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Victim Impact Statements at Sentencing : Judicial Experiences and Perceptions

A Survey of Three Jurisdictions

Department of Justice Canada
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Victim Impact Statements at Sentencing: Judicial Experiences and Perceptions

A Survey of Three Jurisdictions

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Final Report

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The views expressed herein are solely those of the authors and do not necessarily represent the views of the Department of Justice Canada.

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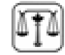

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Highlights

Since their introduction in 1988, victim impact statements (VIS) have generated considerable controversy. To this point however, there has been an almost complete absence of information about the attitudes and experiences of the most important criminal justice professional with respect to sentencing: judges. Only three surveys have ever been conducted of Canadian judges: Manitoba in 2001, Ontario in 2002, and the Multi-site study in 2003/04. The purpose of the present research project was to replicate the Ontario survey four years later in three additional jurisdictions. Surveys were distributed in British Columbia, Alberta and Manitoba in February 2006. The same questionnaire and methodology for distribution was used. This report compares responses across jurisdictions, and summarizes responses from the entire sample of judges. It also provides comparisons between the results of surveys conducted in 2002 and 2006.

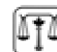
Judges in all four jurisdictions reported an increase in the number of VIS submitted. This is particularly true in Manitoba where 41% of the respondents reported seeing a moderate or significant increase in the number of VIS.

To explore perceptions of the utility of victim impact statements judges were asked the following question: "*In general, are victim impact statements useful*?". The response options were that the statements were useful "in all cases", "in most cases", "in some cases" and "in just a few cases". Consistent with the responses from Ontario, judges in the three new jurisdictions clearly found victim impact statements to be useful in general.

The second question relating to this issue asked judges whether they found VIS useful in terms of providing information relevant to the principles of sentencing. Again, the general reaction was affirmative although there was considerable inter-jurisdictional variability. The response was particularly positive in Manitoba where almost half (47%) of judges stated that they found VIS to contain information relevant to sentencing principles often, almost always or always. This response was made by fewer judges in British Columbia (36%) and far fewer in Alberta (12%). Over the three jurisdictions, approximately three quarters of judges reported finding relevant information; only one-quarter of the total sample stated that VIS never contained information relevant to the principles of sentencing.

Consistent with the trend for judges to be sensitive to the issue, we found that most judges reported that they almost always or often referred to the victim impact statements in their reasons for sentence.

The findings from this survey demonstrate that although victim impact statements are entered in only a relatively small percentage of sentencing hearings, judges report that they are a useful source of information at sentencing. Moreover, most respondents acknowledged that VIS represent a unique source of information relevant to the purposes of sentencing.



Executive Summary

Since their introduction in 1988, victim impact statements (VIS) have generated considerable controversy. This is true in Canada as well as other jurisdictions. To this point however, there has been an almost complete absence of information about the attitudes and experiences of the most important criminal justice professional with respect to sentencing: judges. While a very limited number of studies have explored the views of judges in other jurisdictions, only three surveys have been conducted of Canadian judges: Manitoba in 2001, Ontario in 2002, and the Multi-site study in 2003/04. The purpose of the present research project was to replicate the Ontario survey four years later in three additional jurisdictions. Surveys were distributed in British Columbia, Alberta and Manitoba in February 2006. The same questionnaire and methodology for distribution was used. This report compares responses across jurisdictions, and summarizes responses from the entire sample of judges.

Most judges sentence a very large number of offenders every month

The caseload in Canada's criminal courts creates a large number of sentencing hearings. Respondents were asked how many sentencing hearings they conducted each month, and the averages were: BC: 55; Alberta: 33; Manitoba: 38. The aggregate average for the three jurisdictions was 42 sentencing hearings per month, considerably lower than the average number reported by judges in Ontario (71). These statistics have important implications for the sentencing process, and in particular for the question of victim input: judges are under great pressure to get through a large number of cases.

Victim impact statements (VIS) are submitted in only a small percentage of cases

One of the problems identified in the research literature is confirmed in this survey of judges: victim impact statements appear in only a small percentage of cases being sentenced. In BC, judges reported that a VIS had been submitted in 8% of cases, compared to 11% in Manitoba and 13% in Alberta. These statistics are comparable to the responses from Ontario in 2002 when on average judges reported seeing a VIS in 11% of cases.

Many judges report an increase in the number of VIS submitted

Judges in all four jurisdictions reported an increase in the number of VIS submitted. This is particularly true in Manitoba where 41% of the respondents reported seeing a moderate or significant increase in the number of VIS.

Judges report having difficulty in determining whether the victim has been apprised of his or her right to submit an impact statement

It is sometimes challenging for a judge to know whether a victim impact statement has been submitted. Respondents were asked about this particular issue. Almost half (42%) the respondents in all jurisdictions stated that it was "difficult in most cases". This pattern of responses suggests that it is frequently difficult to ascertain whether the victim has been provided with the opportunity to submit a victim impact statement.

Judges often have to proceed to sentencing without knowing whether the victim has been apprised of the right to submit a VIS

Judges often have to proceed to sentence the offender without knowing the status of the victim impact statement. The results revealed considerable variability regarding whether judges have to proceed to sentence the offender without knowing the status of the victim impact statement. The percentage that responded that they often proceeded without this information varied from 35% in Manitoba to 70% in British Columbia. Across the three 2006 surveys 64% stated that they often had to proceed.

Only rarely to victims elect to make an oral presentation of the impact statement

How often do victims elect to make an oral presentation of their victim impact statement? It seems to be a quite rare occurrence, in all jurisdictions. The most frequent response across all jurisdictions was "very occasionally". Approximately three-quarters of respondents held this view. In British Columbia 24% of the sample stated that the victim had never expressed an interest in delivering the statement orally whereas in Alberta only 5% gave this response.

Most judges report no change in the number of victims wishing to make an oral presentation of their victim impact statements

Judges were asked whether they had perceived any increase since 1999 in the number of victims who expressed a desire to deliver their statements orally. Considerable variation emerged across jurisdictions. Thus in British Columbia 69% of respondents reported no change in the number of victims expressing a desire to deliver statements orally whereas in Manitoba fewer than one quarter held this view. Manitoba judges were significantly more likely to report seeing an increase in requests for an oral delivery of the statement.

Victims seldom cross-examined on contents of their victim impact statements

Some victims have been cross-examined on the contents of their victim impact statements. This can be stressful for the victim, as several victims have affirmed. It is unclear how often this practice occurs. Responses to the survey suggest that it is a relatively rare occurrence: 97% stated that it never or almost never took place. This is consistent with findings from the survey conducted in Ontario, where 84% of respondents stated that cross-examination of the victim never or almost never took place.

Most judges perceive victim impact statements to contain information that is in general useful, as well as, relevant to sentencing

Judges were simply asked "*In general, are victim impact statements useful*?". The response options were that the statements were useful "in all cases", "in most cases", "in some cases" and "in just a few cases". Consistent with the responses from Ontario, judges in the three new jurisdictions clearly found victim impact statements to be useful. Combining the first two response categories it can be seen that 62% of judges in British Columbia reported that VIS were useful in most or all cases. The percentage was slightly lower in Manitoba (59%) and lowest in Alberta (35%). Over all three jurisdictions 50% of judges held this view. Only 19% of judges believed that VIS are useful in just a few cases. This pattern of results suggests that contrary to some commentators, judges do in fact find victim impact statements useful.

The second question relating to this issue asked judges whether they found VIS useful in terms of providing information relevant to the principles of sentencing. Again, the general reaction was affirmative although there was considerable inter-jurisdictional variability. The response was particularly positive in Manitoba where almost half (47%) of judges stated that they found VIS to contain information relevant to sentencing principles often, almost always or always. This response was made by fewer judges in British Columbia (36%) and far fewer in Alberta (12%). Over the three jurisdictions, approximately three quarters of judges reported finding relevant information; only one-quarter of the total sample stated that VIS never contained information relevant to the principles of sentencing.

Perceptions of judges consistent with those of Crown counsel

It is worth noting that a similar trend emerged from the survey of Crown counsel in Ontario. In that survey, approximately one-third of respondents indicated that in most cases, or almost every case, the VIS contained new or different information relevant to sentencing (see Cole, 2003). Similarly, when asked whether victim impact statements were useful to the court, approximately two-thirds of the Crown counsel responded, "yes, in most cases". No respondents in that survey indicated that victim impact statements were never or almost never useful to the court at sentencing.

