Government of Canada
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GIVING MEANINGFUL EFFECT TO VICTIMS' RIGHTS: THE *CANADIAN VICTIMS BILL OF RIGHTS* AS QUASI-CONSTITUTIONAL LEGISLATION

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Abstract

This research paper by Professor Benjamin Perrin[*] is the first detailed examination of the quasi-constitutional status of the *Canadian Victims Bill of Rights* ("CVBR") and the implications for its interpretation and application. It aims to provide a doctrinal account of this extraordinary legal recognition and to serve as a resource for scholars, judges, lawyers, and other justice system participants to ensure that the CVBR is interpreted and applied consistently with its aim of serving as a catalyst for transformative change to how the criminal justice system has historically treated victims.

Based on an extensive survey of Supreme Court of Canada jurisprudence as well as the text and legislative history of the CVBR and related caselaw, this paper finds that the CVBR is unequivocally quasi-constitutional legislation and that it is endowed with the following key characteristics:

- Broad, purposive interpretation: The CVBR should be interpreted using the modern approach to statutory interpretation, together with a broad, liberal, and purposive interpretation to ensure that it achieves its broad public purposes, while remaining faithful to the text and context of the legislation. As human rights legislation, exceptions to the CVBR should be narrowly construed, including because such legislation is designed to protect victims of crime who are among the most vulnerable members of society.

- Pre-eminence over ordinary legislation and the common law: The CVBR has legal pre-eminence over ordinary legislation and the common law, and may be relevant in the application of common law legal tests and evidence law. As quasi-constitutional legislation, the CVBR is generally subordinate to the *Canadian Charter of Rights and Freedoms*. However, victims also have constitutional rights that are protected under the *Charter*. Where related constitutional and quasi-constitutional rights are both enjoyed by an individual, they may produce cumulative effects.

- Primacy over ordinary legislation: To the extent that there is any inconsistency between the CVBR and ordinary legislation, the former prevails, rendering the latter inapplicable.

In addition to the foregoing, there are several additional mechanisms provided by law for the CVBR to be given meaningful effect, namely discretionary judicial remedies, statutory processes, decisions of administrative tribunals, and the federal/provincial complaint mechanism in ss. 25 and 26 of the CVBR, respectively. The CVBR must be respected by all public authorities in the criminal justice system. However, victims are precluded from launching their own cause of action or appeal based on an infringement or denial of their rights under the CVBR, by virtue of ss. 28 and 29.

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Introduction

The *Victims Bill of Rights Act*[1] was heralded when it was introduced in Parliament over a decade ago as "transformative in improving rights for victims within our criminal justice system."[2] In addition to amending the *Criminal Code*,[3] *Corrections and Conditional Release Act*,[4] *Canada Evidence Act*,[5] and *Employment Insurance Act*,[6] this legislation enacted the *Canadian Victims Bill of Rights* ("CVBR").[7]

The CVBR enshrines rights for victims of crime in law. In order "to give meaningful effect to victims' rights by all players in our criminal justice system", the legislation was enacted with "quasi-constitutional status".[8] This research paper is the first detailed examination of the quasi-constitutional status of the CVBR and the implications for its interpretation and application going forward.

For several years, the Office of the Federal Ombudsperson for Victims of Crime ("OFOVC") has noted a disconnect between the quasi-constitutional status of the CVBR and practice on-the-ground. Its 2021 report, *Information as a Gateway Right: Examining complaints related to the Canadian Victims Bill of Right*s, states:

> Yet, despite the enactment of this quasi-constitutional federal statute, victims in the Canadian criminal justice system continue to report to the Office of the Federal Ombudsman for Victims of Crime (OFOVC) that they lack adequate information about their rights and the services available to them. This clearly illustrates how the adoption of a law in the books is different from its implementation in action, as criminal justice personnel continue to systematically overlook or neglect victims' legitimate needs.[9]

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[1] *Victims Bill of Rights Act*, SC 2015, c 13, https://www.parl.ca/legisinfo/en/bill/41-2/C-32. For proposed amendments to the *Canadian Victims Bill of Rights* (which do not affect the analysis in this research paper), see Bill C-16, *An Act to amend certain Acts in relation to criminal and correctional matters (child protection, gender-based violence, delays and other measures*, 45th Parl, 1st Sess, 2025 (Second reading and referral to committee 2 February 2026), https://www.parl.ca/legisinfo/en/bill/45-1/c-16.
[2] Canada, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 176 (20 February 2015) (P. MacKay), https://www.ourcommons.ca/Content/House/412/Debates/176/HAN176-E.PDF at p 11455.
[3] *Criminal Code*, RSC 1985, c C-46, https://laws-lois.justice.gc.ca/eng/acts/c-46/.
[4] *Corrections and Conditional Release* Act, SC 1992, c 20, https://laws-lois.justice.gc.ca/eng/acts/c-44.6/.
[5] *Canada Evidence Act*, RSC 1985, c C-5, https://laws-lois.justice.gc.ca/eng/acts/c-5/.
[6] *Employment Insurance Act*, SC 1996, c 23, https://laws-lois.justice.gc.ca/eng/acts/e-5.6/.
[7] *Canadian Victims Bill of Rights*, SC 2015, c 13, s 2, https://laws-lois.justice.gc.ca/eng/acts/c-23.7/page-1.html [CVBR].
[8] Canada, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 72 (9 April 2014) (P. MacKay), https://www.ourcommons.ca/Content/House/412/Debates/072/HAN072-E.PDF at p 4490.
[9] Canada, Office of the Federal Ombudsperson for Victims of Crime, *Information as a Gateway Right: Examining complaints related to the Canadian Victims Bill of Right*s (2021), https://www.canada.ca/content/dam/ofovc-ofvac/documents/reports/en/Report%20Information%20as%20a%20gateway%20right_en_FINAL.pdf, at p 2 (citations omitted).

More recently, in its 2025 report *Rethinking Justice for Survivors of Sexual Violence: A Systemic Investigation*, the OFOVC reiterated and amplified these concerns:

> **The CVBR is more powerful than is often recognized**
>
> CVBR has quasi-constitutional status. It was a significant advancement for victims and survivors of crime in Canada, marking a culture change in Canada's legal framework. The broad range of rights it endows, along with its primacy over other legislation, gives it the potential for considerable impact. Consistently applied, it would provide victims with a stronger voice in the CJS, better access to information, increased attention to their safety, and enhanced opportunities for restitution.[10] [...]
>
> The CVBR has quasi-constitutional status but it is often treated as optional or symbolic.[11]

The objective of this paper is to examine the significance and operation of quasi-constitutional legislation within Canada's legal order and apply these findings to the CVBR. It aims to provide a foundational doctrinal account of this extraordinary legal recognition and to serve as a resource for scholars, judges, lawyers, and other justice system participants to ensure that the CVBR is interpreted and applied consistently with its aim of transformative change to how the criminal justice system has historically treated victims.

Part I of this paper examines fundamental questions about quasi-constitutional legislation, focusing on the Supreme Court of Canada's jurisprudence since the concept emerged more than half a century ago.[12] Part II applies these findings to the CVBR. It explains why the CVBR unequivocally qualifies as quasi-constitutional legislation and how its primacy clause and related provisions should be interpreted and applied. Finally, it explores the various ways that victims' rights in the CVBR are to be applied and exercised in practice.

This paper relies on traditional doctrinal legal research methodology, focusing on the jurisprudence of the Supreme Court of Canada and a thorough review of the CVBR's legislative history. Despite thousands of judicial decisions[13] mentioning quasi-constitutional legislation and the significance of this recognition, there is surprisingly little scholarly commentary on the topic and only brief mention of it in leading texts on statutory

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[10] Canada, Office of the Federal Ombudsperson for Victims of Crime, *Rethinking Justice for Survivors of Sexual Violence: A Systemic Investigation* (2025), https://www.canada.ca/content/dam/ofovc-ofvac/documents/sissa/OFOVC_Rethinking_Justice_Report_20251119, at pp 10-14 - 10-15 (citations omitted) [*Rethinking Justice for Survivors of Sexual Violence*].

[11] *Ibid*, at p 10-18. The OFCVC also notes: "In Canada, other quasi-constitutional laws are backed by enforcement mechanisms and oversight bodies. The CVBR stands out as an exception." *Ibid* at p 10-19.

[12] For the historical origins of quasi-constitutional legislation in Canada, see V. MacDonnell, "A Theory of Quasi-Constitutional Legislation" (2016) 53:2 *Osgoode Hall Law Journal* at pp 512-513, https://www.canlii.org/en/commentary/doc/2016CanLIIDocs4295 [MacDonnell].

[13] Based on a search of Quicklaw for the term "quasi-constitutional" in the document text of Canadian judicial decisions conducted on 21 January 2026, some 2,066 unique cases were identified. This paper involved a review of the approximately 100 Supreme Court of Canada decisions mentioning the phrase "quasi-constitutional" and others identified in the secondary literature.

construction.[14] The limited judicial and scholarly treatment of the CVBR as quasi-constitutional legislation is also examined.

