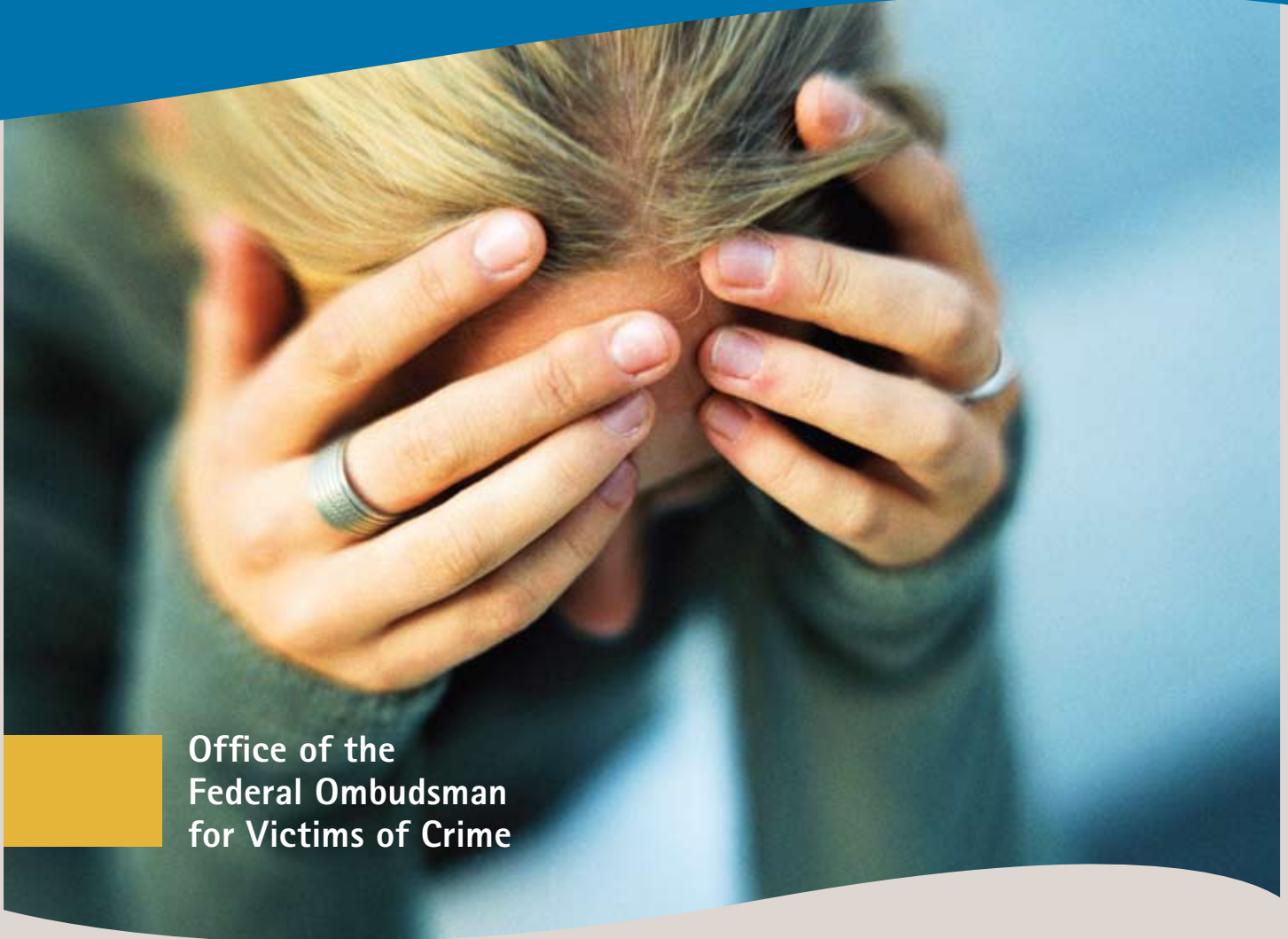




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Office of the
Federal Ombudsman
for Victims of Crime

Toward a **Greater Respect**
for **Victims** in the *Corrections*
and *Conditional Release Act*

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Victims have told the Government that what they want is more information, more access to information earlier in the process, more opportunities to be heard, and more opportunities to provide information.

— Parliamentary Standing Committee on Justice and Human Rights, 2000, *A Work in Progress: The Corrections and Conditional Release Act*

THE OFFICE OF THE FEDERAL OMBUDSMAN FOR VICTIMS OF CRIME

The Office of the Federal Ombudsman for Victims of Crime (OFOVC) was created in 2007 to ensure that the federal government meets its responsibilities to victims of crime.

As part of its mandate, the OFOVC addresses complaints about compliance with the provisions of the *Corrections and Conditional Release Act (CCRA)* that apply to victims of offenders under federal supervision (sentence of imprisonment of two years or more). The OFOVC also identifies issues that impact negatively on victims of crime and makes recommendations to the federal government based on those issues and the principles set out in the *Canadian Statement of Basic Principles of Justice for Victims of Crime*.





Executive Summary

When enacted in 1992, the *Corrections and Conditional Release Act (CCRA)* marked the first time that victims were formally recognized in any federal legislation governing the corrections and conditional release system. It acknowledged victims as having a legitimate interest in receiving information about the offender who harmed them, including: information about an offender's progress, review dates for temporary absences and parole, the location of the penitentiary where s/he is incarcerated, and the offender's destination upon conditional release. Victims may also provide information, such as a victim impact statement, describing how the crime has affected their life, to the Correctional Service of Canada (CSC) and the National Parole Board (NPB).

While the *CCRA* introduced significant reforms to recognize and respond to the needs of victims, more remained to be done. This is clear from the subsequent recommendations made by victims, victims groups, and Parliamentary committees.

In 2008–09, the OFOVC conducted a victim-centered review of the *CCRA*. As part of the review, the OFOVC considered information from a number of sources, including the Office's contact with victims of crime and their advocates; the results of a 2007 OFOVC-hosted national roundtable discussion with victim advocates concerning options for improving the *CCRA*; and previous calls for change to the *CCRA*, made by panels, committees, and victims groups. The OFOVC also gained valuable insight from discussing the matter with other federal government departments, most notably the CSC and the NPB, who helped provide clarification and insight.

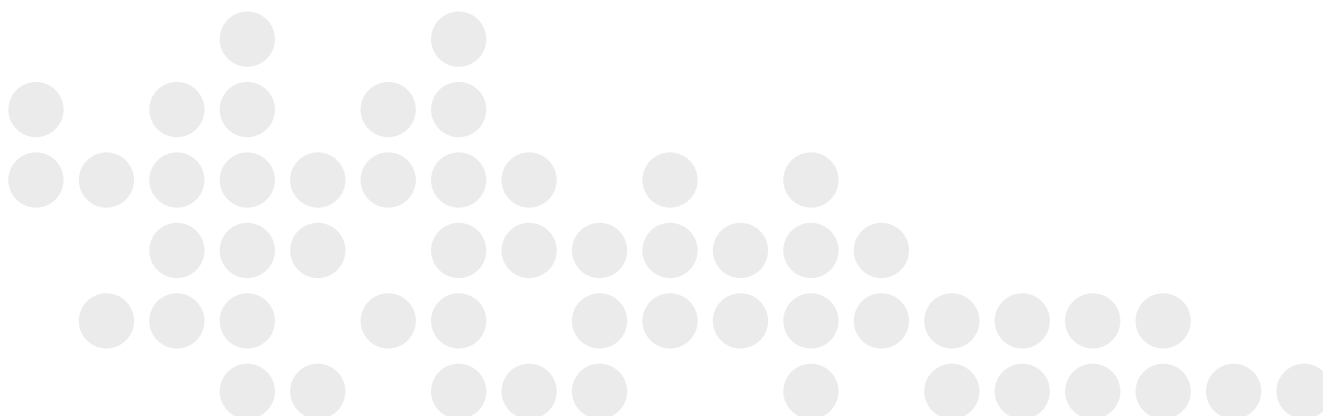
This report is the result of the OFOVC's review and presents an overview of the *CCRA* followed by a series of 13 recommendations for reform that touch on:

- the inclusion of basic victim principles in the *CCRA*;
- shifting the burden of responsibility to provide information to victims under the *CCRA* from victims to the CSC and the NPB;
- a victim's ability to learn more about an offender's progress and rehabilitation;
- a victim's ability to be notified of an offender transfer, in advance where possible;
- the right of victims to attend NPB hearings in person or, where preferred, through the use of available technologies such as video conferencing or access to archived audio or video recordings;
- giving victims a stronger voice in transfer and release decisions;
- the timing, frequency and scheduling of parole hearings; and
- restitution.

On June 17, 2009, Canada's then Minister of Public Safety, the Honourable Peter Van Loan, introduced Bill C-43, *An Act to amend the Corrections and Conditional Release Act*. The Bill addressed a number of issues the OFOVC has raised with the federal government since its inception, including the need to expand the type of information victims can receive. Had the Bill passed without amendments, it would have made significant reforms to the current corrections and parole system and enhanced the role of victims within those systems. However, in the course of developing this report, the Government made the decision to prorogue Parliament, resulting in the termination of the Bill.

