

FEDERAL OMBUDSMAN FOR VICTIMS OF CRIME SUBMISSION TO THE CSC REVIEW PANEL

The Office of the Federal Ombudsman for Victims of Crime was announced in March, 2007 by the Minister of Justice and the Minister of Public Safety. The recognition of the need for the creation of a federal “ombudsman” for victims of crime has evolved over the last decade and has been recommended by victims, victim advocates and Parliamentarians.

The mandate of the Federal Ombudsman for Victims of Crime relates exclusively to matters of federal responsibility and includes:

- facilitating access to existing federal programs and services by providing victims with information and referrals;
- addressing victims’ complaints about compliance with the provisions of the *Corrections and Conditional Release Act (CCRA)* that apply to victims of offenders under federal supervision as well as providing an independent resource for those victims;
- enhancing awareness among criminal justice personnel and policy makers of the needs and concerns of victims and the applicable laws that benefit victims of crime, including the principles set out in the *Canadian Statement of Basic Principles of Justice for Victims of Crime* (please see Appendix 2); and
- identifying emerging issues and exploring systemic issues that impact negatively on victims of crime.

It is important to note that these are early days for this office and that as of yet, we have not received many complaints that would inform the work of the committee.

However, given the Review Panel’s mandate to consider, “CSC’s plans to enhance services for and support to victims,” our Office did not want to miss the opportunity to provide a brief submission to the Panel. While this report does not cover all of the issues regarding victims of crime, it does raise some longstanding issues that need to be addressed.

Before getting into specific reports and recommendations, it is important to take note of the specific legal obligations the Correctional Service of Canada (CSC) has to victims of crime as well as the broader obligations of the federal government. Section 26 of the *Corrections and Conditional Release Act (CCRA)* sets out what information victims can receive from CSC about an offender. Upon request, victims will be provided with the following information:

- The offender's name;
- The offence and the court that convicted the offender;
- The offender's sentence start date and length of sentence;
- The offender's eligibility and review dates for temporary absences, day parole and full parole.

Victims may also be provided with additional information if their interest clearly outweighs any invasion of the offender's privacy. Disclosed information may include:

- The location of the penitentiary where the offender is being held;
- The date on which the offender is to be released on unescorted or escorted temporary absence, work release, parole, or statutory release;
- Any conditions attached to the offender's unescorted temporary absence, work release, parole, or statutory release;
- The offender's destination when released 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;
- The date of any National Parole Board (NPB) hearing;
- Whether the offender is in custody and, if not, why not.

In 2001, the then Solicitor General of Canada undertook a national consultation with victims and victims groups.¹ Some of the issues that were identified have been addressed (i.e. need for dedicated CSC victim liaison officers) however, several other issues are still outstanding:

- victims feel that offenders have more rights and get access to better services;
- 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 principles applying to how victims will be treated are not outlined in any legislation;
- victims reported living in fear of the offender who harmed them; that the offender will contact them when (s)he gets out. This fear may prevent victims from *asking* for information or making an impact statement because they fear reprisals (or re-victimization) should the offender become aware;
- victims want more information about the offender, including information on institutional conduct, programming information to gain a sense that the offender is making an effort to change (some indicated that their fears would be somewhat reduced by learning that the offender is making progress) and information on transfers that offenders receive.²
- victims want to be able to listen to tapes of parole hearings;
- victims expressed concern about the ability of offenders to waive parole hearings, this action causes stress to victims and therefore should not be allowed; some suggested the offender should be penalized, especially for last minute cancellations (for example, by having to wait at least six months to reschedule a hearing).

On May 29, 2000, the Parliamentary Standing Committee on Justice and Human Rights Committee issued a comprehensive report entitled "The Corrections and Conditional Release Act: A Work in Progress." The report followed a thorough review of the *CCRA*

¹ National Consultation with Victims of Crime – Highlights and Key Messages http://ww2.ps-sp.gc.ca/publications/corrections/pdf/victims200107_e.pdf

² This was also raised as an issue by victims in the Summary of Victim Responses to NPB Questionnaire (December 2003) http://www.npb-cnrc.gc.ca/victims/Questionnaire/QIndex_e.htm

and included input from victims and victim groups. The report contained fifty-three recommendations to improve the corrections and conditional release processes, six of which pertained specifically to victims. The committee's report said, "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."