1. Quasi-Constitutional Legislation

Part I of this paper examines the following issues of general application related to quasi-constitutional legislation:

- What is quasi-constitutional legislation, and why is it significant?
- How is quasi-constitutional legislation identified?
- How should quasi-constitutional legislation be interpreted?
- What is the relationship between quasi-constitutional legislation and the *Canadian Charter of Rights and Freedoms*[15] ("*Charter*")?
- What is the relationship between quasi-constitutional legislation and ordinary legislation?
- What is the relationship between quasi-constitutional legislation and the common law?
- What is the role of quasi-constitutional legislation in evidence law?
- How are the primacy provisions in quasi-constitutional legislation to be applied in practice?

A) What is quasi-constitutional legislation, and why is it significant?

"Quasi-constitutional legislation"[16] refers to statutes that have legal pre-eminence over ordinary legislation and the common law, and that prevail to the extent there is any inconsistency, while remaining subordinate to constitutional law. They are interpreted in a broad, purposive manner.

In greater detail, the primary features of quasi-constitutional legislation are:

- Broad, purposive interpretation: Quasi-constitutional legislation is interpreted using the modern approach to statutory interpretation, together with a "broad, liberal, and

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[14] See, e.g., J. Helis, *Quasi-constitutional Laws of Canada* (Irwin Law, 2018) [Helis]; MacDonnell; L. Sossin, "The Quasi-Revival of the Canadian Bill of Rights and Its Implications for Administrative Law" (2004) 25 Supreme Court Law Review, https://www.canlii.org/en/commentary/doc/2004CanLIIDocs442.

[15] *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, *1982*, being Schedule B to the *Canada Act 1982*, 1982, c 11 (UK), https://laws-lois.justice.gc.ca/eng/const/page-12.html [*Canadian Charter of Rights and Freedoms*].

[16] Definition of "quasi": "Seemingly but not actually; in some sense or degree; resembling; nearly.": B.A. Garner, ed, *Black's Law Dictionary*, 11th ed (Thomson Reuters, 2019) "quasi".

purposive interpretation"[17] to ensure that it achieves its "broad public purposes",[18] while remaining faithful to the text and context of the legislation.[19]

- Pre-eminence over ordinary legislation and the common law: While quasi-constitutional legislation is generally subordinate to constitutional law, it has legal pre-eminence over ordinary legislation and the common law, and may be relevant in the application of common law legal tests and evidence law.[20]

- Primacy over ordinary legislation: To the extent that there is any inconsistency between quasi-constitutional legislation and ordinary legislation, the former prevails, rendering the latter inapplicable.[21]

Each of these aspects of quasi-constitutional legislation is explored in greater detail below; first, we will consider how it is identified.

B) How is quasi-constitutional legislation identified?

While the Supreme Court of Canada has yet to set out a comprehensive test for recognizing legislation as quasi-constitutional, in practice it tends to arise from the presence of a primacy clause, or based on the "close relationship between these statutes and constitutional rights".[22] As John Helis observes, "[t]he common thread among quasi-constitutional laws is that they are all rights-based regimes".[23] Quasi-constitutional

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[17] *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2011 SCC 53 at para 62, https://www.canlii.org/en/ca/scc/doc/2011/2011scc53/2011scc53.html [*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*].

[18] *McCormick v Fasken Martineau DuMoulin LLP*, 2014 SCC 39 at para 17, https://www.canlii.org/en/ca/scc/doc/2014/2014scc39/2014scc39.html [*McCormick v Fasken Martineau*]; see also *Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 at para 23, https://www.canlii.org/en/ca/scc/doc/2002/2002scc53/2002scc53.html [*Lavigne v Canada*], citing with approval *Canada (Attorney General) v Viola (C.A.)*, 1990 CanLII 13036, [1991] 1 FC 373 at p 386 (FCA) (emphasis added) [*Canada v Viola*]. See also *Ont. Human Rights Comm. v Simpsons-Sears*, 1985 CanLII 18, [1985] 2 SCR 536 at para 12 (SCC), https://www.canlii.org/en/ca/scc/doc/1985/1985canlii18/1985canlii18.html [*Simpson-Sears*].

[19] As discussed below, see *British Columbia Human Rights Tribunal v Schrenk*, 2017 SCC 62 at paras 31-32 (citations omitted), https://www.canlii.org/en/ca/scc/doc/2017/2017scc62/2017scc62.html [*Schrenk*].

[20] *2747-3174 Québec Inc. v Quebec (Régie des permis d'alcool)*, 1996 CanLII 153, [1996] 3 SCR 919 at paras 89, 94 (SCC) (per L'Heureux-Dubé J concurring), https://www.canlii.org/en/ca/scc/doc/1996/1996canlii153/1996canlii153.html [*2747-3174 Québec Inc. v Quebec*]. See, e.g., *Douez v Facebook, Inc.*, 2017 SCC 33, https://www.canlii.org/en/ca/scc/doc/2017/2017scc33/2017scc33.html [*Douez v Facebook*]; *Globe and Mail v Canada (Attorney General)*, 2010 SCC 41 at paras 26-31, https://www.canlii.org/en/ca/scc/doc/2010/2010scc41/2010scc41.html [*Globe and Mail v Canada*].

[21] *Tranchemontagne v Ontario (Director, Disability Support Program)*, 2006 SCC 14 at paras 35-36, https://www.canlii.org/en/ca/scc/doc/2006/2006scc14/2006scc14.html [*Tranchemontagne v Ontario*].

[22] MacDonnell at p 510.

[23] Helis at p 4.

legislation is enacted in the same manner as other statutes, through the regular legislative process, and may likewise be amended as such.[24]

While quasi-constitutional legislation typically has a primacy clause that explicitly establishes its pre-eminence over ordinary legislation, some quasi-constitutional legislation, such as the *Canadian Human Rights Act*,[25] does not. In *2747-3174 Québec Inc. v Quebec (Régie des permis d'alcool)*, Justice L'Heureux-Dubé, in a concurring opinion, cited with approval P.-A. Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991), stating: "Even in the absence of a provision establishing its preponderance, a charter of rights prevails over other statutes".[26]

The following legislation has been recognized by the Court as having quasi-constitutional status:

- Statutory bills of rights and human rights legislation (e.g. *Canadian Bill of Rights*,[27] *Canadian Human Rights Act*, Quebec *Charter of Human Rights and Freedoms*,[28] and provincial human rights codes);[29]
- Privacy legislation;[30]
- *Official Languages Act*;[31] and
- Access to information legislation.[32]

A primacy clause typically provides that the legislation prevails if there is any inconsistency between it and other Acts of Parliament (other than other quasi-constitutional legislation).[33]

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[24] *Ibid* at p 1; R. Sullivan, *The Construction of Statutes*, 7th ed (LexisNexis, 2022) at p 591.
[25] *Canadian Human Rights Act*, RSC 1985, c H-6, https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-h-6/latest/rsc-1985-c-h-6.html.
[26] *2747-3174 Québec Inc. v Quebec* at para 89, citing with approval P.-A. Côté, *The Interpretation of Legislation in Canada*, 2nd ed (1991) at p 311 [Côté].
[27] *Canadian Bill of Rights*, SC 1960, c 44, https://laws-lois.justice.gc.ca/eng/acts/c-12.3/page-1.html.
[28] *Charter of Human Rights and Freedoms*, CQLR c C-12, s 52, https://www.canlii.org/en/qc/laws/stat/cqlr-c-c-12/latest/cqlr-c-c-12.html [Quebec *Charter*].
[29] See *Bell Canada v Canadian Telephone Employees Association*, 2003 SCC 36 at para 28, https://www.canlii.org/en/ca/scc/doc/2003/2003scc36/2003scc36.html (*Canadian Bill of Rights* as quasi-constitutional); *Canada (Canadian Human Rights Commission) v Canada (Attorney General)* at para 62 (*Canadian Human Rights Act* as quasi-constitutional); *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Montréal (City)*; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Boisbriand (City)*, 2000 SCC 27 at paras 27-28, https://www.canlii.org/en/ca/scc/doc/2000/2000scc27/2000scc27.html [*Boisbriand*] (*Quebec Charter* as quasi-constitutional); *Tranchemontagne v Ontario* at para 33 (provincial human rights codes as quasi-constitutional).
[30] See *Lavigne v Canada* at paras 24-25.
[31] See *ibid* at para 23; *Official Languages Act*, RSC 1985, c 31 (4th Supp), http://laws-lois.justice.gc.ca/eng/acts/o-3.01/page-7.html [*Official Languages Act*].
[32] See *Canada (Information Commissioner) v Canada (Minister of National Defence)*, 2011 SCC 25 at para 40, https://www.canlii.org/en/ca/scc/doc/2011/2011scc25/2011scc25.html [*Canada (Information Commissioner) v Canada (Minister of National Defence)*].
[33] See, e.g., *Official Languages Act* at s 82.