While the OFOVC supported the Bill as a step forward in responding to victims' needs and concerns, there are a number of important issues that continue to remain unaddressed within it. This report provides recommendations to the Minister of Public Safety on how to address those issues. Furthermore, the OFOVC urges the Government to consider the recommendations and information provided in this report and subsequently update, amend and then reintroduce the Bill to increase its efficacy and strengthen Canada's corrections and conditional release system.

We look forward to the Minister's response and to quick and decisive action by the Government of Canada.





Victims and the *Corrections and Conditional Release Act*: An Overview

The *CCRA* came into force on November 1, 1992, replacing the *Penitentiary Act* and the *Parole Act*. The *CCRA* provides the legal framework and direction for the corrections and conditional release system and covers three main areas of concern: the incarceration and supervision of federal offenders, the conditional release process and oversight.

CURRENT VICTIMS' RIGHTS UNDER THE *CCRA*

While the *CCRA* is largely focused on offenders, it does permit victims to receive certain information about offenders. Under the *CCRA*, there are two types of information disclosures to victims: mandatory and discretionary.

Paragraphs 26(1)(a) and 142(1)(a) *require* the CSC and the NPB to disclose the following information to a victim:

- the offender's name,
- the offence for which the offender was convicted and the court that convicted the offender,
- the date of commencement and length of the sentence that the offender is serving, and
- eligibility dates and review dates applicable to the offender in respect of escorted and unescorted temporary absences or parole.

Paragraphs 26(1)(b) and 142(1)(b) *permit* the CSC and the NPB to disclose additional information on a case-by-case basis, *if they determine the release of the information is justified on the grounds that the interest of the victim in such disclosure outweighs any invasion of the offender's privacy that could result from the disclosure*. This information may include:

- the offender's age;
- the location of the penitentiary in which the sentence is being served;
- the date, if any, on which the offender is to be released on temporary absence, work release, parole or statutory release;
- the date of any hearing for the purposes of a detention review;
- any of the conditions attached to the offender's temporary absence, work release, parole or statutory release;
- the destination of the offender on any temporary absence, work release, parole or statutory release, and whether the offender will be in the vicinity of the victim while travelling to that destination;
- whether the offender is in custody and, if not, the reason that the offender is not in custody; and
- whether or not the offender has appealed a decision of the NPB and the outcome of that appeal.

PROGRESS IN BRINGING CHANGE TO THE *CCRA*

Legislative reform

Since its enactment in 1992, various victims' rights groups, panels, and committees have undertaken reviews and proposed changes to the *CCRA*, as it relates to victims. Generally, the findings of the reviews were similar in that they consistently demonstrate that victims want more information, a stronger presence in the system and feel that offenders typically have more rights than victims. Despite the findings, none of the reports and consultations described below have resulted in concrete legislative change.



In 2000, the Sub-Committee on *Corrections and Conditional Release Act* of the Standing Committee on Justice and Human Rights released its report *A Work in Progress: The Corrections and Conditional Release Act*.¹ The Report made 53 recommendations, 6 of which specifically focused on victims' rights, including giving victims information about offender transfers between institutions (in advance when possible), offender participation in programs, and new offences

committed by offenders while on conditional release. The Committee also made recommendations on the issue of access to audiotapes of parole hearings, the right to present impact statements at hearings and the right to prevent any unwanted communications from offenders in federal correctional institutions, especially with victims. Finally, the Committee recommended that an office for victims' information and complaints, with jurisdiction over victim-related activities of both the CSC and the NPB, be established.

In 2001, consultations were held by the Solicitor General of Canada with registered victims and victim service providers. The final report resulting from that process, entitled *National Consultation with Victims of Crime: Highlights and Key Messages*,² found that victims generally felt that offenders had more rights than victims. Victims said they wanted dedicated CSC victim liaison officers that would provide service exclusively to victims, respect and for their voice to *be heard and to count* when release decisions are made about offenders. They also said they often live in fear of the offender who harmed them.

Similarly, the NPB did a survey in 2003 that again reinforced victims' need for additional information about offenders' rehabilitation and the reasons for transfers between institutions. Some respondents reported that knowing about the offender's progress would help them prepare effective victim impact statements. Victims also raised concerns about how and when information about the NPB is provided and their rights as victims.³

In April 2005, the federal government introduced legislation that would have amended the *CCRA* to expand the type of information victims could access about an offender, including reasons for transfers, programs attended while in prison, advance notification of transfer to a minimum security institution, and allowing victims to listen to audiotape recordings of NPB hearings. The proposed amendments died on the Order Paper when an election was called.

¹ http://cmte.parl.gc.ca/Content/HOC/committee/362/just/reports/rp2537364/just01/362_JUST_Rpt03-e.pdf

² Solicitor General of Canada. *National Consultation with Victims of Crime: Highlights and Key Messages*. Ottawa: Solicitor General of Canada, 2001. Catalogue no. JS42-97/2001-1. Available online at: ww2.ps-sp.gc.ca/publications/corrections/Victims200107_e.asp

³ National Parole Board, Summary of Victim Responses to NPB Questionnaire December 2003, as described in the Performance Monitoring Report 2003–04. See: www.npb-cnrc.gc.ca/rpts/pmr/pmr_2003_2004/04pmr_14_e.htm#_ftnref1

Two years later, in 2007, the CSC Review Panel released an independent assessment of CSC's contributions to public safety, *A Roadmap to Strengthening Public Safety*, which included recommendations to improve the federal correctional system. As part of the review, the OFOVC met with the panel and made four recommendations, including the need to expand information victims may receive from the CSC. The final report made 109 recommendations to the federal government, a number of which reflected the input of the OFOVC, such as expanding information available to victims.

On June 17, 2009, Canada's Minister of Public Safety introduced Bill C-43, *An Act to amend the Corrections and Conditional Release Act*. Bill C-43 proposed to enshrine in law a victim's right to make statements at NPB hearings and to expand the information that may be disclosed to victims by the CSC and the NPB. Specifically, it sought to provide victims with information on offender transfers with, whenever possible, advance notice of transfers to minimum security institutions, offender program participation; any convictions for serious disciplinary offences; and reasons for a waiver of a parole hearing. Bill C-43 would have also limited the ability of offenders to withdraw their participation at parole hearings at the last minute to limit the chances of victims travelling long distances unnecessarily to attend a cancelled parole hearing.

While Bill C-43 did address some of victims' concerns, there are still significant gaps relative to victims' needs. Furthermore, given that the Bill died with the proroguing of Parliament in December 2009, the issues identified with the *CCRA* continue to remain of concern for victims.

Policy and program reform

Despite the lack of legislative change to date, considerable progress has been made in advancing victims' interests through periodic policy and procedural changes made by the CSC and the NPB.

In July 2001, the NPB introduced a new policy that allowed victims to present oral victim impact statements at parole hearings to describe the continuing effects the crime has had on their lives and regarding any concerns they have for their safety or the safety of the community. Victims can present their statement in person or using audio or videotape. This particular policy is one that has been well-used by victims. Over the last five years, victims have made 976 presentations at 613 hearings.⁴ Clearly, having the opportunity to present their stories and have a voice in the decisions being made about the offender and his or her danger to the community is something valued by registered victims.⁵

Similarly, after establishing a Victims Services Division in 2001, the CSC amended its policy on information sharing between victims and the CSC in 2006. The changes clarified the information-sharing process and outlined the responsibilities of victims and CSC officials, most notably with respect to the sections on disclosure of information and sharing victim-related information with offenders.

In November that same year, the federal Victims Fund was expanded to provide assistance to support registered victims to attend federal parole hearings. Since the establishment of this assistance, oral presentations by victims at federal parole board hearings have increased by 50%. In 2007–2008, 410 registered victims and 75 support people received more than \$320,000 in assistance from the Victims Fund to travel to parole board hearings and to pay for expenses such as meals, mileage, accommodation and childcare.

⁴ National Parole Board, "NPB Quick Stats": www.npb-cnrc.gc.ca/infocntr/factsh/parole_stats-eng.shtml#10

⁵ A registered victim refers to a victim who has registered with the CSC and/or the NPB for the purposes of receiving notification.

That same month, a National Office for Victims (NOV) was created within the federal Department of Public Safety and Emergency Preparedness. The NOV augments existing information services provided directly by the CSC and the NPB by providing a centralized source of information about victims' entitlements under the *CCRA*. The NOV is co-located with the Department of Justice's Policy Centre for Victim Issues and features a national toll-free line for victims.

Less than one year later, in April 2007, the OFOVC was established to help victims of crime and their families. The Office was developed in response to recommendations made by victims, victim advocates and Parliamentarians over the course of the preceding decade. A key part of the OFOVC's mandate includes addressing complaints from victims about federal government departments', programs' or employees' compliance with the victim-related provisions of the *CCRA*.