VIS constitute a unique source of information relevant to sentencing

It may be argued that the information contained in the victim impact statement is useful, but redundant, in the sense that it has already emerged from the Crown. To address this question the survey posed the following question: "*How often do victim impact statements contain information relevant to sentencing that did not emerge during the trial or in the Crown's sentencing submissions?*" As with a number of other questions, the most positive response came from the Manitoba judges where 29% stated that VIS often represented a unique source of information. In British Columbia only 17% held this view, and not one respondent in Alberta held it. The aggregated response was more positive than negative. Across the three jurisdictions 47% stated that VIS often or sometimes contained useful information unavailable from other sources; only 21% responded that VIS almost never contained such information. These trends parallel those emerging from the survey of Ontario judges. Taken together the responses to these

inter-related questions suggest that from the judicial perspective – which is surely critical – the victim impact statement represents a useful source of information relevant to sentencing.

The VIS often contains the victim's recommendations regarding sentence

The survey asked judges how often, in their experience, victim impact statements contain the victims' wishes regarding the sentence that should be imposed. The pattern of responses varied according to the respondent's jurisdiction. Only 12% of judges in Manitoba stated that the victim's wishes regarding sentencing were often, always or almost always present. The proportion of judges responding in this way was somewhat higher in Alberta (19%), and much higher in British Columbia (37%). It was highest of all in Ontario where almost half the sample (43%) in 2002 reported seeing victim "submissions" on sentencing often, almost always or always. Across the three new jurisdictions 24% stated that sentence recommendations were often, almost always or always present. Only one quarter (25%) stated that victim sentence recommendations were never or almost never present. These responses demonstrate the need to better inform victims about the true purpose of the victim impact statements, and to guide them regarding the kinds of information that should not be included in their statement.

Judges often refer to the victim impact statement or its contents

Consistent with the trend for judges to be sensitive to the issue, we found that most judges reported that they almost always or often referred to the victim impact statements in their reasons for sentence. This trend was most noticeable in British Columbia where over half (53%) almost always referred to VIS or victim impact in reasons for sentence. The percentages reporting this were considerably lower in Manitoba (35%) and Alberta (29%). Across the three jurisdictions, 39% of respondents almost always referred to victim impact when giving reasons for sentence. Overall, only 5% stated that they never referred to victim impact statements.

If the victim is present at sentencing judges often address him or her directly

Most sentencing hearings take place in the absence of the victim. However, when they are present, it is clearly of assistance to be addressed by the court. The last question on the survey was the following: "*Do you ever address the victim directly in delivering oral reasons for sentence?*" Results indicated that judges are certainly alive to this issue: almost two-thirds (63%) of all respondents stated that they sometimes or often addressed the victim directly. Sixteen percent never or almost never addressed the victim, and 21% stated that they did so "only occasionally".

Conclusion

As a result of the surveys conducted in four jurisdictions we now have a much more informed view of the utility of victim impact statements. Two research priorities would appear to emerge from the studies conducted to date. First, it is important to complete the picture with respect to judicial attitudes and experiences regarding the victim impact statement. Assuming the co-operation of the respective Chief Justices, it would be relatively easy and economical to survey the judiciary in the remaining provinces and territories. We need to know how well the VIS regime is functioning in these other jurisdictions, and whether regional variations are more pronounced when the smaller provinces or territories are included.

Second, once a comprehensive portrait of judicial attitudes is available, we see the need for a "best practices" analysis. This would consist of a review of all the research pertaining to VIS in Canada, with a view to identifying the factors associated with the most successful use of victim impact statements. This exercise would include a review of procedures, protocols and materials. Following such an exercise it would be possible to develop a best practices protocol to be shared across all jurisdictions. Finally, since victim input at sentencing is a feature of all common law jurisdictions, it would also be useful to include an international component, to determine whether superior practices exist in another country.

It was encouraging to note that while variability emerged across the jurisdictions in response to some questions, there was generally considerable consensus – particularly regarding to the most important issues concerning the victim impact statement regime. We would end this report on the perceptions of judges in four jurisdictions by concluding that despite a number of criticisms victim impact statements perform a useful function in the sentencing process in Canada.

Introduction

Victim impact statement provisions entered the *Criminal Code* in 1988, and statutory amendments were introduced in 1999 to further promote the use of these statements in the sentencing process. These amendments included codifying the right of the victim to submit a victim impact statement orally at the sentencing hearing. Since their introduction, victim impact statements (VIS) have generated a considerable amount of research in Canada as well as other jurisdictions (see Roberts, 2002, for a review of research into the use of victim statements at sentencing, and Young, 2001, for a review of the role of the victim in the criminal process). Much of this research has explored the perceptions of criminal justice practitioners such as Crown Counsel. However, members of the judiciary are in many respects best placed to inform policy-makers about the relative success of a sentencing tool such as the victim impact statement. First and foremost, the VIS is a device to communicate information to the court about the impact of the crime upon the victim. Whether (and how) this tool is useful in sentencing is a matter for judges alone to determine. Accordingly, the views of the judiciary are critical to our understanding of the utility of these statements to courts across Canada.

To date however, there has been an almost complete absence of information about the attitudes and experiences of the most important criminal justice professional with respect to the sentencing process: judges.[1] While a very limited number of studies have explored the views of judges in other jurisdictions,[2] only two surveys have been conducted of the Canadian judiciary with respect to this important issue. The first involved 19 provincial court judges in Manitoba in 2000-2001 (see D'Avignon, 2001). The second survey, which was contracted by the Department of Justice Canada, was distributed to all sitting judges in the province of Ontario in 2001 (see Roberts and Edgar, 2002). Responses were received from approximately one-third of all judges, a response rate comparable to other surveys of the judiciary.[3]

The Ontario survey generated a number of important findings relating to the use of victim impact statements in Canada. The purpose of the present research was to extend that survey to explore the perceptions and experiences of judges in other jurisdictions four years later. In addition, this research provides unique insight into the views of judges with respect to the critical issue of sentencing, and represents one of the few explorations of judicial perceptions conducted in this country.

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[1] A small number of interviews were conducted with judges as part of the Department of Justice research in the mid 1980s; see Giliberti (1990) for a summary. More recently research conducted for the Department of Justice Canada explored the perceptions and experiences of the judiciary; see Prairie Research Associates, 2006).

[2] See, for example, Erez and Rogers (1999); Rogers and Erez (1999); Erez and Laster (1999); Henley, Davis and Smith (1994).

[3] For example, Roberts, Doob and Marinos (2000) reported a response rate of 36% in their survey of judicial attitudes to conditional sentences of imprisonment. Bateman (2002) reports a response rate of 19% in a survey of crown and defence counsel experience with victim impact statements.

Methodology

As noted, one of the principal goals of the present research was to replicate the survey conducted in Ontario in 2002. For this reason, the same questionnaire was employed, although some additional questions were added on this occasion. These new items explored judicial perceptions of the purpose of a victim impact statement as well as judges' views on the benefit for victims of submitting a VIS at sentencing. In order to ensure that these additional questions did not influence responses to the original items used in the Ontario survey, they were placed at the end of the questionnaire. The same methodology was adopted in terms of distributing the survey (see Appendix A for survey).

In February 2006, a request for assistance was sent to the Chief Judges and Chief Justice of three provinces: British Columbia, Alberta, and Manitoba. British Columbia is the only jurisdiction in Canada without a formal VIS program; accordingly, one of the purposes of the present research was to see whether judicial experiences and perceptions might be different in that province. All three consented to the survey being conducted in their jurisdictions and distributed the survey out of their offices to all sitting provincial court judges in their province. The completed surveys were anonymous. The majority were returned through the office of the Chief Judge or Justice, the rest were mailed directly to the researchers.

After a period of three weeks, a reminder communication was sent from the office of the Chief Justice. This resulted in a number of additional responses being returned. Thus, the same data collection procedure was followed in all three jurisdictions, and is consistent with the first survey conducted in the province of Ontario in 2001, with the report being completed in 2002.

In addition to completing the questionnaire, a number of judges added their own comments about the issues raised. These spontaneous comments are provided throughout this report. Some of these respondents identified themselves or the specific courthouses in which they sat. Their comments have been edited in order to preserve their anonymity beyond the province in which they reside.

Response Rate

The variable of critical interest in any survey is the response rate. The higher the response rate, the more confident the researchers can be that the sample respondents are representative of the population. It is reasonable to anticipate that research involving criminal justice practitioners will generate a lower response rate than surveys with other professionals or the general public. Judges in particular have less time than many other professionals. This reality must be kept in mind when evaluating the response rates of any survey of judicial officers.

