement of Basic Principles of Justice for Victims of Crime* with decision and policy-makers



Making a complaint



- Any individual or organization can call our office to make a complaint.
- We can only review complaints that relate to victims of crime and their treatment by federal departments, agencies, employees or policies.
- If we cannot address a complaint directly, we will happily help by connecting the victim/contact with the appropriate agency or service.

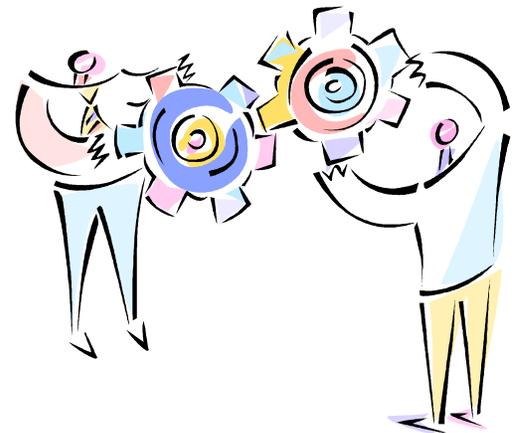


Effecting positive change



- The OFOVC's intention is to identify systemic issues that might negatively impact on victims of crime.
- The Office works collaboratively with other federal government departments to find solutions to the issues and problems victims bring to us.
- Our goal is not to criticize federal departments/employees but to find ways to work together to effect positive change.

The OFOVC has received excellent cooperation from the Correctional Service of Canada, the Parole Board of Canada and other federal departments and looks forward to building on that relationship.



Examples of complaints that may be reviewed



- Not provided with information as set out in the *Corrections and Conditional Release Act*
- Not treated with respect by a federal agency or department
- Not notified of the release of an offender
- Denied funding to attend a federal parole hearing
- Privacy of victim vs. offender (no equity in sharing of information)

Complaints we cannot review



- Incidents that occurred prior to March 2007, unless requested by Minister of Justice and Minister of Public Safety
- Areas of provincial jurisdiction (i.e. compensation, provincial victim services, prosecution, sentencing, etc.)
- Decisions (rulings) of the Parole Board of Canada
- A recommendation made by the Correctional Service of Canada to the Parole Board of Canada
- A decision of the Correctional Service of Canada to transfer an offender or authorize a release



*Enhancing Victims' Rights
and Role in the Canadian
Criminal Justice System*

Victims' rights in Canada – Current



- Victims have very few actual rights in the Canadian criminal justice system.
- Essentially, under the *Corrections and Conditional Release Act*, victims' rights are limited only to a very small amount of information about the offender who harmed them. This includes:
 - the offender's name
 - the offence of which the offender was convicted and the court that convicted the offender
 - the date of commencement and length of sentence that the offender is serving
 - eligibility dates and review dates applicable to the offender in respect to temporary absences and parole.

Victims' rights in Canada - currently



- Victims may also – *at the discretion* of the Parole Board of Canada or the Correctional Service of Canada – receive additional information about the offender who harmed them; they do not have a right to this information.
- Everything else that enables a victim to participate in the system – including to attend parole hearings – is a matter of policy, with no recourse in the event of denial.

What do victims want?



Victims want:

- More information about the system, the process, their rights, available supports and services and the offender who harmed them.
- To be able to participate in a meaningful way in the criminal justice process.
- To have their needs and concerns addressed and considered in all parts of the system and at all stages.
- Tangible supports to help them cope with the financial, physical and emotional toll in the aftermath of a crime.

Why do victims' matter?



- Victims who have confidence in the system may be more likely to come forward and report crimes, enabling the whole process to function more effectively.
- Meaningful participation by victims can serve to inform and strengthen important corrections and conditional release decisions.
- The criminal justice system should be one that upholds the Canadian values of respect, fairness, dignity and inclusion.
 - We need to ask ourselves whether we're meeting those standards when it comes to victims.

What impact will it have on the system? (\$)



- Ensuring safe and healthy communities is not an either or proposition.
- A functioning and effective corrections system is important; as is offender programming, rehabilitation and management.
- Focusing on victims does not mean neglecting other parts of the system. It can and should strengthen the overall criminal justice system.
- The imbalance between victim and offender rights is stark and unjust.
- At the very least, victims rights should be balanced with those of the offender who harmed them.

Victim concern #1: lack of information



- Victims have expressed a strong desire for more information for years. Not just in policy, but in law. (i.e.: the right to info)
- Currently, the onus is on victims to register with the CSC or PBC in order to receive information; victims who are unaware they must register do not receive any information.
- We believe that victims should *proactively* be given information about their rights and the services available to them. (Limitations of privacy legislation)
- Lack of information limits a victims' opportunity to participate in the system or to plan for their own safety (i.e.: provide input on decisions, provide more up-to-date victim impact statements, safety planning)

Lack of information cntd...



- With respect to the information victims currently have – they want and need more.
 - What programming has the offender taken? What progress have they made?
 - Why were they transferred (often to lower security institution)?
 - What information is considered before any corrections/parole decision is made? How is the victims' safety considered in release/parole decisions?
 - Why are they unable to get certain information about the offender upon request, but yet the same information is available at a parole hearing?