In 2007, the Government provided additional funding to the CSC for the National Victim Services Program. As part of this new initiative, the CSC established new staff positions responsible for providing service to victims of federal offenders on a full-time basis. Since the implementation of the National Victim Services Program, approximately 1,700 additional victims registered with the CSC to receive notification about the offender who harmed them. Since its inception, program staff have made more than 60,000 contacts with registered victims.⁶

In November 2008, the Minister of Public Safety committed to expanding the CSC's policy with respect to informing victims of the reasons behind Escorted Temporary Absences (ETA) after a high-profile inmate who had been denied parole was granted an ETA shortly thereafter. The family of the victims were not originally given the reason for the ETA, but after consultation with the OFOVC, the CSC made the decision to provide that information. The information was well-received by the victims.

Following this policy change, the OFOVC wrote to the Minister of Public Safety and congratulated him on his decision, but raised the concern that victims, who were able to access summaries of the NPB's decisions, known as decision sheets, for release decisions like full and day parole, were not able to access these sheets for decisions regarding ETAs.⁷

In June 2009, the federal government addressed this issue in Bill C-43 by making it clear that victims can be informed of "the reasons for any temporary absence." Bill C-43 proposed to amend section 144 of the *CCRA* to include decision sheets for ETA decisions made by the NPB with respect to those serving life sentences for murder. The OFOVC encourages the Government to include this provision again should it choose to reintroduce the Bill or similar legislation.

⁶ These data concerning the NVSP are available on the Correctional Service of Canada Website, at: www.csc-scc.gc.ca/victims-victimes/index-eng.shtml

⁷ Normally, wardens will make decisions about ETAs except in the case of lifers who are more than three years from their parole eligibility date.



Towards Further Progress: Recommendations

In an effort to build upon the work done to date, the OFOVC conducted, in its second year of operation, a victim-centered review of the *CCRA*. As part of the review, the OFOVC considered information from a number of sources, including its contact with victims of crime and their advocates; the results of a 2007 OFOVC-hosted national roundtable discussion with victim advocates, where attendees met to discuss options for improving the *CCRA*; and previous calls for change to the *CCRA*, made by panels and victims groups. The OFOVC also included information gained from discussions with key federal departments, such as the CSC and the NPB, who helped the Office to further understand the processes in place to carry out the practical applications of the legislation, as it applies to victims.

The OFOVC also reviewed previous recommendations made in other forums, such as the Standing Committee on Justice and Human Rights in its 1998 report entitled *Victims' Rights: A Voice, Not a Veto* and the Sub-Committee on Corrections and Conditional Release 2000 report entitled *The Corrections and Conditional Release Act: A Work in Progress*.

The subsequent recommendations, detailed in this section, are directed to the Minister of Public Safety for consideration as amendments to the *CCRA* and other policies, procedures and legislation as required.

INCORPORATING VICTIM PRINCIPLES INTO THE *CCRA*

Based on the 1985 *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, the *Canadian Statement of Basic Principles of Justice for Victims of Crime* (see Appendix B) was first endorsed by Canada's federal, provincial and territorial Ministers responsible for Justice in 1988 and renewed in 2003. The Statement serves as a guide when developing government legislation and policies for responding to the needs of crime victims. In signing the Statement, federal, provincial and territorial Ministers responsible for Justice agreed to reflect the principles in their respective laws, regulations, and procedures.

As part of its mandate, the OFOVC promotes the consideration and application of the Statement wherever possible in the amendment or creation of legislation. Incorporating the basic principles of the Statement serves to address the frustration victims commonly express regarding the systemic imbalance between the rights of offenders and victims in the Canadian justice system, namely that the rights of offenders outweigh those of victims.

At the 2007 OFOVC Roundtable, participants identified the fact that the *CCRA* remains silent on how victims should be treated as a significant gap. One participant noted that the principles dictating how *offenders* will be treated are captured in legislation, the *CCRA* (i.e., decisions pertaining to offenders must be made “in a forthright and fair manner”), but that the principles applying to how *victims* will be treated are not outlined in any legislation. It was suggested that these same principles should apply to victims. This was consistent with previous findings, such as the 2001 Solicitor General’s National Consultation with Victims.

Currently, the *CCRA* does not incorporate the principles outlined in the Statement. Sections 4 and 100 of the *CCRA* explain guiding principles for the CSC and the NPB respectively. With respect to victims, reference is made to receiving information from, and communicating with, victims. Bill C-43 slightly amended these provisions by emphasizing that the CSC and the NPB enhance their effectiveness by the “timely exchange of relevant information with victims.”

In the absence of any legislation that includes principles for how victims should be treated and what their rights are, victims and advocates argue that current federal policies and procedures designed to protect their interests and respond to their needs are inadequate.

Participants at the OFOVC Roundtable attributed the positive treatment that victims currently receive from the CSC and the NPB to the sensitivity and initiative displayed by individual employees in each organization. However, they suggested that it is not enough for victims to have to rely on policies or the goodwill of those working in the system. After all, the public would not tolerate mere policies and goodwill as assurance that the system would respect the human rights of offenders. The state is expected to ensure that the rights of offenders are reflected in legislation and are enforced. Victims deserve the same consideration. If victims are to acquire meaningful rights within the corrections and parole systems, the law must clearly reflect how victims will be treated, and those laws must be subsequently enforced.



The principles set out below serve to create a firm legislative foundation upon which the rights of victims can be established in the *CCRA*. The inclusion of these principles in law is critical to ensuring that the system interacts with victims in a respectful and fair manner.

(i) Victims shall be treated with courtesy, compassion and respect.

As is reflected in the Statement and the Preamble of the *Youth Criminal Justice Act*, the Declaration of Principles states: “victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system” and “victims should be provided with information about the proceedings and given an opportunity to participate and be heard.” These same principles should be reflected in the *CCRA*.

(ii) Information shall be provided to victims about the corrections and conditional release process and the victim’s role and opportunities to participate in the process.

Sections 4 and 100 of the *CCRA* refer to the information from, and communication with, victims of crime. Subsection 23(e) says the CSC shall take all reasonable steps to obtain “existing information from victims” but there is no requirement for the CSC or the NPB to obtain, where possible and practical, the contact information for victims.

Furthermore, information about an offender is not provided automatically to victims; victims can only receive this information once they have registered with either the CSC or the NPB. Here, the onus is on the victims to seek out how to obtain this information and ultimately to contact the appropriate person in order to register. For a victim who has been severely traumatized, these additional administrative steps and requirements can be incredibly burdensome.

Despite this, over the past thirteen years, there has been a significant increase of nearly 500% in the number of registered victims. Over 90% of those registered are victims of violent crimes. The CSC provides victims with over 16,000 disclosures, and the NPB had more than 20,000 contacts with victims in 2007–08.⁸

While these statistics make it clear that some victims have an interest in keeping informed of an offender’s status and progress, the registered victim-to-offender ratio is actually relatively low. There are over 20,000 offenders currently under federal custody, approximately 70% of which are serving sentences for violent crimes. Yet just over 6,000 victims are registered to receive information for fewer than 4,000 offenders. While not all victims want to receive information about an offender, there is currently no way to determine whether victims who have not registered have made an informed choice, or whether they are simply unaware of their rights.

Parole officials identified a lack of awareness among victims about their rights as one of the main barriers to more victims registering.⁹ Recent research prepared for the NOV also suggests many victims do not register with the CSC or the NPB because they are not aware of their rights, often because many have no contact with provincial victim services.¹⁰

⁸ National Parole Board, “NPB Quick Stats”: www.npb-cnrc.gc.ca/infocntr/factsh/parole_stats-eng.shtml#10

⁹ The PCVI Multi-Site Survey of Victims of Crime and Criminal Justice Professionals

¹⁰ Martell Consulting Services Ltd, “Information Sharing and Victims — Prepared for Public Safety Canada,” March 2008.



The CSC and the NPB try to work with provincial victim services to notify victims about their rights under the *CCRA*, but many victims do not seek or receive the assistance of victim services.¹¹

In the 2001 consultation report, *National Consultation with Victims of Crime: Highlights and Key Messages*, victims said information should be provided in a proactive manner and that the system should automatically reach out to them to make them aware of their right to receive information. This sentiment was strongly echoed at the OFOVC 2007 National Roundtable. It was clearly articulated that victims feel the onus to request information should not rest with them.



Since 1988, in Canada, the *Criminal Code* requires judges and mental review board hearings, at the time of sentencing, to ask if a victim has been given the opportunity to present an impact statement. However, research shows that while more than 60% of judges feel there has been a demonstrated increase in the submissions of victim impact statements since the *Criminal Code* was amended,¹² these statements appear in only a small percentage of cases being sentenced. In an effort to determine the reason behind the number of victims presenting statements, almost half (42%) of judges report having difficulty determining whether the victim has been apprised of his or her right to submit an impact statement and often have to proceed to sentencing without this information.¹³

The OFOVC believes the CSC and the NPB should, where the information is available, *proactively* provide information to victims about their rights under the *CCRA*. For example, a package of information could be sent to victims of federal offenders within six months of sentencing. Victims then have the choice to register to participate in the process or not.