Some of the recommendations have been implemented. For example, victims can now speak at parole hearings and the Office of the Federal Ombudsman for Victims of Crime has been established. However, a number of key recommendations remain to be addressed³:

RECOMMENDATION 36 - The Sub-committee recommends that paragraphs 26(1)(b) and 142(1)(b) of the *Corrections and Conditional Release Act* be amended to allow for the provision to victims, as defined in the Act, of offender information related to offender program participation, offender institutional conduct, and new offences committed by a conditionally released offender resulting in re-incarceration.

RECOMMENDATION 37 - The Sub-committee recommends that subparagraph 26(1)(b)(ii) of the *Corrections and Conditional Release Act* be amended to allow for the Correctional Service of Canada to advise victims (as defined in the Act) in a timely manner, and wherever possible in advance, of the planned, anticipated, or scheduled routine transfer of inmates.

RECOMMENDATION 38 - The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to facilitate victim access, for consultation purposes at Correctional Service or Parole Board offices, to audiotape recordings of Parole Board hearings.

RECOMMENDATION 40 - The Sub-committee recommends that the Solicitor General of Canada, in conjunction with the Correctional Service of Canada and the National Parole Board, develop a comprehensive strategy to prevent any unwanted communications from offenders in federal correctional institutions, especially with victims.

The panel should review the above recommendations made in the Committees Report regarding victims of crime.

³ Not all of these recommendations are related to CSC but we have included them to give the Panel a better understanding of the range of issues victims face.

VICTIM SERVICES

There are approximately 5300 victims registered with CSC/NPB, an increase of over 400% since 1995. The number of victims registered with CSC/NPB is expected to rise to over 8000 by 2010. Recently, with the announcement of new funding, CSC will be able to develop a National Victim Services Program and hire dedicated victim service officers to work solely with victims of crime.

The services for victims will be enhanced once this process is complete and we hope that this new program will increase CSC's capacity to promote awareness of its victim service program and victims' rights under the *CCRA*. Although the numbers of registered victims continues to rise, many victims still are not aware of their rights.

There are over 20,000 offenders currently under federal jurisdiction, approximately 70% who are serving sentences for violent crimes. However, only 5300 victims are registered. While not all victims want to receive information about offenders, we do not know how many victims have chosen not to register or how many who do not know they have a right to register. In the Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada (Department of Justice), parole officials said one of the main barriers to more victims registering is due to a lack of awareness among victims about their rights.

As it stands now, CSC/NPB will only provide information to victims who are registered to receive information about offenders. If victims are not informed that they have a right to information of an offender or that they must make the initial request, many victims will not register. Some victims expect they will automatically be notified before the offender is released.

In the Solicitor General's consultation (2001), victims said information should be provided in a proactive manner and the system should automatically reach out to victims to make them aware of their right to receive information. Victims could then choose whether or not they are interested in receiving on-going information from CSC or NPB. It was articulated clearly that victims feel the onus to request information should not rest with them.

There have been several recent media reports of families of deceased victims who found out the offenders were in the community after the fact. In one case, a woman whose sister was murdered 14 years ago found out that the murderer was already on day parole despite being sentenced to life without parole for 14 years. She did not know murderers could apply for day parole three years before full parole.

In another case, a family read about the release of the woman who caused the death of their 5 year old child in the media. They believed the offender would serve her entire 5 year sentence and were not aware that they had to register to receive information about her status.

Currently, neither CSC nor the NPB pro-actively contact victims. Rather, they rely on provincial victim services to notify victims about their rights under the CCRA, but the reality is many victims do not seek or receive the assistance from provincial victim services. Many cases are plea bargained quickly and in many jurisdictions victim services are under-resourced so not all victims receive the same level of service.

Although we believe there are sincere attempts of outreach being made by CSC/NPB, the current approach unfairly penalizes many victims who would like to receive information.