By its terms, a primacy clause is the legislature essentially setting out a hierarchy for the courts to apply to statutes, subject, of course, to the constitution. Primacy clauses thus place quasi-constitutional legislation above ordinary legislation, so that it prevails to the extent of any inconsistency.[34] A primacy clause may, or may not, be explicitly labelled as such. As noted below, it may have no heading at all or an alternate heading, such as "application".

For example, in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Communauté urbaine de Montréal*, Justice LeBel, for a unanimous Court, stated that s. 52 of the Quebec *Charter of Human Rights and Freedoms* ("*Quebec Charter*") "unquestionably gives the *Quebec Charter* a preeminent, quasi-constitutional stature in relation to other Quebec legislation."[35] Section 52 of the *Quebec Charter* states: "No provision of any Act, even subsequent to the Charter, may derogate from sections 1 to 38, except so far as provided by those sections, unless such Act expressly states that it applies despite the Charter."[36] This provision does not have a heading in the *Quebec Charter* and in its decision, the Court did not label it a "primacy" clause, but rather simply cited it and spoke of its significance.

The *Official Languages Act*[37] has quasi-constitutional status, with a "primacy" clause in section 82(1) and because of the "importance of [its] objectives and of the constitutional values embodied"[38] in it.

In *Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers, Local 401*, the Supreme Court of Canada explained that the rationale for recognizing privacy rights as quasi-constitutional is due to their "fundamental role" in a free and democratic society:

> The ability of individuals to control their personal information is intimately connected to their individual autonomy, dignity and privacy. These are fundamental values that lie at the heart of a democracy. As this Court has previously recognized, legislation which aims to protect control over personal information should be characterized as 'quasi-constitutional' because of the fundamental role privacy plays in the preservation of a free and democratic society[.][39]

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[34] See, e.g., *Tranchemontagne v Ontario* at paras 35-36.
[35] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Communauté urbaine de Montréal*, 2004 SCC 30 at para 15, https://www.canlii.org/en/ca/scc/doc/2004/2004scc30/2004scc30.html; see also *Globe and Mail v Canada* at para 29; *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 at para 152 (per Gascon J for the majority), https://www.canlii.org/en/ca/scc/doc/2015/2015scc16/2015scc16.html.
[36] Quebec *Charter* at s 52.
[37] *Official Languages Act* at s 82(1).
[38] *Lavigne v Canada* at para 23.
[39] *Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers, Local 401*, 2013 SCC 62 at para 19, https://www.canlii.org/en/ca/scc/doc/2013/2013scc62/2013scc62.html (citations omitted); see also *Ibid* at para 22.

It is also notable that the privacy legislation in that case had an “application” provision that functions as a primacy clause.[40]

Given the significance of a finding of quasi-constitutional status, it is unsurprising that some litigants have sought such judicial recognition for their claims in less obvious situations. Without a primacy provision, such claims have been unsuccessful before the Supreme Court of Canada. For example, in *Baier v Alberta*, the Supreme Court of Canada declined to recognize school boards as local government institutions that have “constitutional status in the ‘conventional or quasi-constitutional sense’.”[41]

In *Old St. Boniface Residents Assn. Inc. v Winnipeg (City)*, Justice La Forest, writing in dissent, appears to accept the characterization of a master plan adopted by a municipal government pursuant to a statute as a “quasi-constitutional document” that “should be interpreted with an appropriate measure of flexibility, which reflects a balance between its general, long-term nature, and its statutorily mandated function as the foundation of the planning process.”[42] However, this characterization did not garner support from the majority of the Court.

C) How should quasi-constitutional legislation be interpreted?

Quasi-constitutional legislation is interpreted using the modern approach to statutory interpretation, together with a “broad, liberal, and purposive interpretation”[43] to ensure that it achieves its “broad public purposes”,[44] while remaining faithful to the text and context of the legislation.[45] Accordingly, “it is inappropriate to rely solely on a strictly grammatical analysis”[46] of quasi-constitutional legislation, and ambiguity “must be interpreted in a way that best reflects the remedial goals of the statute.”[47]

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[40] See *Personal Information Protection Act*, SA 2003, c P-6.5 at s 4(6), https://www.canlii.org/en/ab/laws/stat/sa-2003-c-p-6.5/latest/sa-2003-c-p-6.5.html. See also *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 at s 4(3), https://www.canlii.org/en/ca/laws/stat/sc-2000-c-5/latest/sc-2000-c-5.html.
[41] *Baier v Alberta*, 2007 SCC 31 at para 39 (per Rothstein J for the majority), https://www.canlii.org/en/ca/scc/doc/2007/2007scc31/2007scc31.html.
[42] *Old St. Boniface Residents Assn. Inc. v Winnipeg (City)*, 1990 CanLII 31, [1990] 3 SCR 1170 at p 1208 (SCC) (per La Forest J in dissent), https://www.canlii.org/en/ca/scc/doc/1990/1990canlii31/1990canlii31.html.
[43] *Canada (Canadian Human Rights Commission) v Canada (Attorney General)* at para 62.
[44] *McCormick v Fasken Martineau* at para 17; see also *Lavigne v Canada* at para 23, citing with approval *Canada v Viola* at p 386 (emphasis added). See also *Simpsons-Sears* at para 12.
[45] As discussed below, see *Schrenk* at paras 31-32.
[46] *Quebec v. Boisbriand* at para 30.
[47] *New Brunswick (Human Rights Commission) v Potash Corporation of Saskatchewan Inc*., 2008 SCC 45 at para 19 (per Abella J for the majority), https://www.canlii.org/en/ca/scc/doc/2008/2008scc45/2008scc45.html [*New Brunswick (Human Rights Commission) v Potash Corporation*].

In *British Columbia Human Rights Tribunal v Schrenk*,[48] Justice Rowe, for a majority of the Supreme Court of Canada, set out the principles of statutory interpretation that apply to human rights legislation as quasi-constitutional legislation. First, the modern approach to statutory interpretation guides the interpretation of this quasi-constitutional legislation: "Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[49] Second, there are additional principles applicable to interpreting human rights legislation:

> The protections afforded by human rights legislation are fundamental to our society. For this reason, human rights laws are given broad and liberal interpretations so as better to achieve their goals. As this Court has affirmed, "[t]he Code is quasi-constitutional legislation that attracts a generous interpretation to permit the achievement of its broad public purposes". In light of this, courts must favour interpretations that align with the purposes of human rights laws like the Code rather than adopt narrow or technical constructions that would frustrate those purposes.
>
> That said, "[t]his interpretive approach does not give a board or court license to ignore the words of the Act in order to prevent discrimination wherever it is found".[50]

Exceptions to quasi-constitutional legislation should be explicit and narrowly construed. In *Canada (House of Commons) v Vaid*, Justice Binnie, for a unanimous Court, stated that "the *Canadian Human Rights Act* is a quasi-constitutional document and we should affirm that any exemption from its provisions must be clearly stated."[51] In that case, he concluded that federal human rights legislation applies to employees of the House of Commons and Senate.[52] Likewise, in *Zurich Insurance Co. v Ontario (Human Rights Commission)*, Justice Sopinka, writing for the majority, stated that exceptions to human rights legislation should be narrowly construed, in part because such legislation is designed to protect the vulnerable:

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[48] *Schrenk*.

[49] *Ibid* at para 30 citing *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837, [1998] 1 SCR 27 at para 21 (SCC), https://www.canlii.org/en/ca/scc/doc/1998/1998canlii837/1998canlii837.html quoting E. Driedger, *Construction of Statutes*, 2nd ed (1983) at p 87.

[50] *Schrenk* at paras 31-32 (citations omitted). Note that in an earlier decision in the context of official languages and privacy legislation (both of which are quasi-constitutional), the Court stated that quasi-constitutional status does not alter the application of the modern approach to statutory interpretation, such that quasi-constitutional status "is one indicator to be considered in interpreting them, but it is not conclusive in itself. The only effect of this Court's use of the expression 'quasi-constitutional' to describe these two Acts is to recognize their special purpose": *Lavigne v Canada* at para 25. However, *Schrenk* is a more recent authority from the Court and better reflects the jurisprudence, including *New Brunswick (Human Rights Commission) v Potash Corporation* at para 19 (per Abella J for the majority). See also *Canada (Information Commissioner) v Canada (Minister of National Defence)* at para 40 (per Charron J for the majority).

[51] *Canada (House of Commons) v Vaid*, 2005 SCC 30 at para 81, https://www.canlii.org/en/ca/scc/doc/2005/2005scc30/2005scc30.html.

[52] *Ibid* at para 82.

> In approaching the interpretation of a human rights statute, certain special principles must be respected. Human rights legislation is amongst the most pre-eminent category of legislation. It has been described as having a "special nature, not quite constitutional but certainly more than the ordinary..." (*Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, 1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536, at p. 547). One of the reasons such legislation has been so described is that it is often the final refuge of the disadvantaged and the disenfranchised. As the last protection of the most vulnerable members of society, exceptions to such legislation should be narrowly construed.[53]

D) What is the relationship between quasi-constitutional legislation and the *Canadian Charter of Rights and Freedoms*?