This proposal was supported at the Roundtable. One participant said the risk of sending information to someone who did not want it was much less serious than the risk of someone who needed the information not knowing they could get it. Our office has heard from victims who said they thought someone would contact them and provide information about parole and only found out that they had to register once the offender was in the community.

¹¹ Juristat Canadian Centre for Justice Statistics. "Victim Services in Canada, 2005/2006," In only 1% of violent incidents did the victim receive support specifically from a victim service agency. (p. 4, Text Box 2).

¹² *Victim Impact Statements at Sentencing: Judicial Experiences and Perceptions A Survey of Three Jurisdictions*, Department of Justice Canada, 2006. pg. 2

¹³ *Victim Impact Statements at Sentencing: Judicial Experiences and Perceptions A Survey of Three Jurisdictions*, Department of Justice Canada, 2006.

(iii) The views, concerns, safety and security of victims shall be considered during decisions pertaining to the placement, release and supervision of an offender.

Many victims have told us about the negative impact of offender transfers or releases into the community, particularly when the offender is located close to the victim.¹⁴

The *Criminal Code* states that judges and review boards “shall” consider victim impact statements. In contrast, the current section 4 of the *CCRA* only states that the CSC makes decisions having regard to information provided by various sources, including victims. Section 101 states that parole boards take into consideration information provided by various sources, including victims.

NPB staff, by their own admission, note that victims’ information may sometimes be overlooked, depending on the format of the information. In 2006, the NPB undertook a review to determine, in part, whether there is national consistency in the NPB’s practices with respect to contacts with victims. The April 2006 Report resulting from that process, *Contacts with Victims — Review of Regional Practices*, stated:

One region raised the issue that victim videos are not being reviewed by the Board if the hearing does not take place and a paper review is done. However, if the victim’s statement is written, it is brought to the attention of the voting Board members.¹⁵

Not making every effort to incorporate a victim’s statement for consideration reinforces the feeling some victims have that their voices are unimportant to the process. One participant at the OFOVC’s 2007 Roundtable reported being told by corrections and parole officials that victim information “did not carry too much weight.”

T contacted the OFOVC after learning that the offender who shot his brother (M) had been released into the community and was staying across the street from a member of M and T’s family several days a week. After becoming severely disabled as a result of the crime, M visited his family at this home frequently, as it was one of the few social outings he could enjoy. The family was upset, as they had expected to be contacted by the NPB and given the chance to provide an impact statement before the offender was released. However, like too many victims, they did not know they had to register to receive this information. The close proximity to the offender created fear for the entire family, including M. As a result of collaborative efforts between federal offices, a community assessment was done. Following the assessment, the NPB amended the offender’s release conditions so that he could no longer enter the town where the victim lived.

¹⁴ This may require amendments to sections 17 (ETAs) and 28 (Transfers) to ensure wardens consider available victim information as part of these decisions.

¹⁵ National Parole Board, April 2006, *Contacts with Victims — Review of Regional Practices*, available online at: www.npb-cnrc.gc.ca/rprts/pmd-docs/c_v-eng.shtml

Victims want to know that the information they provide will be considered. They also want a *real* voice in transfer and release decisions. In its interactions with victims, the OFOVC consistently hears that victims are concerned about the limited extent to which their information is considered by the CSC and the NPB, particularly in making decisions such as the transfer of an offender to a minimum security prison near a victim's residence or the release of the offender into their community.

Many victims live in fear of being further victimized by the offender and fear the day that he/she will be released. In some cases, this fear goes as far as preventing victims from even *asking* for information because they fear reprisals (or re-victimization) should the offender become aware that the victim is the least bit *interested* in the system or in their case.¹⁶ One participant at the OFOVC 2007 Roundtable said, "The safety of the victim must be stated clearly."

Unlike the *Criminal Code* provisions related to pre-trial release (i.e. bail), there is no specific reference to the safety of the individual victim when it comes to parole or release. The Standing Committee on Justice and Human Rights Report, *Victims Rights: A Voice, Not a Veto*, recommended "that the judicial interim release provisions of the *Criminal Code* be amended to require a justice to inquire through the Crown Attorney into the complainant's safety concerns, if any, and the nature and scope of release conditions necessary to address them." In its response, the Government said:

With very few exceptions, these provisions (i.e. bail) do not require any consideration of the particular victim's safety concerns and interests, although the safety of all members of the public (which, of course, includes the victim) and the risk of repetition of the offence are always considered.

Judicial officers generally do consider the safety of the victim in determining whether to release a suspect or accused in accordance with the criteria set out in the applicable Code provisions. However, it is acknowledged that, if the victim is unaware of the release proceedings or of the fact that, in many circumstances, conditions may be imposed for the release of the accused, victims have little confidence that anyone has turned their mind to their particular concerns. In our view, amendments to the judicial interim release provisions could help restore the victim's confidence in this critical decision-making process... The goal of the amendments that will be explored is **not** to keep more people in custody pending their proceedings unnecessarily; rather, it is to ensure that the perspective of the victim of the alleged offence is taken into account within the current framework for judicial interim release.

As a result of the Committee's Report, Parliament amended paragraph 515(10)(b)¹⁷ of the *Criminal Code* in 1999 to include the protection of the victim as one of the issues to be considered before releasing an accused person. The OFOVC recommends that the same consideration be extended to offender parole and release decisions.

When the CSC is aware of a victim's concerns for his/her safety, and is aware of the proximity of the victim's residence to an offender's release destination, CSC staff should consider alternative residential destinations. For example, the CSC should be required (where the victim has concerns for their overall well-being and/or safety) to include the victim in the community assessment before allowing the offender to go to a specific destination.

¹⁶ Policy Centre for Victim Issues, "Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada — Summary of Probation Officer, Corrections and Parole Board Respondents," 2005. p. 6.

¹⁷ Paragraph 515(10)(b) says, "For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds... (b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice."

(iv) 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.

Victims' needs vary, but consideration can and should be given to common potential issues that exist for all victims. One example of this is the consideration needed for dealing with different types of victims groups, such as Aboriginal victims. To this end, the Office presented a recommendation to the CSC Review Panel that more work be undertaken to reach out to Aboriginal victims. The resulting report, *A Roadmap to Strengthening Community Safety*, echoed this idea and formally recommended that a strategy be developed, in conjunction with the Aboriginal Policy Branch, Public Safety, the Federal Ombudsman for Victims of Crime, and Aboriginal organizations, to reach out to Aboriginal victims to ensure their information needs are identified and addressed. As a result, the National Office for Victims of Crime has begun developing its National Strategy to meet the Information Needs of Aboriginal Victims. We look forward to working with the National Office as the Strategy progresses.

(v) All reasonable measures should be taken to minimize inconvenience to victims.

Many victims have told us that although they appreciate the opportunity to attend parole hearings, it is often very difficult to make practical plans for attending. Often, in cases of homicide, family members or spouses of the victims feel very strongly that they should be present to represent the victim. However, despite the importance that attendance at these hearings may have for victims and their loved ones, little thought is given to victims' needs or circumstances. As a result, some victims have had to cancel or postpone medical procedures or vacations in anticipation of a parole hearing. In other cases, some were not able to modify their schedules and attend because of the timing of the hearing, which may have caused further stress. Others have attended despite the hearing being scheduled close to an anniversary or a holiday.

Rightfully, victims believe that they should be consulted, within reason, before a date is set for a hearing. Where this is not possible, victims' needs could be addressed by incorporating a number of alternative options for victims to attend or review the proceedings of a parole hearing without being physically present, such as video conferencing or a victim-accessible archive of parole hearing recordings.

A young woman was in touch with our office because the man convicted of sexually assaulting her when she was a teenager was released to a halfway house less than 15 minutes from her home. When the offender, who was deemed a high risk to reoffend, was initially released, he was sent to a halfway house in another city. The young woman received notification on a Thursday evening that the offender would be moving to a halfway house in her city on Monday. When she checked its location, it was minutes from her home. She quit her job and fled the city. The National Parole Board amended his release conditions to specify an area in the city where he could not go, which caused the victim to fear for her safety even more since it now pinpointed where she lived and worked. The offender was returned to prison within weeks for violating the conditions of his release but will be released soon, and she has asked, once again, that he not be returned to the city in which she resides.

(vi) Information should be provided to victims about how they can raise their concerns when they believe that these principles have not been followed.

Victims have frequently expressed their frustration with their lack of legislated rights, and, as a result, the lack of enforceability of the policies that affect them most. In Canada, under the current system, victims' rights are not enforceable and no compliance measures exist to permit any organization to correct a failure to respect victims' rights as outlined in the Statement. However, in an effort to begin balancing the rights of offenders and victims, the Government of Canada created the OFOVC in 2007 to accept and review complaints against other federal government departments, agencies, employees, laws and policies with respect to victims' treatment. While this is a positive step forward, the OFOVC, like all victims services organizations, faces challenges in reaching out to victims to let them know about the Office's mandate and services. In this regard, it would be both effective and efficient if information given to federal victims of crime was required to include information about the OFOVC and how to reach the Office in the event a victim feels that any of the basic principles outlined in the Statement have not been followed.