Table 1 provides the numbers of respondents and response rates from the three jurisdictions involved in this research, as well as, the earlier survey conducted in Ontario. The response rate is defined as the number of respondents expressed as a proportion of all sitting judges at the time the survey was distributed. As can be seen, the response rates were somewhat variable across the jurisdictions, although Manitoba recorded the highest response rate (50%). The higher response rate in that province reflects the smaller number of judges (34); a superior response rate is probably to be expected when the total number of potential respondents is small. The weighted average response rate across the three jurisdictions surveyed in 2006 was slightly higher than the response rate achieved in Ontario four years earlier (36% vs. 31%).

Table 1: Survey Response Rates

	Ontario (2002) N= 63	**British Columbia (2006) N= 37**	**Alberta (2006) N= 42**	**Manitoba (2006) N= 17**	**Weighted Average Rate in 2006**
Response Rate	31%	27%	42%	50%	36%

Findings

This report summarizes findings from the three jurisdictions surveyed in 2006, and provides comparisons with the survey conducted in Ontario in 2002. The survey and summary of results can be found in Appendix A. The discussion that follows provides a more detailed and fulsome analysis of these data. Tables conform to the following format: combined results are first summarized for the three jurisdictions surveyed in 2006[4] and then a more detailed breakdown between the four jurisdictions is provided.

[4] In all surveys the proportion of respondents who responded "don't know" was very small; accordingly we have omitted these responses in the tables except for the two questions which generated an abnormally high number of such responses. In addition, column percentages occasionally exceed 100% due to rounding error.

1. Volume of Hearings and Frequency of Statements

1.1 Judges sentence a large number of offenders every month

The caseload in criminal courts creates a large number of sentencing hearings each month. Survey respondents were asked how many sentencing hearings they conducted each month, and the averages were: British Columbia: 55; Alberta: 33; Manitoba: 38. The aggregate average for the three jurisdictions was 42 sentencing hearings per month, lower than the average number reported by judges in Ontario (71). These statistics have important implications for the sentencing process, and in particular for the question of victim input: judges are under great pressure to get through a large number of cases. This prevents them from devoting a considerable amount of court time to any particular case, absent exceptional circumstances. Some apprehension may therefore arise in response to requests to put over a matter, or protract a sentencing hearing, in order to facilitate input from the victim.

1.2 Judges report seeing victim impact statements in only a small percentage of cases

Judges were asked, "*In approximately what percentage of all sentencing hearings was a VIS submitted*". This survey confirms one of the findings from the previous literature on victim impact schemes identified in the research literature: Victim impact statements are submitted in a relatively small proportion of cases. Across the three jurisdictions, the average percentage was 11%, with little variability among jurisdictions. In British Columbia judges reported that a VIS had been submitted in 8% of cases, compared to 11% in Manitoba and 13% in Alberta.[5]

These statistics are comparable to the survey conducted in Ontario, which found that on average judges reported seeing a victim impact statement in 11% of cases. Although, as will be seen later in this report, judges state that they find them to be a useful source of information, a VIS is clearly part of the record in only a small percentage of cases. One final note must be added. It seems likely that these statistics underestimate, to an unknown extent, the degree of victim participation in sentencing since VIS is not the only avenue by which victims can provide information to the court. In some locations victims appear to provide the information orally without having submitted a formal statement. As one judge noted on his or her survey, "I conducted 43 sentencing hearings [and] formal VIS were only received and filed once or twice but many victims, especially in circuit locations address the court directly".

[5] There appears to be variability within provinces in terms of the frequency of statements submitted. As one respondent from British Columbia noted: "Recently, I relocated from [X] to [Y] and have noticed that in Y I am very rarely given VIS whereas in X it was very common to receive them".

1.3 Many judges report an increase in the number of VIS submitted since the statutory amendments of 1999

One of the goals of the 1999 amendments to the victim impact statement provisions in the *Criminal Code* was to increase the number of victims submitting an impact statement. A critical question with respect to legislative evaluation is whether the amendments have achieved this objective: "*Have you noticed any change in the number of victim impact statements submitted since the 1999 amendments*?" Table 2 shows that approximately two-thirds of the 2006 total sample (63%) held the view that there had been some increase in the number of statements submitted. Almost one-third (30%) of those reporting an increase believed that the increase had been moderate or significant. One quarter reported no change and 2% perceived a decrease. Eleven percent offered no response or noted that they had been appointed after 1999 and thus were unable to respond to the question (Table 2).

These trends confirm, in three additional jurisdictions, results from the Ontario survey. It would appear then that the reform legislation has had the desired effect of promoting the use of victim statements at sentencing. This is an important finding, one that will also be of interest to other jurisdictions keen to encourage a degree of victim input at sentencing.

Table 2: Have you noticed any change in the number of VIS since the 1999 amendments? (All Three Jurisdictions Combined, N=96)

Yes, a significant increase	4%
Yes, a moderate increase	26%
Yes, a slight increase	33%
No, no change	25%
Slight decrease	2%
Cannot say/ respondent appointed after 1999	11%
	100%

Table 3 provides comparisons across the four jurisdictions. As can be seen, a non-trivial proportion of respondents in two jurisdictions (15% in Alberta and Manitoba and 3% in BC) were unable to respond due to the fact that they had been appointed after 1999. Table 3 reveals that significant proportions of judges in all jurisdictions report an increase in the number of VIS submitted since 1999, particularly in Manitoba. Forty-one percent of the Manitoba judges reported a moderate or significant increase in VIS, compared to 32% in Alberta and only 22% in British Columbia (Table 3). The higher rate in Manitoba may be the result of a greater emphasis on victim's rights by the government of that province. Manitoba has enacted Victims' Rights legislation that may have itself stimulated greater victim involvement in that province. Additionally, passage of such legislation may be an indication of a greater governmental interest in victim issues in that province that has translated into a greater emphasis there in obtaining VIS.

Table 3: Have you noticed any change in the number of VIS since the 1999 amendments?

	British Columbia (2006) N= 37	**Alberta (2006) N= 42**	**Manitoba (2006) N= 17**	**Ontario (2002) N= 63**
Yes, a significant increase	3%	5%	6%	8%
Yes, a moderate increase	19%	27%	35%	25%
Yes, a slight increase	36%	32%	29%	37%
No, no change	33%	22%	12%	30%
Slight decrease	6%	--	--	--
Cannot say/ respondent appointed after 1999	3%	15%	15%	--
	100%	**100%**	**100%**	**100%**

2. Informing the Victim

2.1 Some judges report having difficulty in determining whether the victim has been apprised of the right to submit an impact statement

In the past, it has been challenging for a court to establish whether the victim has been apprised of his or her right to submit a victim impact statement. With respect to this issue respondents were asked the following question: "*How difficult is it to ascertain whether the victim has been apprised of their right to submit a statement?"* As can be seen in Table 4, judges appear evenly divided: 46% report that it is easy to ascertain this information in all or most cases, while 42% report that it is difficult in most cases.[6] These trends are very consistent with the experiences of judges in Ontario in 2002: 49% of respondents stated that it was easy to ascertain this information in most or all cases, 51% responded that it was difficult in most cases.

Table 5 provides the jurisdictional comparisons, which reveal little variability across provinces with respect to this issue. Written comments suggest that some respondents clearly had some difficulty -- one Alberta respondent noted: "*I really have no way of knowing the extent to which victims are apprised of the availability let alone the process and purpose of the statement submission system*". Three Alberta individuals were critical of Crown counsel with respect to this issue. One noted that, "*Crowns are not as diligent as they could or should be in seeking and obtaining a VIS*". Another wrote that this was "Not something that is usually addressed by the Crown". Finally, a third respondent added: "*Crown has a duty to advise victims of the VIS. They consistently neglect this requirement*".

Table 4: How difficult is it to know whether the victim has been apprised of the right to submit a VIS? (Three Jurisdictions Combined, N= 96)

Easy in all cases	10%
Easy in most cases	36%
Easy in some cases	12%
Difficult in most cases	42%
	100%

[6] Some judges clearly see the VIS as a matter for the Crown alone. One BC respondent noted that, "I never ask the question [whether the victim has been apprised of this right]. It is none of my business." Another respondent from the same province wrote: "It is assumed [that the victim has been informed] as the law requires it. I am told in approximately 30% of cases". Finally, a respondent from Manitoba suggested that the nature of the offence might determine the level of difficulty in establishing what the victim knows when he or she noted that: "It depends upon the nature of the case".

Table 5: How difficult is it to know whether the victim has been apprised of the right to submit a VIS?