While quasi-constitutional legislation is generally subordinate to the *Charter*, the matter can sometimes be more complicated. For instance, in *Canada (Information Commissioner) v Canada (Minister of National Defence)*, Justice LeBel noted that "[s]tatutes that protect *Charter* rights have often been found to have quasi-constitutional status",[54] such as official languages rights and privacy rights. Indeed, where related constitutional and quasi-constitutional rights are both enjoyed by an individual, they may produce cumulative effects.[55] This suggests that the legal impact of rights that are simultaneously constitutional and quasi-constitutional warrant special attention to ensure they are given meaningful effect and they may carry additional weight, depending on the circumstances.

E) What is the relationship between quasi-constitutional legislation and ordinary legislation?

Quasi-constitutional legislation has legal pre-eminence over ordinary legislation, meaning that it prevails to the extent that there is any inconsistency. As Ruth Sullivan has stated: "legislation enacted for the protection of human rights, as well as other 'fundamental' or 'quasi-constitutional' legislation, prevails over ordinary legislation to the extent necessary to avoid conflict. This rule applies regardless of which legislation was enacted first and which is considered more specific."[56]

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[53] *Zurich Insurance Co. v Ontario (Human Rights Commission)*, 1992 CanLII 67, [1992] 2 SCR 321 at p 24 (SCC), https://www.canlii.org/en/ca/scc/doc/1992/1992canlii67/1992canlii67.html [*Zurich Insurance Co. v Ontario*].

[54] *Canada (Information Commissioner) v Canada (Minister of National Defence)* at para 79 (per LeBel J).

[55] *Singh v Minister of Employment and Immigration*, 1985 CanLII 65, [1985] 1 SCR 177 at para 85 (SCC) (per Beetz J), https://www.canlii.org/en/ca/scc/doc/1985/1985canlii65/1985canlii65.html [*Singh v Minister of Employment and Immigration*] cited with approval in *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 at para 26, https://www.canlii.org/en/ca/scc/doc/2005/2005scc35/2005scc35.html [*Chaoulli v Quebec*].

[56] R. Sullivan, *Sullivan on the Construction of Statutes*, 5th ed (LexisNexis, 2008) at p 340. See also *Insurance Corporation of British Columbia v Heerspink*, 1982 CanLII 27, [1982] 2 SCR 145 at pp 157-8 (SCC) (per Lamer J, as he then was, for the majority; emphasis added), https://www.canlii.org/en/ca/scc/doc/1982/1982canlii27/1982canlii27.html [*ICBC v Heerspink*].

In *2747-3174 Québec Inc. v Quebec (Régie des permis d'alcool)*,[57] Justice L'Heureux-Dubé, in a concurring opinion, described the significance of quasi-constitutional legislation as having "pre-eminence" over ordinary legislation:

> With regard to legal preeminence, it is clear that the [*Quebec*] *Charter* prevails over statute law because of its quasi-constitutional status. I myself have noted that quasi-constitutional legislation has 'preeminence over ordinary legislation'. As P.-A. Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991), at p. 311, notes about the interpretative function of such preeminence:
>
>> Although not formally incorporated in the Constitution, Parliament has nevertheless endowed certain statutes with a predominance over other legislation. Among them, in federal law, is the Canadian Bill of Rights . . . and in Quebec law, the Charter of Human Rights and Freedoms. . . .
>>
>> Even in the absence of a provision establishing its preponderance, a charter of rights prevails over other statutes. . . .[58]

In *de Montigny v Brossard (Succession)*, Justice LeBel, for a unanimous Court, stated that the *Quebec Charter*'s "quasi-constitutional status means that it prevails over general legal rules in the Quebec normative order."[59]

Another way that the relationship between quasi-constitutional legislation and ordinary legislation has been conceptualized by the courts is the idea that quasi-constitutional rights are effectively integrated into every ordinary statute:

> In a way, the provisions of the [*Quebec*] *Charter* that protect fundamental rights form an integral part of every statute without the statute itself having to say so.
>
> More specifically, the provision of the [*Act Respecting Occupational Health and Safety*, CQLR, c. S-2.1] that refers to a "good and sufficient reason" must be interpreted as if it included the words "that is consistent with the [*Quebec*] *Charter*". This is the principle of supremacy of the [*Quebec*] *Charter*, a quasi-constitutional Act.[60]

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[57] *2747-3174 Québec Inc. v Quebec (Régie des permis d'alcool)*.

[58] *Ibid* at para 89 (SCC) (per L'Heureux-Dubé J) (citations omitted, emphasis omitted). See also *ICBC v Heerspink* at pp 157-8 (SCC) (per Lamer J, as he then was, for the majority).

[59] *de Montigny v Brossard (Succession)*, 2010 SCC 51 at para 45, https://www.canlii.org/en/ca/scc/doc/2010/2010scc51/2010scc51.html.

[60] *Quebec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v Caron*, 2018 SCC 3 at para 34 (per Abella J for the majority), https://www.canlii.org/en/ca/scc/doc/2018/2018scc3/2018scc3.html citing *Gauthier c Commission scolaire Marguerite-Bourgeoys*, 2007 QCCA 1433 at paras 51-52, https://www.canlii.org/fr/qc/qcca/doc/2007/2007qcca1433/2007qcca1433.html.

F) What is the relationship between quasi-constitutional legislation and the common law?

Quasi-constitutional legislation also has legal pre-eminence over the common law and may be relevant to the application of common law legal tests. In her concurring opinion in *2747-3174 Québec Inc. v Quebec (Régie des permis d'alcool)*, Justice L'Heureux-Dubé noted that the *Quebec Charter* "has the same legal preeminence over the common law: any common law rule can be codified, replaced or repealed by statute law and, *a fortiori*, by a quasi-constitutional statute."[61]

The Supreme Court of Canada has also considered quasi-constitutional privacy rights when applying common law legal tests. In *Douez v Facebook, Inc.*,[62] a BC-resident who was a user of Facebook sued the social networking company for allegedly infringing her privacy by using her name and likeness without consent in an advertising product called "Sponsored Stories". Facebook sought to stay the action brought in British Columbia because its terms of use included a forum selection and choice of law provision that said disputes would be resolved in Santa Clara County, California, under California law. Under the common law test for applying forum selection clauses, once the clause has been shown to be valid, the burden is on the plaintiff to show strong reasons why it should not be applied, taking into account all the circumstances and public policy.[63]

On the facts in *Douez v Facebook, Inc.*, the majority allowed Douez's appeal, finding there was strong cause not to enforce Facebook's forum selection clause, stating, *inter alia*: "Most importantly, the claim involves a consumer contract of adhesion and a statutory cause of action implicating the quasi-constitutional privacy rights of British Columbians."[64] The majority elaborated:

> Canadian courts have a greater interest in adjudicating cases impinging on constitutional and quasi-constitutional rights because these rights play an essential role in a free and democratic society and embody key Canadian values. There is an inherent public good in Canadian courts deciding these types of claims. Through adjudication, courts establish norms and interpret the rights enjoyed by all Canadians.[65]

[61] *2747-3174 Québec Inc. v Quebec (Régie des permis d'alcool)* at para 94.
[62] *Douez v Facebook*.
[63] *Ibid* at paras 23, 29.
[64] *Ibid* at para 50.
[65] *Ibid* at para 58.

G) What is the role of quasi-constitutional legislation in evidence law?

Quasi-constitutional legislation has also been used to inform evidence law. In *Globe and Mail v Canada (Attorney General)*, the Supreme Court of Canada indicated that the law of evidence in the province of Quebec must be applied in the context of, *inter alia*, the quasi-constitutional status of the *Quebec Charter*.[66]

On the merits, the Court found that while there was no basis under either the *Canadian Charter of Rights and Freedoms* or the *Quebec Charter* to recognize a constitutional or quasi-constitutional class-based journalist-source privilege, respectively, these constitutional and quasi-constitutional rights can "inform the analysis"[67] and "are engaged by a claim of journalist-source privilege",[68] meaning that "[s]ome form of legal protection for the confidential relationship between journalists and their anonymous sources is required."[69]

H) How are the primacy provisions in quasi-constitutional legislation to be applied in practice?