Recommendation 1:

That the Government of Canada introduce an amendment to sections 4 and 101 (principles) of the *CCRA*, which reflect the *Canadian Basic Statement of Principles of Justice for Victims of Crime* and the interests of victims in the corrections and parole system. The principles should recognize that victims have the right to participate in the parole and corrections system.



PROVIDING INFORMATION TO VICTIMS

Proactive contact with victims

Victims and victim groups have consistently said information should be provided to victims in a *proactive* manner and that the system should automatically reach out to them to make them aware of their right to receive information.

Currently, victims must contact the CSC and the NPB. Neither organization will contact victims proactively, even when they have the victims' address (i.e. from the province). The OFOVC believes the CSC should, where the information is available, *proactively* provide information to victims about their rights under the *CCRA* within six months of sentencing. Victims would then have the choice to register to participate in the process or not.

While we do not expect the CSC to go searching for contact information for victims, where they do have contact information, they should send a package of information. Subsection 23(e) says the CSC shall take all reasonable steps to obtain "existing information from victims" but there is no requirement for the CSC or the NPB to obtain the contact information for victims.

Recommendation 2:

That the Government of Canada introduce an amendment to subsection 23(e) to include the victim's contact information.

Discretionary disclosure

As mentioned previously, there are two types of information that can be released to victims: mandatory and discretionary. For example, an offender's parole eligibility date shall be disclosed, but the dates of his or her release are only shared at the discretion of the NPB.

There are policies and procedures governing the disclosure of each type of information. For example, the CSC's *Commissioner's Directive 784 (Information for Victims)*, paragraph 24, states that:

Those with delegated authority under paragraph 16 of this [Commissioner's Directive] will determine discretionary disclosures of information on a case-by-case basis following an analysis of whether or not the interest of the victim in such disclosure clearly outweighs any invasion of the offender's privacy that could result from the disclosure.

Currently, discretionary information may be provided to registered victims only if the victim's interest *clearly outweighs the invasion of the offender's privacy*. Given the current wording of the legislation, the Office is concerned that other agencies may object to the routine sharing of this information. In order to avoid misinterpretation, the discretion to provide information to victims should default towards providing the information except in cases where it may cause undue harm. The OFOVC believes this is information that all victims should have, unless there is a reason to believe there is a threat to the safety of an offender or an institution.

Recommendation 3:

That the Government of Canada introduce legislation that proposes to automatically provide all information currently considered discretionary under the *CCRA* to registered victims, except in cases where it may threaten the safety of an offender, individual or institution.

Regular and meaningful information updates

Victims understand, better than most, that nearly all offenders will eventually be released from prison. Given their personal experiences, they know the impact violence can have, which is why many victims sincerely hope that offenders will be rehabilitated while in prison. The best protection victims, their families and the community will have is if the offender can learn to modify negative behaviour before he or she is released.



As such, it is important for many victims to know what, if anything, the offender is doing to rehabilitate him or herself. The final *Report of the Solicitor General's 2001 National Consultation with Victims* noted:

Victims emphasized the need for more information about the offender that harmed them, particularly information on program participation and institutional conduct. This view was stated consistently across the country... Many stated that if this type of information can be made available to observers at parole hearings or by listening to an audiotape of hearings, then it should also be available at earlier points in the offender's sentence.

The *CCRA* does not permit the disclosure of information about the offender's participation in programs, behaviour in prison, or disciplinary offences. Consequently, victims are only able to get this information for the first time if they attend a parole hearing or access a NPB Decision Registry. For example, the family of a victim who was killed by an offender in an impaired driving crash may only learn at the parole hearing, or thereafter, whether the offender has been complying with attendance at Alcoholics Anonymous meetings or similar conditions. Likewise, the victim of an assault may only learn whether the offender who harmed him/her participated in counselling and abstained from acts of physical violence while in prison or, of equal importance, whether the offender has not participated in any programs at all.

Victims groups have long advocated for the provision of information to victims regarding the offender's institutional conduct, rehabilitative programming/assessments, psychological evaluations, employment (within the institution and work release programs), and educational upgrading. The Canadian Resource Centre for Victims of Crime (CRCVC)¹⁸ said,

From a victim's perspective, rehabilitation is very important. Victims never want to see anyone else victimized in the same manner that they were. Thus, if victims knew what components of the Correctional Plan, if any, the offender has completed to address his problems and the success of such programming, victims would have a better sense of whether the offender is taking genuine steps to improve himself. If such information was provided regularly throughout an offender's incarceration (instead of finding out months or even years later at a parole hearing), there might not be such fear or concern when he is released.¹⁹

Similarly, Victims of Violence made the following argument:

The offender's right to privacy prevents the victim from being kept informed as to whether the offender, for instance, is partaking in anger management courses or if he has been involved in violent acts within the prison. Many victims are related to the offender in their case and, upon release, the offender may come into contact with the victim and the victim's family. Should the family not have the right to know? There seems to be great secrecy surrounding the offender's conduct in prison even though this information could possibly benefit the victim.²⁰

This concern was also raised during the OFOVC's 2007 Roundtable. It was noted that an expansion of information to crime victims should be provided so that victims may feel safer in their daily lives and have knowledge about the offender's rehabilitative progress. As stated in the Report of the 2001 consultations with victims: "Most victims stressed that their need to know is motivated primarily by security and safety reasons, not vengefulness."

Victims have said that this type of information, in advance of a parole hearing, would enable them to provide a more meaningful victim impact statement, given that the victim could better speak to the potential safety risk to him/herself or to the public and prepare for his/her eventual release. Under current policies, victims are only able to read, verbatim, their pre-prepared, pre-approved statements at a parole hearing. The OFOVC Roundtable participants reflected on the problems that arise when victims hear new information at parole hearings and are not able to address it in their statements. In addition to being denied the ability to present the most relevant points possible, victims may feel embarrassed about making an "out of date" statement when everyone else at the hearing has more current information.

¹⁸ The CRCVC is an organization dedicated to ensuring victims' rights and public safety. An important part of the work of the CRCVC involves helping victims to obtain and understand information on offenders and their rights under the *CCRA*.

¹⁹ Canadian Resource Centre for Victims of Crime. June 4, 2007. Brief to the CSC Review Panel, p. 3. Available online at: www.crcvc.ca/docs/CSC_Review_May07.pdf

²⁰ Victims of Violence, Brief to the Sub-Committee on *Corrections and Conditional Release Act* of the Standing Committee on Justice and Human Rights, p. 2.

In its final report, issued in December 2007, the CSC Review Panel endorsed a recommendation made by the OFOVC to share information with registered victims on the progress of offenders on, at least, an annual basis.

In Bill C-43, the Government addressed this issue. The Bill would have amended paragraph 26(1)(b) to include: programs that were designed to address the needs of the offender and contribute to their successful reintegration into the community in which the offender is participating or has participated and serious disciplinary offences that the offender has committed.

While these are positive steps, the Bill did not specify when victims will get this information or if it will be on a regular basis. The Bill also did not permit victims to know whether an offender completed a program, or if he or she was successful. All of these details are necessary to ensure that victims receive reliable and consistent information without unnecessary anxiety. As such, the OFOVC encourages the Government to consider amending these provisions to make them as effective as possible for the victims they are intended to benefit.

Recommendation 4:

That the Government of Canada introduce legislation to specify that victims be given information about an offender's progress and that the information is provided at least annually throughout the duration of the offender's sentence.

Victims who have contacted our office have raised concerns about not being able to access photos of offenders before they are released from prison. If victims attend parole hearings or participate via video conferencing, they will see the offender. But if a victim cannot attend a hearing or is too afraid to do so, they are not likely to know what the offender looks like. Many offenders spend years in prison and their physical appearance may change significantly. In a limited number of cases, offenders have even changed their sex. Without an updated photo, victims will have no way of identifying the offender should he or she pose a threat to the victim once released.

Recommendation 5:

That the Government of Canada amend subsections 26(1) and 142(1) of the CCRA to provide the CSC and the NPB discretion to show a photo of the offender to a registered victim.

The victim of a sexual assault contacted the Office regarding the release of the offender who committed the crime. The crime occurred when she was barely a teenager, and it had been almost a decade since she had seen the offender, who was being released into the community. She asked the CSC for a copy of his photograph so she would be able to identify him if she saw him. He was deemed a high-risk offender, and she was fearful for her safety as he had threatened her in the past. Although the CSC, using the Privacy Act, did release a photo to the victim, it took four months.



PRISON TRANSFERS

Prison transfers can be a confusing and upsetting issue for some victims, especially when the transfer is made from a higher to lower security prison. Currently, victims do not have a legislative right to be informed of the reasons why offenders are being transferred, such as program participation or behavioural problems. Additionally, notification to victims about offender transfers takes place only *after* the transfer has taken place.