In a survey of victims in 2003, the NPB concluded, “The National Parole Board is not a government organisation well known to the general public. For the most part, it is other agencies who direct the public to the Board for information and services...For many victims the need for information about the offenders involved in their cases does not occur until late in the criminal justice continuum. The realisation that the offender will eventually be released appears to be what sparks the need for information. At that point, victims are somewhat perplexed as to which agency would have that information.”⁴

The panel should inquire about the current policy of CSC not to make pro-active contact with victims, including the number of victims that are eligible to register (obviously this could only be an approximate number given there may be multiple victims for one offence, etc.) and who are the victims who are registered (type of offence, region, age, education, etc.).

⁴ NATIONAL PAROLE BOARD, Summary of Victim responses to NPB Questionnaire December 2003, http://www.npb-cnrc.gc.ca/victims/Questionnaire/QIndex_e.htm.

ABORIGINAL VICTIMS

One of the ongoing challenges, not only for CSC, but for the entire criminal justice system, is the over-representation of aboriginals in federal prisons. For example, the Correctional Investigator has repeatedly raised the issue, most recently in his 2006 Annual Report. The issue is one that the Panel will review.

We believe the discussion must be expanded to consider the needs and interests of Aboriginal victims who are equally over-represented. Unfortunately, to date, little attention has been paid to women and children who are most often the victims of Aboriginal offenders.⁵ One study found that, “Aboriginal sex offenders often committed their offences in Aboriginal communities, and almost all of their sexual offences were committed against members of their immediate or extended family.”⁶

Data shows “that Aboriginal victimization is disproportionately higher than for Canadians generally....Studies reporting victimization rates of Aboriginal women in the area of 80-90% are commonplace”⁷ Rates of homicide, sexual assault and violent crime are higher in the Territories than in the rest of the country.

Increased efforts to provide quality programming to Aboriginal offenders is important. However, attempts to focus solely on reducing the number of Aboriginal offenders in prison at the risk of further victimization to their victims are not acceptable. These offenders, once released from prison, return to the communities where their victims live. Therefore, the voices of these victims are essential and may not be shared by the community or its leaders.

A report⁸ prepared for the Policy Centre for Victim Issues in 2003 highlighted the reality for victims in the Territories:

- victims are expected to remain silent about abuse;
- there may be more focus on the offender rather than the victim;
- there may be a lack of support for victims in some communities (i.e. shunned, victim blaming, gossiped about);
- there may be a focus on keeping the family together at all costs;
- shelters may be seen as breaking up families;
- there can be pressure on victims not to report or to drop charges;
- there can be pressure to keep the offender with in the community despite concerns/wishes of the victim;

⁵ The Minister of Justice recently announced more funding for victim support in the Territories by doubling the number of victim-witness assistants (from 5 to 10).

⁶ Larry Chartrand and Celeste McKay, “A Review of Research on Criminal Victimization and First Nations, Métis and Inuit Peoples 1990 to 2001,” Policy Centre for Victim Issues, January 2006, P.21.

⁷ Ibid. P.v

⁸ Mary Beth Levan, “Creating a Framework for the Wisdom of the Community: Review of Victim Services in Nunavut, Northwest and Yukon Territories,” September 2003.

Community based approaches and alternative ways to deal with offenders can be beneficial for offenders, the community and the victim but it is important to always seek the proper input from victims.⁹ Some have questioned, “whether victims are truly free to participate, or must bow to community pressure and the lack of meaningful alternatives. The prevalence of violence against women and children and the internalization of dominant attitudes may test healing is a viable option today.”¹⁰

According to some researchers, “Aboriginal women perceive as too lenient, and indeed racist, the ‘culturally sensitive’ sentencing of Aboriginal men convicted of crimes of violence. Sentences which allow a violent offender to remain in his community are seen as imposing very serious risks for survivors and potential victims of such crimes, emphasizing rehabilitation at the expense of community safety. Political and judicial support for community sentencing combined with the apathy or outright tolerance of some Aboriginal community leaders and elders towards violence against women may exacerbate these risks.”¹¹

The panel should make inquiries to determine what steps are being taken to ensure the voices of Aboriginal victims are being heard and considered as CSC works to address the issue of the over-representation of Aboriginal offenders in federal prisons.