	British Columbia (2006) N= 37	Alberta (2006) N= 42	Manitoba (2006) N= 17	Ontario (2002) N= 63
Easy in all cases	6%	10%	19%	14%
Easy in most cases	37%	41%	19%	35%
Easy in some cases	9%	10%	25%	18%
Difficult in most cases	43%	41%	38%	33%
Other response	6%			
	100%	**100%**	**100%**	**100%**

2.2 Judges may have to proceed with sentencing without knowing whether the victim has been apprised of the right to submit a victim impact statement

According to Section 722.2 (1) of the Criminal Code:

As soon as practicable after a finding of guilt and in any event before imposing sentence, the court shall inquire of the prosecutor or a victim of the offence, or any person representing a victim of the offence, whether the victim or victims have been advised of the opportunity to prepare a statement referred to in subsection 722(1).

This provision creates a statutory obligation on judges to make an inquiry with respect to the victim impact statement before proceeding to sentencing. Many sentencing hearings take place immediately following a guilty plea. This plea is often a result of plea negotiations that may have resulted in an agreement to make a joint submission on sentencing. In other words, there is often little opportunity to pursue the question of whether a victim impact statement is available without adjourning the matter when it otherwise would have been completed that day. In the survey, judges were asked how often they had to proceed with a sentencing hearing without knowing whether the victim has been apprised of his or her right to submit a victim impact statement in accordance with the statutory provision.

Across the three 2006 surveys, almost two-thirds (64%) stated that they often proceeded with the hearing without having ascertained whether the victim had been apprised of the right to submit a statement. Twelve percent responded “never” or “almost never” (Table 6). The survey results revealed considerable cross-jurisdictional variability regarding whether judges proceed to sentence the offender without knowing the status of the victim impact statement. The percentage

responding that they often proceeded without this information varied from 35% in Manitoba to 70% in British Columbia (Table 7). The higher percentage in BC may be related to the absence of a VIS program in that province.

Table 6: How often do you have to proceed with a sentencing hearing without knowing whether the victim has been apprised of the right to submit a VIS? (Three Jurisdictions Combined, N= 96)

Often	64%
Sometimes	20%
Almost never	8%
Never	4%
Other response	4%
	100%

Table 7: How often do you have to proceed with a sentencing hearing without knowing whether the victim has been apprised of the right to submit a VIS?

	British Columbia (2006) N= 37	**Alberta (2006) N= 42**	**Manitoba (2006) N= 17**	**Ontario (2002) N= 63**
Often	70%	69%	35%	40%
Sometimes	14%	14%	47%	25%
Almost never	5%	10%	12%	29%
Never	--	7%	6%	6%
Other response[7]	11%	--	--	--
	100%	**100%**	**100%**	**100%**

[7] These included: “rely on Crown”; “it is assumed [to be there] because the law requires it” and “I don’t ask”.

3. Issues Surrounding Oral Delivery of the VIS

3.1 Victims seldom ask to read their victim statement aloud in court

Research with crime victims, particularly in cases of serious violence has revealed considerable interest in delivering the statement orally at the sentencing hearing. Section 722 (2.1) states that:

The court shall, on the request of a victim, permit the victim to read a statement prepared and filed in accordance with subsection (2), or to present the statement in any other manner that the court considers appropriate.

How often do victims express a desire to make an oral presentation of their victim impact statement? It appears to be a quite rare occurrence. The most frequent response across all three jurisdictions was "very occasionally". Approximately three-quarters of respondents (74%) provided this response. Some variability emerged across provinces: In British Columbia 24% of the sample stated that the victim had never expressed an interest in delivering the statement orally whereas in Alberta only 5% gave this response (Table 9).

Table 8: How often do victims express a desire to deliver their statement orally? (Three Jurisdictions Combined, N= 96)

Often	--
Sometimes	13%
Very occasionally	74%
Never happened in my court	14%
	100%

Table 9: How often do victims express a desire to deliver their statement orally?

	British Columbia (2006) N= 37	**Alberta (2006) N= 42**	**Manitoba (2006) N= 17**	**Ontario (2002) N= 63**
Often	--	--	--	--
Sometimes	3%	19%	18%	22%
Very occasionally	73%	76%	71%	64%
Never happened in my court	24%	5%	12%	13%
	100%	**100%**	**100%**	**100%**

3.2 Most judges report no change in the number of victims wishing to make an oral presentation of their victim impact statements

Section 722(2) entered the *Code* as part of the amendments of 1999, and was designed to create the opportunity for victims to deliver their statements orally. Has the provision stimulated the submission of impact statements? Judges were asked whether they had perceived any increase since 1999 in the number of victims who expressed a desire to deliver their statements orally. Overall, 39% of the total sample reported an increase while approximately half (51%) perceived no change. A further 11% of respondents were unable to respond to the question due to the fact that they had been appointed after 1999 (Table 10).

Considerable variation emerged across jurisdictions. Thus, in British Columbia 69% of respondents reported no change in the number of victims expressing a desire to deliver statements orally, whereas in Manitoba, less than one quarter held this view (Table 11). Manitoba judges were more likely to report seeing an increase in requests for an oral delivery of the statement. The experience in Manitoba contrasts with responses from Ontario in 2002. Only 32% of Ontario judges,[8] but 59% of Manitoba respondents reported an increase in this respect.[9] British Columbia would seem to be the anomalous jurisdiction regarding responses to this question suggesting a slower uptake of victim impact statements in that province (Table 11). This may be related to the absence of a formal VIS program in that jurisdiction.

Table 10: Have you noticed any increase since the 1999 amendments in the number of victims who want to deliver their statements orally? (Three Jurisdictions Combined, N= 96)

Yes, a significant increase	1%
Yes, a moderate increase	7%
Yes, a slight increase	31%
No, no change	51%
Cannot say/ respondent appointed after 1999	11%
	100%

[8] The responses of the Ontario judiciary concur with those of prosecutors: A survey of Ontario Crown counsel found that 69% reported that there had been no increase in the number of victims requesting an oral delivery of their victim impact statement (Cole, 2003).

[9] In 2000 Manitoba passed significant victims' rights legislation. This legislation may have played a role in increasing the number of victim impact statements submitted at sentencing.

Table 11: Have you noticed any increase since the 1999 amendments in the number of victims who want to deliver their statements orally?

	British Columbia (2006) N= 37	**Alberta (2006) N= 42**	**Manitoba (2006) N= 17**	**Ontario (2002) N= 63**
Yes, a significant increase	--	2%	--	--
Yes, a moderate increase	--	5%	24%	8%
Yes, a slight increase	29%	32%	35%	24%
No, no change	69%	46%	24%	68%
Cannot say/ respondent appointed after 1999	3%	15%	18%	--
	100%	**100%**	**100%**	**100%**

3.3 A small minority of judges report longer sentencing hearings as a result of victims making an oral presentation

Some commentators have expressed apprehension that as increasing numbers of victims elect to deliver their statements orally, sentencing hearings will become more protracted, consuming more valuable court time. (It will be recalled from earlier sections of this report that most judges report having to conduct a considerable number of sentencing hearings each month). Approximately two-thirds (68%) of respondents in the 2002 Ontario survey stated that this question was not applicable, as they had noticed no increase in the volume of victims making an oral presentation. Eight percent of the judges responded that the increase had had no impact on the amount of time it took to conduct a sentencing hearing. However, approximately one quarter (24%) stated that the increased number of victims delivering their statement orally had increased the amount of time taken to conduct a sentencing hearing. In other words, for those judges who had noticed an increase in the number of victims wishing to present a statement orally, a number believed that this trend had had an impact on the amount of time it takes to conduct a sentencing hearing. This supports the conclusion that this provision for oral delivery has not lead to any striking overall increase in the time devoted to sentence hearings only because the vast majority of victims do not attempt to take advantage of it – either because they do not want to or because they are unaware of their right to do so.

Responses from the three new jurisdictions suggest a somewhat different state of affairs. Across the three provinces, 33% of respondents reported an increase in the amount of time taken for a hearing, while 25% reported perceiving no impact (Table 12). However, in Manitoba almost half (47%) believed that the number of VIS had increased the time taken for hearings (Table 13). In

Alberta, 34% of respondents reported an increase in the amount of time taken to conduct sentencing hearings, while only 22% reported no impact. One Alberta respondent who had perceived an increase in the amount of time taken noted that, "[the VIS] was an added factor to consider at sentencing".

Table 12: If the number of VIS has increased, has this affected the time taken for a hearing? (Three Jurisdictions Combined, N= 96)

Has increased the amount of time to conduct a hearing	33%
Has had no impact on amount of time	25%
Not applicable	42%
	100%

Table 13: If the number of VIS has increased, has this affected the time taken for a hearing?