M attended a parole hearing for the man who sexually assaulted and murdered his daughter. The offender was denied. Seven days later, the offender was transferred to a minimum security prison that is less than an hour from M's home. M wanted to know why the offender was transferred to a minimum security prison so close to his home but was unable to get any such information.

Over the past several years, victims have clearly articulated that they want advance notification of transfers and more information regarding the decision to transfer. This matter was consistently raised in prior reviews of the *CCRA*.

CAVEAT (British Columbia), in a discussion paper entitled *Openness and Accountability Within the Correctional Service of Canada: A Time for Change*, said:

Legislation should be created which would require CSC to advise and seek out the victims' views, prior to the decision being made, whenever a transfer is being contemplated by CSC in the routine administration of an offender's sentence.

The Sub-Committee on the *CCRA* agreed with this perspective in its 2000 report, *A Work in Progress*. Recommendation 37 of *A Work in Progress* called upon the Government to amend the Act to provide victims, "wherever possible in advance, of the planned, anticipated, or scheduled routine transfer of inmates."

In the 2001 National Consultation, victims clearly articulated that notification should be given, irrespective of the security level of the facility to which the transfer was occurring:

Support was... offered for the proposal to provide victims with information on transfers that offenders receive. Some victims felt that information on *all* transfers should be provided to victims in *advance* of the transfer taking place.



More recently, in 2007, this issue was revisited by the CSC Review Panel. The Panel noted that recommendation 37 of *A Work in Progress* to advise victims in a timely manner, and in advance when possible, of the planned, anticipated or scheduled routine transfer of inmates, should be reviewed for reconsideration.

Bill C-43 addressed this issue. If passed, the federal government would have amended the *CCRA* to allow victims to receive a summary of the reasons for the transfer and the name and location of the penitentiary and, where possible, advance notification *if the offender is to be transferred to a minimum security institution*. Advance notification of a transfer is not always possible as they may be done quickly, as in the case of a transfer for disciplinary reasons for example. However, as we have learned from various consultations, victims want to be notified in advance of *all* transfers, not only those to a lower security prison. The OFOVC believes advance notification, where possible, should always be made.

Recommendation 6:

That the Government of Canada introduce amendments to sections 26 and 142 of the *CCRA* to share information and provide advance notification of all transfers, where possible, to the victim(s).

H was convicted of murdering three people. The OFOVC received a complaint from the families of the victims because of alleged problems with notification of the offender's transfer to another region. The victims' agent had been told that H had applied for a transfer to another region but that he would likely be denied. No explanation was given to the families concerning the transfer, as the CSC is not currently permitted to share such information. When they learned of the transfer, the families were extremely upset, in part because they were not notified of a previous transfer several years before. They also expressed concern about the lack of an explanation for what factors had changed in the offender's case to justify the transfer.

THE RIGHT TO ATTEND AND PARTICIPATE IN NATIONAL PAROLE BOARD HEARINGS

Giving victims a voice

Provisions to allow for the presentation of written victim impact statements at sentencing were first introduced into the *Criminal Code* in 1988, and in 1996, the law was strengthened requiring courts to consider statements. In 1999, the *Criminal Code* was amended again to give victims the right to present oral statements at sentencing, and in 2005, victims were given similar rights to present statements at review board hearings for offenders found not criminally responsible.

In 2001, the NPB amended its policy to permit victims to present statements at parole hearings. NPB members report that victim impact statements are useful in assessing the nature and extent of harm suffered by the victim; the risk of re-offending the offender may pose if released; the offender's understanding of the impact of the offence; and conditions necessary to manage the risk that might be presented by the offender.²¹

Beyond the benefits to board members, the ability to present a victim impact statement can be extremely important for a victim for a variety of reasons. This was emphasized again by victims at the OFOVC's Roundtable.

Bill C-43 proposed to legislate a victims' right to present impact statements, but only if they are attending hearings. However, the Bill did not specifically provide victims the presumptive right to be able to attend hearings. Instead, victims must apply, like any member of the public, to attend the hearing as an observer which, in addition to being yet another task where the onus is on the victims to follow through, does not reflect victims' particular needs or concerns.

While section 140 of the *CCRA* allows for the presence of observers at parole board hearings, attendance can be denied if it is determined that the attendance of observers will adversely affect the hearing. Although it is rare for the NPB to deny a victim observer status, victims in these cases would not be able to present an oral statement. Nor would they have any recourse as, according to the NPB Policy Manual (s.9.3 Observers at Hearings), a denial of authorization to attend a hearing cannot be appealed.

Recommendation 7:

That the Government of Canada amend subsection 140(4) of the *CCRA* to provide victims a presumptive right to attend a hearing unless there is justification to believe their presence will disrupt the hearing or threaten the security of the institution.



²¹ Available online at: www.npb-cnrc.gc.ca/victims/factsheet-eng.shtml

Considering victims' needs

In addition to ensuring that victims have a legislative right to attend hearings and present a statement, many have further urged that victims should have choices with respect to how they attend a hearing.

For example, video conferencing is a relatively new, but very effective tool for helping victims attend hearings when circumstances would otherwise prevent them from attending in person. Providing video conferencing as an option, where possible, would help address situations where victims may not have the funds to travel, may not be able to do so because of illness, reduced mobility, work or child care commitments, or may be fearful of entering a prison or being in close proximity with the offender. Even with financial assistance provided through the Victims Fund, victims are still required to pay 30% of the cost of the travel upfront. This is not a financially feasible option for some victims, particularly those in remote communities, such as Northern Canada, where travel costs may be significantly higher.

The use of remote options, such as video conferencing, was raised during the 2001 Consultation with Victims. In response, it found that:

...many participants indicated that they would prefer to be able to listen to or participate in hearings in "real-time" through the use of modern technology: teleconferencing or video-conferencing for those who can't be on-site, closed-circuit television or the possibility to observe from behind a one-way glass for those who can and want to be on-site, but not in the same room.

The OFOVC was informed by a victims' advocacy organization that a victim, S, was denied a request to attend an upcoming NPB hearing for an offender who murdered a member of her family because of threats expressed in her victim impact statement and in a conversation with a CSC worker. In addition to the denial, the CSC made the decision to withhold, for a period of six months, any information with respect to the offender, which would include any of his requests for temporary absences, work release, day parole and full parole. After gathering the necessary information, the OFOVC proposed a meeting between all parties to further clarify the issues. Various officials from the NPB and the CSC were in attendance, as well as the Federal Ombudsman for Victims of Crime and a member of his staff. As a result of this meeting, the NPB revisited its decision and informed the Office that it was willing to allow S to attend the upcoming parole hearing as an observer by way of either video conference or teleconference, providing S submitted a revised victim impact statement. Subsequently, S and family members attended the hearing via video conference. The CSC did not revisit its decision in this case.

The NPB has conducted over 100 hearings via video conferencing, four of which included victims of crime. The NPB has taken a cautious approach to the use of video conferencing as the technology is still relatively new and not available in all institutions. As part of this approach, the NPB has developed a policy on video conferencing, which states that:

Video conferencing may be an appropriate option in certain circumstances, including...where it would facilitate participation by...victims in exceptional circumstances who would otherwise be unable to attend for reasons of undue hardship, as assessed on a case by case basis.

T was left severely physically challenged as the result of a vicious attack. T was notified that a parole hearing would be taking place in two weeks. T asked for the hearing to be postponed, but was denied. T attended the hearing but found it a difficult and strenuous process due to his physical limitations. T's spouse was able to provide a small update to the victim impact statement she presented at sentencing, but not to her satisfaction, and T was unable to update his own. The offender was granted day parole, and T felt the decision might have been different if he had been permitted to submit a new impact statement. Another hearing was held a few weeks later and, with the assistance of the OFOVC, T participated via video conferencing. T found it to be a very positive experience – in some respects, more so than attending in person.

Given all that must be considered, it is reasonable that the NPB would be cautious when implementing new procedures. However, while this policy is undoubtedly an improvement, it frames video conferencing as an option in exceptional circumstances only, rather than a viable alternative for victims who may be physically or financially unable to attend in person or who would prefer not to be in close proximity to the offender.

In the same way that victims cannot always attend hearings in person, some victims are not available to attend a hearing in any form during its scheduled time. For these victims, who would still very much like to listen to the offender's responses, having access to preserved audio or video recordings would ensure that they received full and consistent access to the hearing proceedings.

While victims and the general public can access NPB decision sheets, these sheets are not full transcripts of the hearing. Instead, decision sheets provide only a summary of the Board's decision. Victims may want to hear the offender answer in his/her own words questions about the perceived impact of their crime, about their progress in prison and any reasons why he/she feels they are capable of reintegrating into society.