To the extent that there is any inconsistency between quasi-constitutional legislation and ordinary legislation, the former prevails to render the latter inapplicable. In *Tranchemontagne v Ontario (Director, Disability Support Program)*, Justice Bastarache, writing for a majority of the Court, discussed the similarities and differences when a law is found to be inconsistent with the constitution (i.e. s. 52 of the *Constitution Act, 1982*[70]), and where a law is inconsistent with quasi-constitutional legislation (in this case, the primacy provision in s. 47 of the *Ontario Human Rights Code*[71]):

> This primacy provision has both similarities and differences with s. 52 of the *Constitution Act, 1982*, which announces the supremacy of the Constitution. In terms of similarities, both provisions function to eliminate the effects of inconsistent legislation. At the end of the day, whether there is a conflict with the Code or the Constitution, the ultimate effect is that the other provision is not followed and, for the purposes of that particular application, it is as if the legislation was never enacted. But in my view, the differences between the two provisions are far more important. A provision declared invalid pursuant to s. 52 of the *Constitution Act, 1982* was never validly enacted to begin with. It never existed as valid law because the legislature enacting it never had the authority to pass it. But when a provision

[66] *Globe and Mail v Canada* at paras 26-31.
[67] *Globe and Mail v Canada* at para 33.
[68] *Ibid* at para 48.
[69] *Ibid* at para 48.
[70] *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c 11 at s 52, https://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html.
[71] *Human Rights Code*, RSO 1990, c H.19 at s 47, https://www.canlii.org/en/on/laws/stat/rso-1990-c-h19/latest/rso-1990-c-h19.html. Section 47(2): "Where a provision in an Act or regulation purports to require or authorize conduct that is a contravention of Part I, this Act applies and prevails unless the Act or regulation specifically provides that it is to apply despite this Act."

> is inapplicable pursuant to s. 47 of the Code, there is no statement being made as to its validity. The legislature had the power to enact the conflicting provision; it just so happens that the legislature also enacted another law that takes precedence.
>
> [...] When a tribunal or court applies s. 47 of the Code to render another law inapplicable, it is not "going behind" that law to consider its validity [...] It is not declaring that the legislature was wrong to enact it in the first place. Rather, it is simply applying the tie-breaker supplied by, and amended according to the desires of, the legislature itself. The difference between s. 47 of the Code and s. 52 of the *Constitution Act, 1982* is therefore the difference between following legislative intent and overturning legislative intent.[72]

Justice Bastarache recognized the Code as quasi-constitutional legislation, which he described as "[t]he most important characteristic of the Code for the purposes of this appeal".[73] He held that "it must not only be given expansive meaning, but also offered accessible application."[74]

Likewise, in *Attorney General of Canada et al. v Canard*, Justice Beetz stated:

> The *Canadian Bill of Rights* is more than a canon of interpretation, the terms of which would give way to any contrary legislative intent. It renders inoperative any law of Canada that cannot be construed and applied so that it does not abrogate, abridge or infringe one of the rights and freedoms recognized by the Bill, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Bill, and it confers upon the Courts the responsibility to declare any such law inoperative.[75]

Having laid the legal foundations for quasi-constitutional legislation in general, we can now turn to consider the specific quasi-constitutional status of the CVBR and its implications.

2. The *Canadian Victims Bill of Rights* as Quasi-Constitutional Legislation

This paper will now apply the general findings from part one on quasi-constitutional legislation to the CVBR and describe the limited judicial and scholarly treatment of this topic to date. After doing so, the various interpretive, limiting, and primacy clauses in the CVBR will be interpreted holistically to provide a framework for understanding how victims' rights in the CVBR should be applied and exercised in practice.

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[72] *Tranchemontagne v Ontario* at paras 35-36.
[73] *Tranchemontagne v Ontario* at para 33.
[74] *Ibid*.
[75] *Attorney General of Canada et al. v Canard*, 1975 CanLII 137, [1976] 1 SCR 170 at p 205 (SCC) (per Beetz J), https://www.canlii.org/en/ca/scc/doc/1975/1975canlii137/1975canlii137.html.

A) The CVBR is Quasi-Constitutional Legislation

The CVBR is clearly quasi-constitutional legislation because of its interpretive provision (s. 21), explicitly labelled primacy clause (s. 22(1)), and legislative history. Additionally, it is rights-based legislation. First, ss. 21 and 22(1) state:

> **Interpretation of other Acts, regulations, etc.**
>
> **21** To the extent that it is possible to do so, every Act of Parliament enacted — and every order, rule or regulation made under such an Act — before, on or after the day on which this Act comes into force must be construed and applied in a manner that is compatible with the rights under this Act.
>
> **Primacy in event of inconsistency**
>
> **22 (1)** If, after the application of sections 20 and 21, there is any inconsistency between any provision of this Act and any provision of any Act, order, rule or regulation referred to in section 21, the provision of this Act prevails to the extent of the inconsistency.

These provisions alone are sufficient to establish the CVBR as quasi-constitutional. Additionally, the CVBR is rights-based legislation, fashioned as a "bill of rights",[76] and should be considered human rights legislation.[77] The preamble also repeatedly uses the term "victims' rights", and ss. 6-17 of the CVBR recognize a range of general and specific rights held by victims of crime (i.e. information, protection, participation, and restitution). The preamble of the CVBR sets out aspirational societal goals and values, namely that victims should be treated with dignity, compassion, and respect, and that their rights ought to be considered throughout the criminal justice system as part of the proper administration of justice.

Victims of crime also have constitutional rights that are protected under the *Canadian Charter of Rights and Freedoms*, including privacy, security, dignity, equality, and fundamental freedoms such as freedom of religion.[78] As noted above, "[s]tatutes that

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[76] See *2747-3174 Québec Inc. v Quebec* at para 89 (SCC) (per L'Heureux-Dubé J concurring), citing with approval Côté at p 311.

[77] *Zurich Insurance Co. v Ontario* (per Sopinka J).

[78] See CVBR at preamble, s 2; Canada, Department of Justice, *Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003*, https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/03/princ.html [*Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003*]; B. Perrin, *Victim Law: The Law of Victims of Crime in Canada* (Thomson Reuters, 2017) at pp 14-17 [Perrin]; S. Nemet-Brown, *Halsbury's Laws of Canada - Compensation and Rights of Crime Victims* (LexisNexis) (2023 Reissue) at HCC-5 Charter rights. For caselaw, see e.g., *R v Mills*, 1999 CanLII 637, [1999] 3 SCR 668 at paras 17-22 (SCC) (per McLachlin & Iacobucci JJ for the majority), https://www.canlii.org/en/ca/scc/doc/1999/1999canlii637/1999canlii637.html [*R v Mills*]; *R v N.S.*, 2012 SCC 72 at paras 1-2 (per McLachlin CJC), ; *R v Darrach*, 2000 SCC 46 at paras 23-25, https://www.canlii.org/en/ca/scc/doc/2000/2000scc46/2000scc46.html; *R v Quesnelle*, 2014 SCC 46 at paras 14-17, https://www.canlii.org/en/ca/scc/doc/2014/2014scc46/2014scc46.html; *R v L. (D.O.)*, 1993 CanLII 46, [1993] 4 SCR 419 (SCC) (per L'Heureux-Dubé J concurring), https://www.canlii.org/en/ca/scc/doc/1993/1993canlii46/1993canlii46.html.

protect *Charter* rights have often been found to have quasi-constitutional status".[79] Furthermore, as noted above, where related constitutional and quasi-constitutional rights are both enjoyed by an individual, they may produce cumulative effects.[80]

There is substantial evidence in the CVBR's legislative history that Parliament intended it to have quasi-constitutional status. There are repeated references in Hansard to the CVBR being afforded pre-eminence over ordinary legislation and the rationale for doing so. For example, in his major speech at Second Reading on Bill C-32 (*Victims Bill of Rights Act*), the Hon. Peter MacKay, Minister of Justice and Attorney General of Canada, explained that the purpose of the CVBR having quasi-constitutional status was to ensure that victims' rights are given "meaningful effect" throughout the criminal justice system:

> In order to give meaningful effect to victims' rights by all players in our criminal justice system, our government is proposing that this bill have quasi-constitutional status. This would mean that the Canadian victims bill of rights [sic] would prevail over other federal statutes, with the exception of the Constitution Act, which includes the Charter of Rights and other quasi-constitutional statutes within our legal system, such as the Official Languages Act, the Privacy Act, and, of course, the Canadian Human Rights Act.
>
> These other quasi-constitutional statutes will also exist on a level playing field with the Canadian victims bill of rights [sic]. As an example, courts must interpret the Official Languages Act in a manner that is consistent with the Canadian Human Rights Act.
>
> If there is a conflict between these two quasi-constitutional statutes, the court would balance the rights in these two statutes.[81]

Minister MacKay also highlighted that the CVBR, as quasi-constitutional legislation, "would protect extremely important values and incorporate certain goals that are basically associated with the justice system."[82]

At Second Reading, the Hon. Steven Blaney, Minister of Public Safety and Emergency Preparedness, described the CVBR as "quasi-constitutional", "historic", and "a

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[79] *Canada (Information Commissioner) v Canada (Minister of National Defence)* at para 79 (per LeBel J).

[80] *Singh v Minister of Employment and Immigration* at para 85 (SCC) (per Beetz J) cited with approval in *Chaoulli v Quebec* at para 26. With respect to the CVBR, these important considerations were ignored in *R v R.D.F.*, 2016 SKPC 89 at paras 59-64, https://www.canlii.org/en/sk/skpc/doc/2016/2016skpc89/2016skpc89.html, which also failed to acknowledge the quasi-constitutional status of this legislation and that victims have privacy rights protected in the *Charter*: see e.g., *R v Mills* at paras 17-22 (SCC) (per McLachlin & Iacobucci JJ for the majority). See contra *R v R.D.F* in *R v Dhami*, 2019 ONCJ 10, https://www.canlii.org/en/on/oncj/doc/2019/2019oncj10/2019oncj10.html.