	British Columbia (2006) N= 37	**Alberta (2006) N= 42**	**Manitoba (2006) N= 17**	**Ontario (2002) N= 63**
Has increased the amount of time to conduct a hearing	25%	34%	47%	21%
Has had no impact on amount of time	22%	22%	40%	10%
Not applicable	53%	44%	13%	68%
	100%	**100%**	**100%**	**100%**

3.4 Only a small proportion of crime victims are cross-examined on their victim impact statements

Victims may be cross-examined on the contents of their victim impact statements. This can be stressful, as several victims have affirmed (Young and Roberts, 2001). Research with small numbers of victims in cases of very serious violence suggested that when cross-examination took place, victims found it very aversive, even if they had been forewarned by Crown counsel. It is unclear how often this practice occurs. Responses to the survey suggest that it is a relatively rare occurrence. Across all jurisdictions in 2006, 97% stated that it never or almost never took place. No judge responded that it "sometimes" or "often" took place. These trends are consistent with the findings in Ontario where 84% of the sample responded that cross-examination of the victim never or almost never took place.

4. Judicial Perceptions Regarding Utility and Relevance of VIS

4.1 Judges generally find victim impact statements useful

"They put a very human face to the consequences of the criminal conduct" (Alberta respondent)

Perhaps the most controversial issue in the area of victims and sentencing concerns the contents of the victim impact statement. Critics of victim impact statements argue that they contain no useful information that has not emerged at trial or placed before the court in Crown submissions on sentence. For this reason, several questions in our survey addressed the contents of victim impact statements and their utility to the court at the time of sentencing. The perceptions of judges should be accepted as determinative on this issue. It is logical to assume that the usefulness of a particular piece of information for the purposes of sentencing is a matter for the court to decide.

The first question on this topic was general in nature. Judges were simply asked "*In general, are victim impact statements useful?*". The response options were that the statements were useful "in all cases", "in most cases", "in some cases" and "in just a few cases". Consistent with the responses from Ontario, judges in the three new jurisdictions clearly found victim impact statements to be useful. Over all three jurisdictions half the judges held the view that these statements were useful in all or most cases. Only 19% of judges believed that VIS are useful in just a few cases (see Table 14). This pattern of results suggests that contrary to some commentators, judges do in fact find victim impact statements useful. One judge noted who had indicated "useful in all" noted the following: "*I would always like to have them*".

Even some judges who are somewhat sceptical of the utility of the victim impact statement sometimes find them useful. One Ontario respondent wrote that: "I am not a great fan of VIS – I prefer to receive the information from the Crown. However, occasionally I have been very impressed with the insight provided by a VIS ... ." Finally, these trends are consistent with the earlier Manitoba study that found 84% of participants agreed that a VIS assists the court in making sentencing decisions (D'Avignon, 2002).

Considerable variability emerged between jurisdictions. This can be illustrated by combining the first two response categories. Similarly high percentages of judges in British Columbia, Manitoba and Ontario (62%, 59% and 48% respectively) reported that impact statements were useful in most or all cases. The percentage was appreciably lower in Alberta where approximately one-third (35%) held this view (see Table 15).

Table 14: In general, are VIS useful? (Three Jurisdictions Combined, N= 96)

VIS are useful in all cases in which they are submitted	18%
VIS are useful in most cases in which they are submitted	32%
VIS are useful in some cases in which they are submitted	31%
VIS are useful in just a few cases in which they are submitted	19%
	100%

Table 15: In general, are VIS useful?

	British Columbia (2006) N= 37	**Alberta (2006) N= 42**	**Manitoba (2006) N= 17**	**Ontario (2002) N= 63**
VIS are useful in all cases in which they are submitted	19%	14%	24%	21%
VIS are useful in most cases	43%	21%	35%	27%
VIS are useful in some cases	19%	43%	29%	40%
VIS are useful in just a few cases	19%	21%	12%	12%
	100%	**100%**	**100%**	**100%**

4.2 Judges believe VIS contain information relevant to the principles of sentencing

The second question relating to the issue of relevance asked judges whether they found VIS useful in terms of providing information relevant to the principles of sentencing. Again, the general reaction was affirmative although there was considerable inter-jurisdictional variability. Over the three jurisdictions 8% of judges reported finding relevant information in the VIS "always or almost always", while a further 19% reported finding the information "often" useful in this respect. Only one-quarter of the total sample stated that VIS never or almost never contained information relevant to the principles of sentencing (Table 16).

As with the previous question, responses were more positive in Manitoba and British Columbia. Almost half (47%) of the Manitoba judges and over one third of British Columbia respondents

stated that they found VIS to contain information relevant to sentencing principles often, almost always or always. This response was provided by only 12% of judges in Alberta (Table 17).

Table 16: Do VIS provide information relevant to the principles of sentencing? (Three jurisdictions Combined, N= 96)

Always or almost always	8%
Often	19%
Sometimes	47%
Never or almost never	25%
	100%

Table 17: Do VIS provide information relevant to the principles of sentencing?

	British Columbia (2006) N= 37	**Alberta (2006) N= 42**	**Manitoba (2006) N= 17**	**Ontario (2002) N= 63**
Always or almost always	11%	2%	18%	10%
Often	25%	10%	29%	27%
Sometimes	42%	57%	35%	51%
Never or almost never	22%	31%	18%	12%
	100%	**100%**	**100%**	**100%**

4.3 Judges perceive VIS to constitute a unique source of information relevant to sentencing

It has been argued that the information contained in the victim impact statement is useful, but redundant in the sense that it will emerge from Crown submissions or evidence adduced at trial. To address this question the survey posed the following question: "*How often do victim impact statements contain information relevant to sentencing that did not emerge during the trial or in the Crown's sentencing submissions?*". The aggregated response in 2006 was more positive than negative. Across the three jurisdictions 47% stated that VIS often or sometimes contained useful information unavailable from other sources; 21% responded that VIS almost never contained such information (Table 18). These trends parallel those emerging from the 2002 survey of Ontario judges. Taken together the responses to these inter-related questions suggest that from the judicial perspective, the victim impact statement represents a useful source of information relevant to sentencing.

As with the previous two questions about impact statements, clear differences emerged among jurisdictions. The most positive response came from the Manitoba judges where 29% stated that VIS often represented a unique source of information. In British Columbia only 17% held this view, while no respondents in Alberta were of this opinion (Table 19).

Table 18: How often do VIS contain information relevant to sentencing that did not emerge during the trial or in the Crown's sentencing submissions? (Three Jurisdictions Combined, N= 96)

VIS often contain useful information unavailable from other sources	12%
VIS sometimes contain useful information unavailable from other sources	35%
VIS seldom contain useful information unavailable from other sources	32%
VIS almost never contain useful information unavailable from other sources	21%
	100%

Table 19: How often do VIS contain information relevant to sentencing that did not emerge during the trial or in the Crown's sentencing submissions?

	British Columbia (2006) N= 37	**Alberta (2006) N= 42**	**Manitoba (2006) N= 17**	**Ontario (2002) N= 63**
VIS often contain useful information unavailable elsewhere	17%	--	29%	14%
VIS sometimes contain useful information unavailable	39%	29%	41%	52%
VIS seldom contain useful information unavailable Elsewhere	19%	49%	18%	18%
VIS almost never contain useful information unavailable Elsewhere	25%	22%	12%	16%
	100%	**100%**	**100%**	**100%**

4.4 Perceptions of judges consistent with those of Crown counsel and judges in other jurisdictions

Crown counsel (in Ontario at least) appear to share the view held by many judges that VIS represent a useful source of information. In a survey of Crown counsel in Ontario, approximately one-third of respondents indicated that in most cases, or almost every case, the VIS contained new or different information relevant to sentencing (see Cole, 2003). Similarly, when asked whether victim impact statements were useful to the court, approximately two-thirds of the Crown counsel responded, “yes, in most cases”. No respondents in that survey indicated that victim impact statements were never or almost never useful to the court at sentencing.

Finally, it is worth noting that the experiences of judges and crown counsel regarding the utility of VIS are consistent with the few earlier studies that have addressed the issue. For example, in one study that was commissioned by the Department of Justice, the researchers concluded that their findings “did not support the argument that the information found in victim impact statements was available to the court from other sources” (R. S. Sloan Associates, 1990, p. 12). Moreover, comparable findings also emerge from other jurisdictions: Erez, Roeger and Morgan (1994) found that judges in South Australia agreed that victim impact statements provide information unavailable from other sources.

4.5 Victim impact statements particularly useful for crimes of violence

Additional questions on the survey explored the issue of utility. First, respondents were asked if there were certain offences for which a victim impact statement is a particularly useful source of information. Not surprisingly, perhaps, across the three jurisdictions, 79% responded affirmatively. These respondents were then asked to identify which category of offence they had in mind. The offences identified most often by respondents in all three jurisdictions were crimes of violence and sexual offences. Multiple responses emerged for this question.