This idea is not new. The Commons Sub-Committee recommended that victims be able to access audio tapes of hearings at CSC or NPB offices. Similarly, during the 2001 consultation and the OFOVC's 2007 Roundtable, victims expressed support for this idea. An amendment was included in Bill C-46, introduced in the House by the former government in 2005 but died on the Order Paper with the election. Bill C-43 did not address the issue, but the OFOVC would encourage the Government to consider including it in an amended Bill in future.

Recommendation 8:

That the Government of Canada amend section 142 of the *CCRA* to allow registered victims the opportunity to listen to recordings of hearings or, where possible, to attend via video conferencing or other such remote real-time technology.

LIMITING THE ABILITY OF OFFENDERS TO CANCEL HEARINGS WITHOUT PROPER JUSTIFICATION AND NOTICE

Many victims have expressed concern over the ability of offenders to cancel conditional release hearings at the last minute without providing a valid reason. Although CSC and NPB officials report that this is not a common experience, victims describe it as being extremely upsetting whenever it occurs.

In 2005 and 2006, 25 hearings — at which victims were prepared to make oral presentations — did not take place because the offender postponed them. However, these statistics only reflect those hearings where the victim was present and prepared to speak. They do not reflect the number of cases where the victim was present but chose not to speak or where the hearing was cancelled on short notice and victims had already re-arranged their schedules.

The 2001 Report on the National Consultations with victims stated:

Offenders can waive a Parole Board hearing at the last minute if they choose to; victims (who may have taken the time to travel to the location of the hearing and who may have been through a roller coaster of emotions while preparing themselves for the hearing) do not have the right to cancel a hearing nor to demand that it be held once scheduled. It was stressed that when the offender cancels the hearing, victims feel re-victimized and controlled by the offender.

When hearings are cancelled, victims have reported that they experience a significant emotional toll. They often have to plan well in advance to prepare to attend a hearing: taking time off work, arranging for child care and making travel preparations. But for victims, a postponement may mean that they cannot attend the rescheduled hearing or they may have wasted precious time or lost pay. Their frustration may be exacerbated when they are not made aware of the reasons for the postponement as the following case study reveals:

A victims' group wrote to the OFOVC in 2007 about two former police officers and their families who attended a detention hearing for the offender who shot and wounded them while on duty. The offender, serving a lengthy sentence for attempted murder, had been denied Statutory Release and was entitled to a hearing every year. Minutes before the detention hearing, the offender decided not to attend; in that instance, the NPB proceeded with the hearing. In 2008, the families attended once again but minutes before the hearing, the offender decided not to appear. The emotional stress was very difficult for the victims and their families.

Bill C-43 attempted to address this issue. If passed, it would have amended section 123 to eliminate the ability of an offender to withdraw an application for full parole within 14 days before the commencement of the review unless the withdrawal is necessary and it was not possible to withdraw it earlier due to circumstances beyond their control. It would also



have amended paragraph 142(1)(b) so victims could receive the reason for a waiver of a hearing if the offender gives one. Unfortunately, this amendment only applies to full parole and does not include day parole. Victims of offenders applying for day parole suffer the same emotional tolls and deserve the same respect and consideration.

Recommendation 9

That the Government of Canada introduce legislation to eliminate the ability of an offender to withdraw an application for any hearing a victim is attending within 14 days before the commencement of the review unless the withdrawal is necessary and it was not possible to withdraw it earlier due to circumstances beyond their control. That the Government of Canada also ensure, in the same legislation, that victims receive the reason for a waiver of a hearing if the offender gives one.

The parents of two murder victims attended a parole hearing for their sons' murderer. The hearing started on time but the offender said he was not ready to proceed because a "complaint" had not been settled. Despite the frustration of the Board members, the offender was granted a new hearing in a few months. The families were extremely upset as they had travelled a significant distance for a hearing that was only days before Christmas. They felt the offender manipulated the process. The hearing was rescheduled for February, which was the same month that the murders had taken place. The offender cancelled the hearing a second time.



THE RIGHT TO APPEAL A PAROLE BOARD HEARING

Victims have long argued they will never have true rights if there is no legal mechanism to enforce them. Victims feel that the lack of recourse suggests their role in the system is incidental and is not perceived to add value to the process. For victims who want a real voice in the system, this can seem to underscore the belief that their experiences and knowledge of the incident and of the offender are of marginal importance despite the fact that it is they who have suffered the most.

Establishing in law the right of victims to seek a new hearing in the event that they were not properly notified will address the need expressed by victims to be active and informed participants in the parole hearing process. While these errors may not be common, their impact on victims is significant.

In the case of *State ex rel. Hance v. Arizona Board of Pardons and Paroles*, a convicted murderer was released on parole but the victim was not notified of the hearing. When the victim learned of the decision, she sought to have the release order set aside and a re-examination hearing held. The court ordered a new parole hearing for the offender because the victim was not notified of the hearing in advance.²²

Recommendation 10

That the Government of Canada introduce an amendment to section 147 of the *CCRA* to permit a registered victim to request a new hearing if s/he did not receive proper notification.

As registered victims, both K and a family member had been advised of, and had indicated their interest in, attending an upcoming hearing in which the offender was applying for an unescorted temporary absence (UTA). However, both victims contacted the OFOVC to complain that they had not been advised that the offender had also applied for day parole and, as the result of human error, subsequently did not have the opportunity to present an updated Victim Impact Statement to the NPB. At the hearing, the offender was granted full day parole, in effect nullifying his/her request for a UTA. K and the family member received an apology, but no new hearing was scheduled, and they were not granted another opportunity to present their statements.

²² *State ex rel. Hance v. Arizona Board of Pardons and Paroles*, 875 P. 2d 824 (AZ CT APP 1993)

EXTENDING THE TIME BETWEEN HEARINGS FOR THOSE SERVING LIFE AND INDEFINITE SENTENCES

Many victims who attend parole hearings report that it was a difficult but positive experience, regardless of the Board's eventual decision. However, in cases of offenders serving indefinite or life sentences, victims may be faced with multiple hearings once the offender reaches his/her parole eligibility date. Although no research has been done on this issue in Canada, anecdotal evidence collected by the OFOVC from victims and advocates indicates that this is a significant hardship.

Victims are not required to attend parole hearings; however, many report a desire to attend every hearing involving the offender who victimized them. In particular, families of a homicide victim appear to feel a sense of responsibility to be present to represent their loved one(s). Some families have expressed the view that their presence is essential so that their loved one is not forgotten in a process that is largely focused on the offender.

It is therefore a burden on victims that, presently, hearings for those serving life and indefinite sentences can apply for parole every two years once they have reached their parole eligibility date. The emotional strain brought about by waiting for, and living through, parole hearings every two years only serves to heighten the pain and suffering of the victim.

A woman whose sister was murdered said, "Families have already been victimized once. They shouldn't have to be victimized every two years."²³ Another woman said, "To put families through the potential to see the offender every two years is just unbelievable. Two years goes by so quickly."²⁴

Victims and victims' groups have proposed amending the *CCRA* with respect to repeat parole hearings to extend the time in between hearings from two to five years. This would afford some assurance to victims, while at the same time recognizing the offender's interest in retaining ongoing opportunities to apply for parole.

This principle was recently recognized by the federal government when the Minister of Justice introduced Bill C-36, which aims to repeal the judicial review provisions of the *Criminal Code* and to eliminate the ability of those currently serving life sentences for murder to apply for repeated judicial review hearings by having to wait a minimum of five years before they could re-apply if unsuccessful. The Minister said, "We are also sparing families the pain of attending repeated parole eligibility hearings and having to relive these unspeakable losses, over and over again." While this was a positive step forward, this same principle was not applied to spare victims and their families the pain of attending actual parole hearings every two years. The OFOVC encourages the Government to reintroduce similar and amended legislation, which would include the same five-year minimum for parole hearings for those serving life or indefinite sentences.

Recommendation 11

That the Government of Canada introduce an amendment to subsection 123(5) of the *CCRA* to extend the time between hearings to five years for those serving life and indefinite sentences if an offender's request for conditional release is denied.

²³ Bob Mitchell, "Mom steels herself to face teen's killer after 25 years," *Toronto Star*, April 8, 2007

²⁴ Rob Tripp, "Women fights to keep her sister's killer behind bars for good," *Kingston Whig-Standard*, April 15, 2008

RESTITUTION

Over the years, many studies have identified restitution as an important principle for some victims. The US Department of Justice found that restitution is one of the most significant factors influencing victim satisfaction with the criminal justice process and that while restitution has always been available via statute or common law, it remains one of the most underutilized means of providing crime victims with a measurable degree of justice.²⁵ There are many problems with the current restitution provisions in the *Criminal Code*, specifically with the enforcement of these orders.²⁶

When ordered by a court, restitution and victim fine surcharges are part of a sentence, and the CSC is mandated to carry out the sentence imposed by the courts.²⁷ Although it is not currently known how many offenders in the federal corrections system have restitution orders, very little has been done by either the CSC or the NPB to ensure offenders satisfy that aspect of their sentences. This issue was canvassed in the 1987 Corrections Law Review Working Paper on Victims and Corrections.²⁸ At that time, victims groups suggested that part of an inmate's wages be deducted for court-ordered restitution.