[81] Canada, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 72 (9 April 2014) (P. MacKay), https://www.ourcommons.ca/Content/House/412/Debates/072/HAN072-E.PDF at p 4490.

[82] Canada, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 176 (20 February 2015) (P. MacKay), https://www.ourcommons.ca/Content/House/412/Debates/176/HAN176-E.PDF at p 11459.

milestone".[83] Likewise, Mr. Bob Dechert, Parliamentary Secretary to the Minister of Justice, explained the quasi-constitutional nature of the CVBR in the context of this legislation serving as a "necessary catalyst" for changing the way that the justice system responds to victims:

> Let me also elaborate on the primacy clause proposed in this bill, which signals that victims' rights are to be taken seriously and given meaningful effect by all in the criminal justice system. It proposes as a general rule that all federal legislation would be required to the extent possible to be interpreted in a way that is consistent with the Canadian victims bill of rights [sic]. In circumstances where there is clear and irreconcilable conflict between a federal law and the Canadian victims bill of rights, the provisions of this bill would prevail. Victims' rights would be decided on a case-by-case basis whenever conflicts arose between this bill and laws contained in other federal acts. [...]
>
> I firmly believe that this bill is the necessary catalyst for creating a culture of change in the criminal justice system so that the needs of victims of crime can be better met. Given the progressive and vital nature of this bill, I urge all of my colleagues on both sides of the House to support it.[84]

The House of Commons voted unanimously to adopt Bill C-32 on February 23, 2015.[85]

In the Senate debates on Bill C-32, Conservative Senator Pierre-Hugues Boisvenu, who sponsored this legislation in the Senate, explained that quasi-constitutional status for the CVBR was intended to ensure that victims' rights set out in the legislation were "respected as much as possible":

> The government recognizes that it is important to ensure that the rights set out in the Canadian victims bill of rights [sic] are respected as much as possible. With that in mind, where there are inconsistencies in two laws, this act will take precedence over any other federal legislation, with the exception of any inconsistency between the Canadian victims bill of rights and other laws that have been recognized as quasi-constitutional by the courts. Accordingly, the Canadian victims bill of rights will share the same quasi-constitutional status as those other laws and where these inconsistencies exist, the courts will strike a balance between the laws.[86]

During the Standing Senate Committee on Legal and Constitutional Affairs study of Bill C-32, Minister MacKay testified about the quasi-constitutional status of Bill C-32 as follows:

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[83] Canada, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 90 (27 May 2014) (S. Blaney), https://www.ourcommons.ca/Content/House/412/Debates/090/HAN090-E.PDF at p 5712.
[84] Canada, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 90 (27 May 2014) (B. Dechert), https://www.ourcommons.ca/Content/House/412/Debates/090/HAN090-E.PDF at p 5719.
[85] Canada, House of Commons, *Journals*, 41st Parl, 2nd Sess, No 177 (23 February 2015), https://www.ourcommons.ca/Content/House/412/Journals/177/Journal177.PDF at pp 2166-67 (Division no 339).
[86] Canada, *Debates of the Senate*, 41st Parl, 2nd Sess, Vol 149, No 122 (26 February 2015) (P.-H. Boisvenu), https://sencanada.ca/content/sen/chamber/412/debates/pdf/122db_2015-02-26-e.pdf at p 3008.

> The second provision, which underscores the bill's new approach to victims, is the primacy provision. Mr. Chair, colleagues, section 22 of the Canadian victims bill of rights provides that if there is a conflict between the Canadian victims bill of rights and another federal act or statute, the provision of the Canadian victims bill of rights will prevail. <u>This ensures that victims' rights will be protected to the greatest extent possible</u>. [...]
>
> The primacy provision puts the Canadian victims bill of rights on equal footing with other quasi-constitutional statutes. It also <u>sends a clear message that victims' rights cannot be overlooked in the criminal justice system</u>. [...]
>
> The judiciary, in my view, has an extremely critical role when it comes to interpretation of this bill, its primacy and its quasi-constitutional status. [...] It is meant to be there very much as part of our wish that this section create general standards of interpretation that are to be applied to other federal legislation, other orders, other rules, other regulations and then read in, as judges do regularly when it comes to this competition of rights that exists often when clashes in the law occur.[87]

The primacy clause in the CVBR, along with its extensive legislative history, is unequivocal and conclusive evidence that it is quasi-constitutional legislation.

Furthermore, the CVBR should be understood as human rights legislation.[88] In addition to the foregoing statutory provisions and legislative history, such evidence can be found in scholarly commentary,[89] universal human rights instruments (i.e., the 1985 United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* ("*UN Declaration*")),[90] and statements from the federal, provincial and territorial governments (i.e., as noted in the preamble to the CVBR, "in 1988, the federal, provincial and territorial governments endorsed the *Canadian Statement of Basic Principles of Justice for Victims of Crime* and, in 2003, the *Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003*").[91]

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[87] Canada, Senate, Standing Committee on Legal and Constitutional Affairs, 41st Parl, 2nd Sess, No 28 (25 March 2015) (P. MacKay), https://sencanada.ca/en/Content/SEN/Committee/412/lcjc/28ev-51999-e (emphasis added).

[88] While the CVBR is quasi-constitutional legislation regardless of whether it is understood as human rights legislation, there are important reasons to consider it as human rights legislation.

[89] See, e.g., J. Wemmers, "Victims' rights are human rights: The importance of recognizing victims as persons" (2012) 15:2 *Temida*, https://www.researchgate.net/publication/270809432_Victims'_rights_are_human_rights_The_importance_of_recognizing_victims_as_persons; J. Doak, *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (Oxford, 2008); R. Holder, T. Kirchengast & P. Cassell, "Transforming crime victims' rights: from myth to reality" (2021) 45:1 *International Journal of Comparative and Applied Criminal Justice*, https://doi.org/10.1080/01924036.2020.1857278.

[90] United Nations General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN Doc A/RES/40/34 (1985), https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse. See *Canadian Broadcasting Corporation v Canada (Border Services Agency)*, 2021 NSPC 48 at paras 42-46, https://www.canlii.org/en/ns/nspc/doc/2021/2021nspc48/2021nspc48.html [*Canadian Broadcasting Corporation v Canada (Border Services Agency)*].

[91] See *Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003*.

Having established the CVBR's bona fides as quasi-constitutional legislation, we will now review the brief judicial and scholarly consideration of it as such.

B) Judicial consideration of the CVBR as quasi-constitutional legislation

To date, two judicial decisions have recognized the CVBR as quasi-constitutional legislation and discussed its legal significance. Both were written in 2024 by Justice Compagnone of the Court of Quebec (Criminal and Penal Division). In *R c Mund*, Justice Compagnone wrote:

> In the hopes of redressing past injustices, the rights to privacy and psychological security of victims of crime have been explicitly protected in their own instrument, the *Canadian Victims Bill of Rights* (herein after the *CVBR*).
>
> Bestowed with quasi-constitutional status, the *CVBR* imposes that federal legislation, like the *Criminal Code* and the CEA, be applied in compliance with the statute and it's [sic] enumerated rights.
>
> The preamble of the *CVBR* affirms the importance of recognizing courtesy, compassion, and respect for the dignity of the victims as priorities throughout the criminal justice system. These values must guide litigants and deciders when navigating evidentiary provisions such as s. 278.1-278.9 of the *Criminal Code*. Just like these provisions have been enacted to protect the privacy and dignity of complainants and witnesses in sexual assaults procedures, the *CVBR* serves as a beacon of the society's concern for the fair treatment of vulnerable persons who have been historically wronged by a merciless and overly legalistic justice system. [...]
>
> Hence, the Court must be mindful of the treatment victims have suffered in the past so as not to allow or perpetuate behavior that supports mistreatment of their character or dignity. This, while bearing in mind the objectives of protecting the integrity of the trial, the accused's trial rights, the security and privacy of complainants, and equality rights.[92]

Likewise, in *R c Pryczek*, Justice Compagnone stated: "Endowed with a quasi-constitutional status, the *Canadian Victims Bill of Rights* (hereinafter referred to as the 'CVBR') provides that federal laws, such as the *Criminal Code*, must be applied in a manner consistent with the CVBR and the rights it sets out."[93]

C) Scholarly treatment of the CVBR as quasi-constitutional legislation

As mentioned above, quasi-constitutional legislation in general has received scant scholarly attention despite its significance, and this research paper is the first detailed

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[92] *R c Mund*, 2024 QCCQ 5149 at paras 68-70, 73, https://www.canlii.org/en/qc/qccq/doc/2024/2024qccq5149/2024qccq5149.html [*R c Mund*].