Fraud offences were also frequently cited, particularly those resulting in significant loss to the victim. Property offences were also identified; in these cases, the VIS is very useful to quantify the extent of loss to the victim. These results are consistent with responses to the Ontario survey. One Ontario judge noted that VIS may be particularly useful in youth court, so that young offenders “can appreciate the pain that they have caused”. Some judges noted other circumstances in which information from the victim is particularly useful, for example, where the injury to the victim is not clearly manifest to an objective observer. Others noted that victim impact statements were particularly useful where the impact of the crime is “likely to be significant, e.g., break and enter” (Alberta respondent). Finally, several respondents noted that victim impact statements were particularly useful in cases in which the harm to the victim was in some way unusual or exceptional.

Two written comments expressed some scepticism regarding the utility of the information contained in victim impact statements. One Ontario judge wrote that, “*In most cases, we do not need a VIS to understand the impact on victims such as emotional trauma, or physical injuries or damage from B & E.*” Another respondent from the same province remarked that, “*If there has*

been a trial and the victim has testified, VIS is just redundant information. If there has not been a trial but a good PDR/PSR reflecting victim's views, VIS is redundant. Otherwise VIS are very useful for all crimes".

4.6 Judges report that victims' views on sentencing appear in a significant percentage of statements

The last question with respect to the contents of the victim impact statements concerns the controversial issue of victims' views of the appropriate disposition. The case law in Canada[10] and other common law jurisdictions is clear on the matter: victim impact statements should not contain recommendations for sentence. Nevertheless, research in other jurisdictions suggests that victims do sometimes make such recommendations in their impact statements (see Roberts, 2002). The study involving 19 Manitoba judges in 2001 found that two-thirds of the sample stated that victim statements included inappropriate information, and the most frequent category of such information was sentencing recommendations (D'Avignon, 2002). Indeed, one of the principal objections to the introduction of victim impact statements is that they may bias the court through the introduction of victim "sentencing submissions". For this reason some victim impact statement forms explicitly direct the victim to omit such material.[11] Other forms may appear to permit victims to include their views on sentence when they allow the victim to include "other comments or concerns".[12]

We asked judges how often, in their experience, victim impact statements contain the victims' wishes regarding the sentence that should be imposed. Across the three new jurisdictions 24% stated that sentence recommendations were often, almost always or always present. Another one quarter stated that VIS "never or almost never" contained sentence recommendations (Table 20). The pattern of responses varied according to the respondent's jurisdiction. Only 12% of judges in Manitoba stated that the victim's wishes regarding sentencing were often, always or almost always present. The proportion of judges responding in this way was somewhat higher in Alberta (19%), and much higher in British Columbia (37%). It was highest of all in Ontario where almost half the sample in 2002 reported seeing victim "submissions" on sentencing often, almost always or always (Table 21).

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[10] For example, in Gabriel, Hill, J. reaffirms the proposition that "Recommendations as to penalty must be avoided, absent exceptional circumstances, i.e., a court-authorized request, an aboriginal sentencing circle, or as an aspect of a prosecutorial submission that the victim seeks leniency for the offender which might not otherwise be expected in the circumstances" ((1999), 26 C.R. (5th) 364, 137 C.C.C. (3d) 1 (Ont. S.C.J.)).

[11] The Alberta Victim Impact Statement form for example, notes that "The statement should not contain recommendations as to the severity of punishment".

[12] This heading is used in the Nova Scotia Victim impact statements worksheet completed by the victim.

These responses demonstrate the need to better inform victims about the true purpose of the victim impact statements, and to guide them regarding the kinds of information that should not be included in their statement. Whether a VIS contains the victims' views on the sentence that should be imposed may well depend on the form used in the particular jurisdiction. Thus one judge from Manitoba noted that the "*Manitoba VIS form specifically tells victims not to put in their views about sentence*".

Table 20: How often does a VIS contain the victim's wishes regarding the sentence? (Three Jurisdictions Combined, N= 96)

Always or almost always	3%
Often	21%
Sometimes	51%
Never or almost never	25%
	100%

Table 21: How often does a VIS contain the victim's wishes regarding the sentence?

	British Columbia (2006) N= 37	**Alberta (2006) N= 42**	**Manitoba (2006) N= 17**	**Ontario (2002) N= 63**
Always or almost always	6%	2%	--	6%
Often	31%	17%	12%	37%
Sometimes	44%	57%	47%	41%
Never or almost never	19%	24%	41%	16%
	100%	**100%**	**100%**	**100%**

In response to this question one judge from Alberta noted that: "*The vast majority of statements are both brief and appropriate in the sense that the statement attempts only to describe the "real impact" e.g., loss of sleep, loss of trust, loss of innocence and the like. It is extremely rare in my experience, for a victim to attempt to dictate (or suggest) what the court ought to do by way of sentence*" (emphasis in original).

5. Judicial Recognition of Victim Impact

5.1 Judges often refer to the victim impact statements or its contents

Research has demonstrated that crime victims appreciate official acknowledgement of the harm they have suffered (Young and Roberts, 2001). This may come from statements in the Crown's sentencing submissions. The most important consideration for the victim, however, would appear to be judicial recognition. For this reason we asked judges in the survey how often they referred to the victim impact statement or its contents in their reasons for sentencing.

Consistent with the trend for judges to be sensitive to victims' interests, we found that most judges reported that they almost always or often referred to the victim impact statements in their reasons for sentence.[13] Across the three new jurisdictions, 39% of respondents almost always referred to victim impact when giving reasons for sentence. Overall only 5% stated that they never referred to victim impact (Table 22). The trend was most noticeable in British Columbia where over half (53%) almost always referred to VIS or victim impact in reasons for sentence. The percentages reporting this were somewhat lower in Manitoba (35%) and Alberta (29%; see Table 23).

Table 22: How often do you refer to the VIS or its contents in your reasons for sentence? (Three Jurisdictions Combined, N= 96)

Almost always	39%
Often	23%
Sometimes	33%
Never or almost never	5%
	100%

[13] This finding reflects a growing tendency on the part of judges in many jurisdictions to recognize victim impact in their reasons for sentence. Recent evidence of this can be found in a 2001 practice direction from the Lord Chief Justice to judges in England and Wales: "The court should consider whether it is desirable in its sentencing remarks to refer to the evidence provided on behalf of the victim."

Table 23: How often do you refer to the VIS or its contents in your reasons for sentence?

	British Columbia (2006) N= 37	**Alberta (2006) N= 42**	**Manitoba (2006) N= 17**	**Ontario (2002) N= 63**
Almost always	53%	29%	35%	32%
Often	25%	21%	24%	37%
Sometimes	22%	41%	35%	28%
Never or almost never	--	10%	6%	3%
	100%	**100%**	**100%**	**100%**

5.2 Judges often address the victim directly

For a variety of reasons, most sentencing hearings take place in the absence of the victim. The victim may not have been apprised that the hearing is taking place, or the victim may not wish or be able to be present. However, when victims are in attendance, they appreciate judicial recognition of the harm they sustained (Roberts, 2002). The survey included the following question to explore this issue: "*Do you ever address the victim directly in delivering oral reasons for sentence?*".

Results indicated that judges are certainly aware of this issue[14]. Approximately one-third of respondents in the three jurisdictions stated that they often addressed the victim when giving oral reasons. Across the three new provinces, 28% of the sample stated that they often addressed the victim directly while only 16% responded that they never or almost never addressed the victim directly (Table 24). Addressing the victim directly was least frequent in Alberta where only 19% reported that they often pursued this strategy.

Table 24: Do you ever address the victim directly in delivering oral reasons for sentence? (Three Jurisdictions Combined, N= 96)

yes, often	28%
yes, sometimes	35%
only occasionally	21%
never or almost never	16%
	100%

[14] One respondent added the following comment: "*I often speak with the victims if they are present*".

Table 25: Do you address the victim directly in delivering oral reasons for sentence?

	British Columbia (2006) N= 37	**Alberta (2006) N= 42**	**Manitoba (2006) N= 17**	**Ontario (2002) N= 63**
yes, often	35%	19%	35%	32%
yes, sometimes	30%	36%	47%	31%
only occasionally	19%	26%	12%	18%
never or almost never	16%	19%	6%	19%
	100%	**100%**	**100%**	**100%**

This question provoked a number of comments, particularly from judges in the 2002 Ontario survey. One Ontario judge wrote, "always, if I am told the victim is present". Other comments on the same topic included the following: As a matter of principle, I will speak about the victim if the victim is present."