Enhancing victims' right to information in legislation



- Automatically provide registered victims with all information currently considered discretionary under the CCRA—except in cases where it may threaten the safety of an offender, individual or institution—through the introduction of legislation. *(subsections 26(1) and 142(1) of the CCRA)*
- Provide victims with the right to receive information about an offender's progress while under the supervision of the CSC or PBC, and ensure that the information is provided at least annually throughout the duration of the offender's sentence. *(subsections 26(1) and 142(1) of the CCRA)*
- Give the CSC and the PBC discretion to show a photo of the offender at the time of release to the registered victim *(subsections 26(1) and 142(1) of the CCRA)*

Victims' concern #2: Participation in parole and decision-making process



- **More opportunity to input into offender management decisions** – Victims want avenues to be able to input into decision making and ensure their safety is considered in release and parole decisions.
- **Mandatory approval of victim statements** – have to submit in advance without any information on offender progress; frustration at feeling censored while the offender may speak freely; do not have the most up to date information before a hearing so statement may seem out of date.
- **No options** – victims want a choice for how they can attend/review parole hearings in all cases, not just exceptional ones (recordings, closed circuit television, video conferencing, reviewing audio recordings)
- **Adjustments to parole-hearing rooms** – need to make these spaces more suitable for victims of crime and their needs (separate waiting areas for victims, better audio, room capacity for all attending victims and supports etc.)

Enhancing victim participation by amending legislation



- Ensure victims have the right to face their offender by providing them with the presumptive right to attend a parole hearing, unless there is justification to believe their presence will be disruptive or threaten the security of the institution. (*sections 26 and 142, CCRA*)
- Reduce victim trauma and anxiety by giving registered victims the right to attend parole hearing proceedings either in person, by video conference, by teleconference or to review proceedings by accessing recordings of the proceedings at a later date. (*sections 26 and 142, CCRA*)
- Provide victims with up-to-date information about the progress and programming of the offender who harmed them in advance of the victim having to prepare any victim statement for a parole hearing. Sufficient time should be provided between the provision of this information and the deadline by which the victim must present his/her statement.

Victims' concern #3: The financial burden of crime



- Too often the costs of crime fall to innocent victims and that is unacceptable.
- The total tangible social and economic costs of *Criminal Code* offences in Canada in 2008 were approximately \$31.4 billion. \$14.3 billion, or 46 percent, of these costs were borne by victims for such items as medical attention, hospitalizations, lost wages, missed school days, stolen/damaged property
- Victims should not have to pay the price for the crimes committed against them.
- In its work to balance the rights of offenders and victims, Canada must do more to support victims through the financial fallout of crime.

Federal Victim Surcharge



- FVS is a fine imposed against offenders upon conviction.
- The money generated by the FVS is so important. It goes directly to helping support victim services in the province and territories.
- The FVS is meant to be applied in all cases, unless the *offender can prove* that paying the federal victim surcharge would result in *undue hardship* to either him/herself or his/her dependents. Where it is waived, the Court is required to provide the reasons why. This is simply not happening.
- As a result of judges routinely waiving this surcharge, most jurisdictions have recovered only a portion of the anticipated revenue they need to support victims' services.

FVS continued...



- We know from (Department of Justice) research that the FVS is routinely being waived without, in most cases, any reason given for why.
 - A study of the FVS in New Brunswick (DOJ, 2006) reviewed a number of files with respect to the FVS.
 - In 99% of the cases reviewed, there was no documentation of reasons for the waiver in the file.
- Waiving the FVS ultimately means short changing the victims and that needs to be corrected.
- In its last Speech from the Throne the Federal Government committed to making the FVS mandatory. That commitment was never fulfilled. It is expected this commitment will be made again.
- We will continue to push to make sure this commitment is met.

Restitution



- Restitution is 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.
- Restitution is both under-utilized and poorly enforced in Canada, carrying a significant negative impact on victims of crime.
- Victims who wish to have restitution orders enforced must pursue the matter civilly, which is often prohibitively costly and requires victims to spend even more time fighting to obtain that which already should have been given to them.

Providing tangible supports for victims by enhancing legislation



- Require judges to consider restitution in all cases involving a victim and to state reasons for not ordering restitution, similar to provisions for the federal victim surcharge, by amending section 738(1) of the *Criminal Code*.
- Hold offenders accountable by including conditions to ensure they fulfil their court-orders for restitution and federal victim surcharges, by amending paragraph 133(3) of the CCRA, and by authorizing the CSC to deduct reasonable amounts from an offender's earnings to satisfy any outstanding restitution or federal victim surcharge orders.
- Double the federal victim surcharge and make it mandatory in all cases, without exception.

The way forward – next steps



- The time has come in Canada to shift the conversation from offender management to directly meeting victims' needs.
- We need comprehensive legislative change in Canada in order to better address victims' treatment within the system and to correct the imbalance between victim and offender rights.

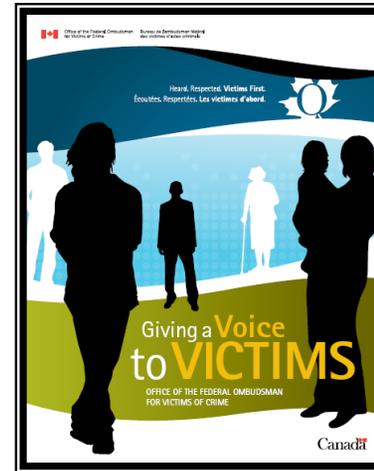
Every victim counts



- If you know a victim of crime with questions or a complaint about a federal law, policy or service, invite them to contact us.
- The experiences victims share with us will help us better understand, and address, the issues facing victims in Canada.
- Based on this information, we can make recommendations to the federal government on how it can change its policies or laws to better address the needs and concerns of victims.



To find out more, or for free publications for your office and clients, contact us.



www.victimsfirst.gc.ca

Toll-free: 1-866-481-8429