[93] *R c Pryczek*, 2024 QCCQ 7445 at para 98, https://www.canlii.org/fr/qc/qccq/doc/2024/2024qccq7445/2024qccq7445.html (unofficial translation). Original text: "Douée d'un statut quasi constitutionnel, la *Charte canadienne des droits des victimes* (ci-après dénommée la « CCDV ») prévoit que les lois fédérales, comme le *Code criminel*, doivent être appliquées en conformité avec la CCDV et les droits qu'elle énumère."

examination of the CVBR's quasi-constitutional status. The CVBR was only adopted in 2015, which is relatively recent in terms of legislation. While numerous sources in the literature refer to the CVBR as quasi-constitutional, few go beyond this bare acknowledgment.

In my 2017 book, *Victim Law: The Law of Victims of Crime in Canada*, published shortly after the adoption of the CVBR, I discussed the quasi-constitutional nature of the CVBR:

> The *Canadian Victims Bill of Rights* (reproduced in Appendix C) establishes statutory rights related to information, protection, participation and restitution for victims throughout the criminal justice system. Parliament has conferred these rights with quasi-constitutional status and created a formal administrative complaint process for victims who believe that their rights have been infringed or denied. However, with some exceptions discussed below, it generally denies them standing to enforce these rights on their own initiative in the courts. This creates a complicated situation where justice system participants are obliged by law to give effect to the rights of victims under the *Canadian Victims Bill of Rights*, but victims may lack standing under the legislation to independently assert these very rights.[94] [...]
>
> These provisions [section 21 and 22 of the CVBR] are significant because they place *the Canadian Victims Bill of Rights* in a privileged position in relation to laws of general application, including the *Criminal Code*, *Canada Evidence Act*, and *Corrections and Conditional Release Act*. It demonstrates the importance that Parliament has now placed on the rights of victims in our criminal justice system.[95]

Similarly, in *Balancing Charter Interests: Victims' Rights and Third Party Remedies*, Joan Barrett states:

> The *Victims Bill of Rights Act* enacted by Bill C-32 has been described by the federal government as having 'quasi-constitutional status.' This flows from ss. 21 and 22 of the Bill which require firstly, that where possible, all other federal legislation is to be construed and applied in a manner compatible with the rights provided in the Bill. Secondly, if an inconsistency with another Act arises, then the provisions of the Bill prevail. Consequently, future interpretations of the *Criminal Code*, the *Youth Criminal Justice Act*, the *Canada Evidence Act* or any other federal statute will have to have regard to the Bill and be interpreted in a manner that is consistent with its provisions. The primacy of the Bill over other legislation is new and did not exist under the provincial or territorial victims' rights legislation. It remains to be seen how the rights under the Bill will be interpreted and enforced given that s. 20 of the Bill provides that the Bill is to be construed and applied in a reasonable manner that is not likely to cause excessive delay or interfere with police, prosecutorial or ministerial discretion or the discretion exercised by a parole board or Review Board.[96]

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[94] B. Perrin, *Victim Law: The Law of Victims of Crime in Canada* (Thomson Reuters, 2017) at p. 23.
[95] *Ibid* at p 32.
[96] J. M. Barrett, *Balancing Charter Interests: Victims' Rights and Third Party Remedies*, vol 1 (Thomson Reuters, 2019) at p 1-17. See also Canadian Centre for Elder Law, *Study Paper on Supporting Vulnerable Victims and Witnesses* (British Columbia Law Institute, 2023) at p 33, https://www.canlii.org/en/commentary/doc/2023CanLIIDocs3535.

D) Interpreting and applying the primacy clause and related provisions in the CVBR

The primacy clause in s. 22 of the CVBR states:

> **Primacy in event of inconsistency**
>
> **22 (1)** If, after the application of sections 20 and 21, there is any inconsistency between any provision of this Act and any provision of any Act, order, rule or regulation referred to in section 21, the provision of this Act prevails to the extent of the inconsistency.
>
> **Exception — Acts, regulations, etc.**
>
> **(2)** Subsection (1) does not apply in respect of the *Canadian Bill of Rights*, the *Canadian Human Rights Act*, the *Official Languages Act*, the *Access to Information Act* and the *Privacy Act* and in respect of orders, rules and regulations made under any of those Acts. It also does not apply in respect of Division 1.1 of Part III of the *National Defence Act* and in respect of any orders, rules and regulations made under that Act to the extent that they apply in relation to that Division.[97]

Accordingly, ss. 20, 21, and 22(2) of the CVBR need to be examined to determine their relationship with this primacy clause. Section 20 of the CVBR (see Appendix) is a provision on how the CVBR itself is to be interpreted. It states that the CVBR should be "construed and applied in a manner that is reasonable in the circumstances", and in a manner that it does not interfere with police, Crown, corrections or Ministerial discretion; cause "excessive delay"; endanger life or safety; or injure international relations, national security or national defence. The legislative history of the CVBR explains the rationale for including s. 20. At Second Reading of Bill C-32, Mr. Dechert stated:

> Thus, this bill would also provide transformational change for victims while upholding the rule of law and respecting principles such as police and prosecutorial discretion. For instance, it is a well-recognized constitutional principle that the Attorneys General of this country must act independently of partisan concerns when exercising their delegated sovereign authority to instigate, continue, or terminate prosecutions. This bill respects that independence, and at the same time grants victims a greater voice in the process.[98]

In other words, s. 20 of the CVBR does not impinge on its primacy over ordinary legislation, but rather ensures that it is applied in a manner consistent with the unwritten constitutional principles of constitutionalism and the rule of law,[99] the royal prerogative over foreign relations and defence of the realm,[100] and the *Charter*. This would be true of all quasi-constitutional legislation. The CVBR simply makes it explicit.

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[97] CVBR, s 22.

[98] Canada, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 90 (27 May 2014) (B. Dechert), https://www.ourcommons.ca/Content/House/412/Debates/090/HAN090-E.PDF at p 5719.

[99] See *Reference re Secession of Quebec*, 1998 CanLII 793, [1998] 2 SCR 217 at paras 70-72 (SCC), https://www.canlii.org/en/ca/scc/doc/1998/1998canlii793/1998canlii793.html.

[100] See *Canada (Prime Minister) v Khadr*, 2010 SCC 3, https://www.canlii.org/en/ca/scc/doc/2010/2010scc3/2010scc3.html; *Black v Canada (Prime Minister)*,

With respect to the "proper administration of justice" in s. 20 of the CVBR, this must be interpreted consistently with the preamble of the CVBR, which states, *inter alia*: "Whereas consideration of the rights of victims of crime is in the interest of the proper administration of justice". As Judge Halfpenny MacQuarrie of the Provincial Court of Nova Scotia stated in *Canadian Broadcasting Corporation v Canada (Border Services Agency)* with respect to the preamble: "This is very strong language in this Court's opinion. It is not equivocal or uncertain language."[101]

A brief note on the concept of discretion, which is mentioned several times in s. 20 of the CVBR is also relevant here. As Justice Rand held in the landmark decision of the Supreme Court of Canada in *Roncarelli v Duplessis*:

> In public regulation of this sort there is no such thing as absolute and untrammelled 'discretion' […] 'Discretion' necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption.[102]

Turning to s. 21 of the CVBR, it states:

> **Interpretation of other Acts, regulations, etc.**
>
> **21** To the extent that it is possible to do so, every Act of Parliament enacted — and every order, rule or regulation made under such an Act — before, on or after the day on which this Act comes into force must be construed and applied in a manner that is compatible with the rights under this Act.[103]

Once again, this provision does not detract from the primacy of the CVBR. Rather, it reinforces it in clear and unequivocal terms. Section 21 requires that all federal legislation (as well as regulations, rules, and orders under such legislation), such as the *Criminal Code*, *Canada Evidence Act*, *Corrections and Conditional Release Act*, and *Youth Criminal Justice Act*,[104] be interpreted and applied consistently with the rights set out in the CVBR, to the extent that is possible to do. If any inconsistency remains, s. 22(1) of the CVBR states that the CVBR "prevails to the extent of the inconsistency" with respect to ordinary federal legislation (as well as regulations, rules, and orders under such legislation). There is no doubt whatsoever that the CVBR is quasi-constitutional legislation and must be considered in the interpretation of all federal legislation and prevail over ordinary federal legislation, to the extent of any inconsistency, subject to compliance with applicable constitutional law (as noted above).

2001 CanLII 8537, 54 OR (3d) 215 at para 36 (ON CA), https://www.canlii.org/en/on/onca/doc/2001/2001canlii8537/2001canlii8537.html.

[101] *Canadian Broadcasting Corporation v Canada (Border Services Agency)* at paras 40-41.

[102] *Roncarelli v Duplessis*, 1959 CanLII 50, [1959] SCR 121 at p 140 (SCC), https://www.canlii.org/en/ca/scc/doc/1959/1959canlii50/1959canlii50.html.

[103] CVBR, s 21.