- "If the victim is present in Court, I always ask them if they wish to say anything." (Ontario)

- "If a VIS is submitted, I ask [the victim] if s/he has anything to add – to me it is very important that the victim be allowed to speak to Court." (Ontario)

- "They are not always present [but] if they are, I most often will do so [i.e., address the victim]." (Ontario)

- "I have often asked if the victim is present in the courtroom and invited the victim or someone there on his/her behalf to speak as type of victim impact statement even if a formal statement has been prepared and vetted by defence counsel. In the rational process of sentencing we should be prepared to accommodate not only the victim's reasons but also his or her emotional response to the crime. I am sure that the cathartic effect on the victim is very beneficial and helps offset the initial trauma caused by the crime." (Ontario)

5.3 Victim impact statements and communication in a sentencing hearing

A number of insightful comments were made by judges participating in the 2006 surveys. Several of these raised the communicative element of a victim impact statement. VIS may be seen as promoting communication between the parties present, rather than representing an attempt to influence the court (see Roberts and Erez, 2004). Thus one judge noted that,

> "*The victim impact statement does not change how I sentence an offender but it allows the victim an opportunity to "speak to" the offender. And I often refer to what the victim may have said when I speak to the offender about the sentence*".

In a similar vein another respondent added the following:

> "*The accused should always be asked if he or she has had a chance to review the contents of the VIS prior to the sentencing hearing. If not, because the Crown has just produced it I generally either read it out in whole or in part or stand the case down so that the accused can read it*!". Another respondent wrote that: "*I make particular use of the VIS for the purpose of s. 718(f) of the Criminal Code – promoting offenders' sense of responsibility and acknowledging harm. Crown can convey [a sense of] physical injury of financial loss but the VIS is particularly effective in conveying emotional impact in the victim's own word*s".

6. Judicial Perceptions of the Victim's Perspective

6.1 Opinion divided regarding victims' understanding of the purpose of VIS

Finally, we turn to the questions that were added to the survey distributed in the three provinces surveyed in 2006. Judges were asked whether they believed that crime victims understand the role that VIS play in the sentencing process. The results are presented in Tables 26 and 27, from which it can be seen that respondents perceived that victims do not fully understand the purpose of these statements.[15] As can be seen in Table 26, across all three jurisdictions only approximately one quarter of the respondents believed that most, almost all or all victims understand the role of the victim impact statement at sentencing. Judges in Alberta seemed most confident that victims understand the role of the impact statement: 31% of Alberta respondents compared to 19% in British Columbia and 25% in Manitoba held this view (Table 27).

Table 26: How well do victims understand the role of the VIS? (Three Jurisdictions Combined, N= 96)

All or almost all victims understand the role of the VIS	4%
Most victims understand the role of the VIS	21%
Some victims understand the role of the VIS	37%
Few victims understand the role of the VIS	25%
Can't say/ no response	13%
	100%

[15] Research with crime victims in Canada and elsewhere suggests that many victims are confused about the role of the VIS (see Roberts, 2003).

Table 27: How well do victims understand the role of the VIS?

	British Columbia (2006) N= 37	Alberta (2006) N= 42	Manitoba (2006) N= 17
All or almost all victims understand the role of the VIS	8%	--	6%
Most victims understand the role of the VIS	11%	31%	19%
Some victims understand the role of the VIS	31%	31%	69%
Few victims understand the role of the VIS	25%	31%	6%
Can't say/ no response	25%	7%	--
	100%	**100%**	**100%**

6.2 Many judges believe that VIS increase victim satisfaction

One purpose of the VIS is to promote victim satisfaction with the sentencing process. Respondents were next asked whether in their experience victims who submitted an impact statement appeared more satisfied. Before reviewing the findings it is worth noting that a substantial proportion of respondents expressed the view that they were unable to respond to the question. The trends were consistent across jurisdictions: judges were more likely to hold the view that submitting a victim impact statement promoted victim satisfaction.

Overall, in the three jurisdictions approximately one third of respondents (32%) held the view that victims who submitted a statement were often or always more satisfied (Table 28). Alberta judges held the most positive views. Thus, 39% of respondents in that province believed that victims who submitted a statement often or always seemed more satisfied. In the other two provinces the proportions of respondents holding this view were slightly lower (26% and 27%; see Table 29).

Table 28: Are victims who submit a VIS more satisfied? (Three Jurisdictions Combined; N= 96)

Victims who submit a statement always seem more satisfied	9%
Victims who submit a statement often seem more satisfied	23%
Victims who submit a statement sometimes seem more satisfied	37%
Victims who submit a statement seldom or never more satisfied	8%
Can't say/ don't know	23%
	100%

Table 29: Are victims who submit a VIS more satisfied?

	British Columbia (2006) N= 37	**Alberta (2006) N= 42**	**Manitoba (2006) N= 17**
Victims who submit a statement always seem more satisfied	6%	12%	7%
Victims who submit a statement often seem more satisfied	20%	27%	20%
Victims who submit a statement sometimes seem more satisfied	34%	32%	60%
Victims who submit a statement seldom or never more satisfied	6%	12%	--
Can't say/ don't know	34%	17%	13%
	100%	**100%**	**100%**

7. Judicial Perceptions of the Purpose of VIS

The final question on the survey explored judicial perceptions of the purpose of the victim impact statement. The *Criminal Code* offers no statutory guidance regarding the purpose of the statement; courts are simply directed to consider the statement at sentencing. The leading case in Canada regarding the use of VIS is *R*. v. *Gabriel*[16], wherein Hill, J. identified the principal purposes served by victim impact statements at sentencing. We drew upon this judgement as well as the scholarly literature and asked respondents to rate the following five purposes using an importance scale from 1 (not at all important) to 10 (very important).

1. To provide the court with information about the impact of the crime
2. To provide the victim with an opportunity to participate in the sentencing process
3. To provide the victim with an opportunity to communicate a message to the offender
4. To provide the offender with an idea of the harm inflicted on the victim
5. To provide the Crown with information about the seriousness of the crime

Tables 30 and 31 provide the average importance ratings assigned by the respondents for all jurisdictions combined and then broken down by jurisdiction. As can be seen there was considerable variation across jurisdictions, although providing the victim with an opportunity to participate in sentencing ranked number one in two of three jurisdictions. Similarly providing the Crown with information about the seriousness of the crime was ranked lowest in all three jurisdictions.

Table 30: Purposes of VIS: Average Importance Ratings for (Three Jurisdictions Combined, N= 96)

Provide the victim with an opportunity to participate in the sentencing process	7.9
provide the offender with an idea of the harm inflicted on the victim	7.8
Provide court with information about the impact of the crime	7.4
Provide the victim with an opportunity to communicate a message to the offender	7.0
Provide Crown with information about the seriousness of the crime	4.5

Note: 10 point scale where 1=not at all important, 10=very important.

[16] Gabriel, supra, note 10.

Table 31: Purposes of VIS: Average Importance Ratings and Rank

	British Columbia (2006) N= 37	Alberta (2006) N= 42	Manitoba (2006) N= 17
Provide court with information about the impact of the crime	7.0 (3)	7.2 (3)	9.0 (2)
Provide the victim with an opportunity to participate in the sentencing process	7.5 (2)	7.9 (1)	9.1 (1)
Provide the victim with an opportunity to communicate a message to the offender	6.7 (4)	7.0 (4)	7.3 (4)
provide the offender with an idea of the harm inflicted on the victim	7.9 (1)	7.3 (2)	8.7 (3)
Provide Crown with information about seriousness of crime	4.5 (5)	3.7 (5)	6.4 (5)

Note: 10 point scale where 1=not at all important, 10=very important.

8. Discussion

This survey addressed two principal questions relating to the VIS regime in Canada: (i) do these statements serve a useful purpose at sentencing, and (ii) have the statutory reforms of 1999 had an impact on the participation of the victim in the sentencing process? On the basis of the responses of judges in four jurisdictions we would respond affirmatively to both. There is little doubt that the respondents found victim impact statements to represent a unique source of information that is relevant to the principles of sentencing. Of course, the statements will vary in the extent to which they contain useful information, and some will contain little that can assist a court in the determination of sentence. But on the whole it seems clear that the statements are useful and that courts (and victims) would suffer if the practice of allowing victims to submit impact statements were discontinued.

It is equally clear that with respect to the frequency with which the statements are submitted, they only appear in a minority of cases proceeding to sentencing. However, we cannot tell whether the relatively low participation rate is a result of a decision made by the victim, or reasons relating to the administration of justice. Crown counsel are sometimes unable to contact the victim in time to allow a statement to be filed by the court, and if the offender is in custody the court will proceed to sentencing without the benefit of victim input. Some victims will have no interest in submitting a statement, in the same way that some crime victims will elect not to report a crime to the police. That of course remains their privilege, although victim services personnel should ensure that the potential benefits to the court, the offender and also to the victim are clear.