While inmates typically have low wages, and even those working in the community have financial challenges, it is equally true that victims may also be suffering financial difficulties, often as a result of the offence committed against them.

Research from the Department of Justice showed that in 2003, crime in Canada cost an estimated \$70 billion, a majority of which — \$47 billion or 67% — was borne by the victims.²⁹ According to a 2004 Canadian study, researchers estimated that the cost of pain and suffering experienced by victims of crime was close to \$36 billion.³⁰ While most jurisdictions in Canada have compensation schemes to assist victims, many victims (i.e. crimes of property, impaired driving) are not eligible. This includes victims of financial crime, as there is a growing recognition of the financial and emotionally devastating impact on the victims involved. Because these schemes are the responsibility of the provinces, there is also a wide discrepancy between jurisdictions (i.e. in Nova Scotia, the maximum award is \$2000 for counselling only). Furthermore, many eligible victims do not apply, often because they are not aware.

Restitution is not about punishing inmates by taking their money. Rather, it is about promoting a sense of accountability and responsibility. This is reflected in section 718 of the *Criminal Code*, which lists the fundamental purposes of sentencing. These include providing reparations for harm done to victims and promoting a sense of responsibility in offenders and acknowledgment of the harm done to victims.

In 1999, the Director of the Policy Centre for Victim Issues, Ms. Catherine Kane, told the Standing Committee on Justice and Human Rights, which was studying Bill C-79, that it was possible to garnish inmates' wages.³¹

Bill C-43 attempted to address this issue by proposing an amendment to section 15 (correctional plan) to include a new subsection that emphasizes the importance of the offender meeting their court-ordered obligations, including restitution to victims or child support.

²⁵ *New Directions from the Field: Victims' Rights and Services for the 21st Century*, US Department of Justice, Office of Justice Programs, Office for Victims of Crime, 1998, p. 357.

²⁶ In December 2008, the OFOVC sent the Minister of Public Safety and Minister of Justice a letter outlining the challenges with the current scheme and encouraging them to look at some options for reform.

²⁷ Subsection 3(a) of the *CCRA*.

²⁸ "Influences on Canadian Correctional Reform — Working Papers of the Correctional Law Review 1986–1988," Solicitor General of Canada.

²⁹ Policy Centre for Victim Issues Fact Sheet, "Costs of Crime in Canada" www.collectionscanada.gc.ca/webarchives/20061025163623/www.victimsworld.gc.ca/fact-sheets/p2.html

³⁰ Leung, Ambrose. 2004. *The Costs of Pain and Suffering from Crime in Canada*. Research and Statistics Division Methodological Series, Department of Justice, Canada.

³¹ <http://cmte.parl.gc.ca/Content/HOC/committee/361/juri/evidence/ev1039484/juriev133-e.htm>

While this was a positive amendment, further amendments to the *CCRA* are required to ensure the NPB can include restitution and the satisfaction of victim fine surcharges as a condition of conditional release. The OFOVC also believes that when an offender is not making reasonable attempts to fulfill his or her court ordered obligations regarding restitution or victim fine surcharge, deductions should be made from his/her prison wages.

Recommendation 12

That the Government of Canada amend paragraph 133(3) of the *CCRA* to include a necessity for conditions to ensure offenders fulfill their court ordered sentences, including restitution and victim fine surcharges.

Recommendation 13

That the Government of Canada amend subsection 78(2) of the *CCRA* to authorize the CSC to deduct reasonable amounts from an offender's earnings to satisfy any outstanding restitution or victim fine surcharge orders.





Conclusion

The OFOVC strongly believes that the needs and interests of victims of crime would be greatly advanced as the result of the adoption of legislation similar to what was proposed in June 2009 through Bill C-43, with the further inclusion of the recommendations presented in this report.

Since the *CCRA* was enacted in 1992, considerable progress has been made, particularly by the CSC and the NPB, in creating a respectful relationship with victims and in developing sound policy and administrative responses to accommodate them. However, despite the improvements made at a policy and procedural level, victims still feel that *legislation* must be enhanced to put victims at the heart of the criminal justice system — and, specifically, that the *CCRA* must be strengthened to ensure that victims' interests are enshrined as rights and, where appropriate, that mechanisms are provided to enforce these rights.

The evidence gleaned from a variety of different sources — Parliamentary and other review panels, direct consultations with victims groups, and discussion with victims themselves — highlights several weaknesses and limitations in the *CCRA*. These limitations serve to reinforce the perception, if not the reality, that in the criminal justice system, offenders' rights and interests trump the needs of victims.

The recommendations provided in this report highlight those limitations and provide feasible, practical solutions.

The OFOVC looks forward to the Minister of Public Safety's response and to swift and decisive action by the Government of Canada.

Appendix A: List of Recommendations

Recommendation 1: That the Government of Canada introduce an amendment to sections 4 and 101 (principles) of the *CCRA*, which reflect the *Canadian Basic Statement of Principles of Justice for Victims of Crime* and the interests of victims in the corrections and parole system. The principles should recognize that victims have the right to participate in the parole and corrections system.

Recommendation 2: That the Government of Canada introduce an amendment to subsection 23(e) to include the victim's contact information.

Recommendation 3: That the Government of Canada introduce legislation that proposes to automatically provide all information currently considered discretionary under the *CCRA* to registered victims, except in cases where it may threaten the safety of an offender, individual or institution.

Recommendation 4: That the Government of Canada introduce legislation to specify that victims be given information about an offender's progress and that the information is provided at least annually throughout the duration of the offender's sentence.

Recommendation 5: That the Government of Canada amend subsections 26(1) and 142(1) of the *CCRA* to provide the CSC and the NPB discretion to show a photo of the offender to a registered victim.

Recommendation 6: That the Government of Canada introduce amendments to sections 26 and 142 of the *CCRA* to share information and provide advance notification of all transfers, where possible, to the victim(s).

Recommendation 7: That the Government of Canada amend subsection 140(4) of the *CCRA* to provide victims a presumptive right to attend a hearing unless there is justification to believe their presence will disrupt the hearing or threaten the security of the institution.

Recommendation 8: That the Government of Canada amend section 142 of the *CCRA* to allow registered victims the opportunity to listen to recordings of hearings or, where possible, to attend via video conferencing or other such remote real-time technology.

Recommendation 9: That the Government of Canada introduce legislation to eliminate the ability of an offender to withdraw an application for any hearing a victim is attending within 14 days before the commencement of the review unless the withdrawal is necessary and it was not possible to withdraw it earlier due to circumstances beyond their control. That the Government of Canada also ensure, in the same legislation, that victims receive the reason for a waiver of a hearing if the offender gives one.

Recommendation 10: That the Government of Canada introduce an amendment to section 147 of the *CCRA* to permit a registered victim to request a new hearing if s/he did not receive proper notification.

Recommendation 11: That the Government of Canada introduce an amendment to subsection 123(5) of the *CCRA* to extend the time between hearings to five years for those serving life and indefinite sentences if an offender's request for conditional release is denied.

Recommendation 12: That the Government of Canada amend paragraph 133(3) of the *CCRA* to include a necessity for conditions to ensure offenders fulfill their court ordered sentences, including restitution and victim fine surcharges.

Recommendation 13: That the Government of Canada amend subsection 78(2) of the *CCRA* to authorize the CSC to deduct reasonable amounts from an offender's earnings to satisfy any outstanding restitution or victim fine surcharge orders.

Appendix B: Canadian Statement of Basic Principles of Justice for Victims of Crime

In honour of the United Nations' Declaration of Basic Principles of Justice for Victims of Crime, and with concern for the harmful impact of criminal victimization on individuals and on society, and in recognition that all persons have the full protection of rights guaranteed by the *Canadian Charter of Rights and Freedoms* and other provincial Charters governing rights and freedoms; that the rights of victims and offenders need to be balanced; and of the shared jurisdiction of federal, provincial, and territorial governments, the federal, provincial, and territorial Ministers responsible for Criminal Justice agree that the following principles should guide the treatment of victims, particularly during the criminal justice process.

The following principles are intended to promote fair treatment of victims and should be reflected in federal/provincial/territorial laws, policies and procedures:

- Victims of crime should be treated with courtesy, compassion, and respect.
- The privacy of victims should be considered and respected to the greatest extent possible.
- All reasonable measures should be taken to minimize inconvenience to victims.
- 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.
- Information should be provided to victims about the criminal justice system and the victim's role and opportunities to participate in criminal justice processes.
- 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.
- Information should be provided to victims about available victim assistance services, other programs and assistance available to them, and means of obtaining financial reparation.
- 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.
- 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.
- Information should be provided to victims about available options to raise their concerns when they believe that these principles have not been followed.

Appendix C: List of Abbreviations

CSC Correctional Service of Canada

CCRA *Corrections and Conditional Release Act*

ETA Escorted Temporary Absence

NOV National Office for Victims

NPB National Parole Board

OFOVC Office of the Federal Ombudsman
for Victims of Crime