⁹ This issue was identified as a “research gap” in a report prepared for the Policy Centre for Victim Issues by Larry Chartrand and Celeste McKay, “A Review of Research on Criminal Victimization and First Nations, Métis and Inuit Peoples 1990 to 2001,” January 2006.

¹⁰ Ibid. P.50

¹¹ Ibid. P.50-51

FAMILY VIOLENCE

The dynamics of family violence present ongoing challenges at all stages of the criminal justice system, including corrections. Previous Board of Investigation reports have raised the issues related to family violence. In one case, a woman was murdered by her partner who was on parole for second degree murder. While on parole, the woman told CSC that the offender had assaulted her. The offender was returned to prison and a parole hearing was held at which time the woman recanted her allegation. The offender was released back into society and he murdered the woman a short time later. It is not unusual for victims of domestic violence to recant allegations of abuse and this was raised in the Board of Investigation report.

Currently, any information victims provide to CSC or the NPB for decision making purposes is shared with the offender, as per the rules of natural justice and the *CCRA*. However, for victims of family violence, this is a dangerous situation. If, for example, she is fearful about his release, she is not likely to tell CSC because they must inform her abuser.¹²

Under section 27(3) (a) of the *CCRA*, the Commissioner may not disclose information if he/she has reasonable grounds to believe that disclosure of information would jeopardize the safety of any person. It is not clear how these exceptions are applied to victims of crime who may fear for their safety. Admittedly, these provisions should only be applied in exceptional circumstances but Parliament did include provisions for exceptions in the law.

The panel should examine how section 27(3)(a) is applied to victims of crime, how often it is applied, how decisions are made, how victims make requests for their information to be withheld, if victims are notified of these provisions, if there is a policy for victims to review the potential risk to the victim before sharing information, etc.

¹² In some cases, a gist of the information only is given to the offender but for victims of domestic violence, this is rarely an option.

LIST OF RECOMMENDATIONS

1. The panel should review the recommendations made in the Common Report with respect to expanding the kind of information victims may receive from CSC.¹³
2. The panel should inquire about the current policy of CSC not to make pro-active contact with victims, including the number of victims that are eligible to register (obviously this could only be an approximate number given there may be multiple victims for one offence, etc.) and who are the victims who are registered (type of offence, region, age, education, etc.).
3. The panel should make inquiries to determine what steps are being taken to ensure the voices of Aboriginal victims are being heard and considered as CSC works to address the issue of the over-representation of Aboriginal offenders in federal prisons.
4. The panel should examine how section 27(3)(a) is applied to victims of crime, how often it is applied, how decisions are made, how victims make requests for their information to be withheld, if victims are notified of these provisions, if there is policy for victims to review the potential risk to the victim before sharing information, etc.

¹³ Including access to decision registry in escorted temporary absence decisions which is not currently permitted.

CANADIAN STATEMENT OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME, 2003

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:

1. Victims of crime should be treated with courtesy, compassion, and respect.
2. The privacy of victims should be considered and respected to the greatest extent possible.
3. All reasonable measures should be taken to minimize inconvenience to victims.
4. The safety and security of victims should be considered at all stages of the criminal justice process and appropriate measures should be taken when necessary to protect victims from intimidation and retaliation.
5. Information should be provided to victims about the criminal justice system and the victim's role and opportunities to participate in criminal justice processes.
6. Victims should be given information, in accordance with prevailing law, policies, and procedures, about the status of the investigation; the scheduling, progress and final outcome of the proceedings; and the status of the offender in the correctional system.
7. Information should be provided to victims about available victim assistance services, other programs and assistance available to them, and means of obtaining financial reparation.
8. The views, concerns and representations of victims are an important consideration in criminal justice processes and should be considered in accordance with prevailing law, policies and procedures.
9. The needs, concerns and diversity of victims should be considered in the development and delivery of programs and services, and in related education and training.
10. Information should be provided to victims about available options to raise their concerns when they believe that these principles have not been followed.