It is important to recall that the relevance of victim impact statements varies among cases, with the greatest relevance usually in crimes of violence. In her study involving Manitoba judges, D'Avignon (2002) reports that 41% of the sample agreed that VIS are not needed in minor cases. Two comments from Manitoba judges make the point well. One respondent noted, "It [having a VIS for every sentencing decision] is not necessary. In minor cases, such as theft, I know what the impact is". Another judge observed that, "they [VIS] are not necessary in every case. That would just stretch resources too thin. It is more important to have them in certain cases like crimes of violence and serious property crimes. We don't want to dilute the system by getting one in every case. Instead it would be better to have a proper victim impact statement in cases where it is very valuable".

One of the surprising findings from the survey concerned the number of statements in which the victim had made a request or recommendation with respect to the specific disposition that should be imposed. This is particularly unexpected in light of the practice of many Crowns of editing the statements and removing extraneous or inappropriate material. Perhaps the time has come to review the VIS forms in use across the country (as well as the information provided to victims) to see whether a more accurate idea of the purpose and function of the VIS can be conveyed to crime victims. After all, victims' recommendations for sentence should not be placed before the court, unless of course they are consistent with submissions of counsel.

8.1 Some objections to victim input at sentencing

It must be added that a small number of judges are uneasy with the concept of victim participation in sentencing. One respondent wrote the following:

> "VISs are one of Parliament's more stupid ideas. They send the wrong message to victims [who] should not be involved in sentencing. Relevant information can come from them through the Crown. VIS should not be a soapbox for victims to rail at offenders. That is not a proper use of a courtroom. Reading the VIS in court is threatening and is of no use to the judicial process. If it is to be done, do it in some other forum. I go through the motions for VIS, but they are only useful in informing the offender about the harm. They should not affect sentence".

Despite the critical tone of the comment the individual nevertheless sees a purpose (albeit limited) to the VIS, namely to educate the offender about the impact of the crime on the victim.

Another judge added the following comment to his or her questionnaire:

> "I have always had some difficulty with the use of VIS as I feel that it is, to some extent, intended to inflame the court against the convicted and while a proper appreciation of the iniquity is necessary, it is my opinion that this is the job of the Crown. Even more so do I feel that it is inequitable as this material is not there in every case. Some victims are less bothered by that has happened to them and either do not fill out a VIS or play the incident down. The opposite can also happen and there can be a real problem when large amounts of extraneous, prejudicial and irrelevant information is included. I do not think that the appropriate sentence should depend on the availability of this material. I don't see myself as a tough sentencer but I don't lay awake at night worrying about it- I don't think any judge could or should. As a result, I pay lip service to the statements but do not allow myself to be affect by the emotional content."

8.2 Conclusion and future research priorities

As a result of the surveys conducted in four jurisdictions we now have a much more informed view of the utility of victim impact statements. A number of trends emerged across all provinces. At the same time, however, some differences did emerge on a number of issues. This suggests that there is still room for a more uniform implementation of the victim impact statement regime. Two research priorities would emerge from the studies conducted to date. First, it is important to complete the picture with respect to judicial attitudes and experiences regarding the victim impact statement. Assuming the co-operation of the respective Chief Justices, it would be relatively easy and economical to survey the judiciary in the remaining provinces and territories. We need to know how well the VIS regime is functioning in these other jurisdictions, and whether regional variations are more pronounced when the smaller provinces or territories are included.

Second, once a comprehensive portrait of judicial attitudes is available, we see the need for a "best practices" analysis. This would consist of a review of all the research pertaining to VIS in Canada, with a view to identifying the factors associated with the most successful use of victim impact statements. This exercise would include a review of procedures, protocols and materials. Following such an exercise it would be possible to develop a best practices protocol to be shared across all jurisdictions. For example, we have noted that British Columbia is the only jurisdiction in Canada without a formal VIS program. To what extent does this fact explain variation in the use and perceived utility of VIS? These kinds of questions can only be definitively answered following a truly national analysis. Finally, since victim input at sentencing is a feature of all common law jurisdictions, it would also be useful to include an international component, to determine whether superior practices exist in another country.

It was encouraging to note that while variability emerged across the jurisdictions in response to some questions, there was generally considerable consensus – particularly regarding to the most important issues concerning the victim impact statement regime. We would end this report on the perceptions of judges in four jurisdictions by concluding that despite a number of criticisms victim impact statements perform a useful function in the sentencing process in Canada.

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Appendix A:

Victim Impact Statement (VIS) Survey of Judges

Overall Results (Three jurisdictions combined)

Note: totals may not add to 100% due to rounding error.

Thank you very much for responding to this brief, anonymous survey. We are interested in the views and experiences of judges with respect to the use of VIS in sentencing.

1. Approximately how many sentencing hearings do you conduct a month?
   Average number: 42

2. In approximately what % of these was a VIS submitted?
   Average percentage: 11%

3. Have you noticed any change in the number of VIS submitted since the 1999 amendments?

4% yes, a significant increase
26% yes, a moderate increase
33% yes, a slight increase
25% no, no change
2% slight decrease
11% cannot say/ appointed after 1999

4. How difficult is it to know whether the victim has been apprised of the right to submit a VIS?

10% Easy in all cases
36% Easy in most cases
12% Easy in some cases
42% Difficult in most cases

5. How often do you have to proceed with a sentencing hearing without knowing whether the victim has been apprised of his or her right to submit a VIS?

64% often
20% sometimes
8% almost never
4% never
4% other response

6. How often do victims express a desire to deliver their statement orally?

-- Often
13% Sometimes
74% Very Occasionally
14% Never happened in my court

7. Have you noticed any increase since the 1999 amendments in the number of victims who want to deliver their statements orally?

1% yes, a significant increase
7% yes, a moderate increase
31% yes, a slight increase
51% no, no change
11% cannot say/appointed after 1999

7a. If there has been an increase, has this had any impact on the time to conduct the hearing?

33% has increased the amount of time
25% has had no impact on the amount of time
42% Not applicable

8. How often does the defence cross-examine victims on the content of the VIS?

-- Often
3% Occasionally
97% Never or almost never

9. How often does a VIS contain the victim's wishes regarding the sentence?

3% Always or almost always
21% Often
51% Sometimes
25% Never or almost never

10. In general, are VIS useful?

18% VIS are useful in all cases in which they are submitted
32% VIS are useful in most cases in which they are submitted
31% VIS are useful in some cases in which they are submitted
19% VIS are useful in just a few of the cases in which they are submitted

11. Are VIS useful in terms of providing information relevant to the principles of sentencing?

8% always or almost always
19% often
47% sometimes
25% Never or almost never

12. How often do VIS contain information relevant to sentencing that did not emerge during the trial or in the Crown's sentencing submissions?

12% VIS often contain useful information unavailable from other sources
35% VIS sometimes contain useful information unavailable from other sources
32% VIS seldom contain useful information unavailable from other sources
21% VIS almost never contain useful information unavailable from other sources

13. Are there certain offences for which the VIS is a particularly useful source of information?

79% yes
21% no

13a. If you answered "yes", which category of offences did you have in mind?

____

14. How often do you refer to the VIS or its contents in your reasons for sentence?

39% Almost always
23% Often
33% Sometimes
5% Never or almost never

15. Do you ever address the victim directly in delivering oral reasons for sentence?

28% yes, often
35% yes, sometimes
21% only occasionally
16% never or almost never

16. How well do victims understand the proper role of the VIS at sentencing?

4% All or almost all victims understand the role of the VIS
21% Most victims understand the role of the VIS
37% Some victims understand the role of the VIS
25% Few Victims understand the role of the VIS
13% Other response

17. In your experience, how effective are VIS in increasing victim satisfaction?

9% Victims who submit a VIS always seem more satisfied
23% Victims who submit a VIS often seem more satisfied
37% Victims who submit a VIS sometimes seem more satisfied
8% Victims who submit a VIS seldom or never seem more satisfied
23% Other response

18. Please rate the following purposes of VIS in terms of their relative importance, using a scale where 1= not at all important, 10= very important.

7.4 To provide the court with information about the impact of the crime
7.9 To provide the victim with an opportunity to participate in the sentencing process
7.0 To provide the victim with an opportunity to communicate a message to the offender
7.8 To provide the offender with an idea of the harm inflicted on the victim
4.5 To provide the Crown with information about the seriousness of the crime

Finally, we would like to thank you for taking the time to complete this questionnaire, and invite you to add any other comments you may have with respect to the use of VIS in sentencing.