[104] *Youth Criminal Justice Act*, SC 2002, c 1, https://laws-lois.justice.gc.ca/eng/acts/y-1.5/.

Finally, s. 22(2) of the CVBR states that its primacy clause does not apply to other listed quasi-constitutional legislation (i.e. "the *Canadian Bill of Rights*, the *Canadian Human Rights Act*, the *Official Languages Act*, the *Access to Information Act* and the *Privacy Act* and in respect of orders, rules and regulations made under any of those Acts"). However, by virtue of s. 21 of the CVBR (discussed above), these quasi-constitutional laws should be interpreted consistent with the CVBR to the extent possible. As noted above in these remarks by Minister MacKay:

> In order to give meaningful effect to victims' rights by all players in our criminal justice system, our government is proposing that this bill have quasi-constitutional status. This would mean that the Canadian victims bill of rights would prevail over other federal statutes, with the exception of the Constitution Act, which includes the Charter of Rights and other quasi-constitutional statutes within our legal system, such as the Official Languages Act, the Privacy Act, and, of course, the Canadian Human Rights Act.
>
> These other quasi-constitutional statutes will also exist on a level playing field with the Canadian victims bill of rights. As an example, courts must interpret the Official Languages Act in a manner that is consistent with the Canadian Human Rights Act.
>
> If there is a conflict between these two quasi-constitutional statutes, the court would balance the rights in these two statutes.[105]

The last sentence of s. 22(2) of the CVBR states: "It also does not apply in respect of Division 1.1 of Part III of the *National Defence Act* and in respect of any orders, rules and regulations made under that Act to the extent that they apply in relation to that Division." This sentence was added to the CVBR in 2019 as a consequential amendment in Bill C-77, which enacted the *Declaration of Victims Rights* in Division 1.1 of Part III of the *National Defence Act*, codifying victims' rights in the military justice system.[106] This *Declaration of Victims Rights* includes a primacy provision in s. 71.19 of the *National Defence Act*, reinforcing the quasi-constitutional status of victims' rights across both the civilian and military criminal justice systems.[107]

Accordingly, the primacy clause in s. 22(1) of the CVBR unequivocally affords this legislation quasi-constitutional status, accompanied by provisions that provide a detailed roadmap for interpreting the CVBR and ordinary legislation, which the CVBR prevails over to the extent of any inconsistency.

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[105] Canada, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 72 (9 April 2014) (P. MacKay), https://www.ourcommons.ca/Content/House/412/Debates/072/HAN072-E.PDF at p 4490.

[106] *An Act to amend the National Defence Act and to make related and consequential amendments to other Acts*, SC 2019, c 15, https://www.parl.ca/DocumentViewer/en/42-1/bill/C-77/royal-assent; *National Defence Act*, RSC 1985, c N-5 at ss 71.01-71.25, https://laws-lois.justice.gc.ca/eng/acts/N-5/FullText.html [*National Defence Act*].

[107] See also *National Defence Act* at s 71.18.

Additionally, as noted above in Part I(C), as quasi-constitutional legislation, the CVBR should be interpreted using the modern approach to statutory interpretation, together with a "broad, liberal, and purposive interpretation"[108] to ensure that it achieves its "broad public purposes"[109] while remaining faithful to the text and context of the legislation.

The inter-related broad public purposes of the CVBR are to: (i) recognize and affirm that "victims"[110] of crime have constitutional rights under the *Charter* as well as new quasi-constitutional procedural and substantive rights;[111] (ii) ensure that these rights are "considered throughout the criminal justice system";[112] and (iii) serve as a "catalyst"[113] for "transformative"[114] change to how the criminal justice system has historically treated victims.[115]

In ensuring that the CVBR is given a broad and purposive interpretation and that its rights are capable of enforcement in court, the words of Chief Justice Dickson, for a unanimous court, in *CN v Canada (Canadian Human Rights Commission)*, are apposite:

> Human rights legislation is intended to give rise, amongst other things, to individual rights of vital importance, rights capable of enforcement, in the final analysis, in a court of law. I recognize that in the construction of such legislation the words of the Act must be given their plain meaning, but it is equally important that the rights enunciated be given their full recognition and effect. We should not search for ways and means to minimize those rights and to enfeeble their proper impact. Although it may seem commonplace, it may be wise to remind ourselves of the statutory guidance given by the federal *Interpretation Act* which asserts that statutes are deemed to be remedial and are thus to be given such fair, large and liberal interpretation as will best ensure that their objects are attained.[116]

Furthermore, applying the Supreme Court of Canada's decision in *Zurich Insurance Co. v Ontario (Human Rights Commission)* to the CVBR as human rights legislation, exceptions to

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[108] *Canada (Canadian Human Rights Commission) v Canada (Attorney General)* at para 62.
[109] *McCormick v Fasken Martineau* at para 17.
[110] CVBR, 2 "victim".
[111] See Parts 2(A)-(B), above; CVBR, preamble, ss. 6-17; see *Canadian Broadcasting Corporation v Canada (Border Services Agency)* at paras 61-62, 105.
[112] CVBR, preamble.
[113] Canada, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 90 (27 May 2014) (B. Dechert), https://www.ourcommons.ca/Content/House/412/Debates/090/HAN090-E.PDF at p 5719.
[114] Canada, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 176 (20 February 2015) (P. MacKay), https://www.ourcommons.ca/Content/House/412/Debates/176/HAN176-E.PDF at p 11455. See also Canada, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 90 (27 May 2014) (B. Dechert), https://www.ourcommons.ca/Content/House/412/Debates/090/HAN090-E.PDF at pp 5718-19; *Canadian Broadcasting Corporation v Canada (Border Services Agency)* at para 93.
[115] See, e.g., *R c Mund* at para 70: "[...] the CVBR serves as a beacon of the society's concern for the fair treatment of vulnerable persons who have been historically wronged by a merciless and overly legalistic justice system."
[116] *CN v Canada (Canadian Human Rights Commission)*, 1987 CanLII 109, [1987] 1 SCR 1114 at p 1134 (SCC), https://www.canlii.org/en/ca/scc/doc/1987/1987canlii109/1987canlii109.html (emphasis added).

it should be "narrowly construed",[117] including because such legislation is designed to protect victims of crime who are among "the most vulnerable members of society".[118] Indeed, victims of crime are disproportionately marginalized, as revealed in Statistics Canada's criminal victimization surveys:

- When controlling for individual characteristics, women, lesbian, gay, or bisexual people, and younger people have a greater likelihood of being violently victimized.
- Higher violent victimization rates were observed among Indigenous people (177 incidents per 1,000 population), particularly among Métis (225) and Inuit (265). [...]
- Childhood maltreatment, including physical or sexual abuse, witnessing violence in the home, or harsh parenting or neglect each increased the likelihood of experiencing violent victimization as an adult.
- Residential mobility and victimization were linked, with those who had changed residences more often in the past 5 years more likely to be victimized, both personally and their household.[119]

E) How are victims' rights in the CVBR to be applied and exercised

The CVBR establishes that victims have substantive and procedural rights throughout their interactions within the criminal justice system.[120] How are these rights in the CVBR to be applied and enforced? Depending on the circumstances, there are a range of possibilities, and some alternatives are precluded by the language of the CVBR itself.

First, certain quasi-constitutional rights of victims in the CVBR are also constitutional rights of victims in the *Charter* (see Parts 1(D) and 2(A)) and may, accordingly, be applied and enforced as such. This may also produce cumulative effects.

Second, as quasi-constitutional legislation, the primacy clause of the CVBR requires that it be interpreted using the modern approach to statutory interpretation, together with a "broad, liberal, and purposive interpretation"[121] to ensure that it achieves its "broad public purposes"[122] while remaining faithful to the text and context of the legislation, as discussed in Parts 1(C) and 2(D).

Third, ordinary legislation should be interpreted consistently with the CVBR as quasi-constitutional legislation, as discussed in Parts 1(E) and 2(D).

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[117] *Zurich Insurance Co. v Ontario* (per Sopinka J).
[118] *Ibid*. See also *R c Mund* at para 70.
[119] A. Cotter, *Criminal Victimization in Canada, 2019* (Statistics Canada, 2021), https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00014-eng.htm.
[120] CVBR, ss. 2 "victim", 5, 6-18.
[121] *Canada (Canadian Human Rights Commission) v Canada (Attorney General)* at para 62.
[122] *McCormick v Fasken Martineau* at para 17.

Fourth, the common law is to be interpreted consistently with the CVBR as quasi-constitutional legislation, as examined in Part 1(F).

Fifth, s. 19(1) of the CVBR states: "The rights of victims under this Act are to be exercised through the mechanisms provided by law." What does this encompass? The term "law" is broad and includes constitutional law, statutes[123] (and regulations, rules, and orders made pursuant to them), the common law, and discretionary judicial remedies. In his major speech at Second Reading on Bill C-32, Minister MacKay highlighted discretionary judicial remedies as a key aspect of ensuring the rights of victims in the CVBR are enforced:

> During many of these consultations, we heard about the need to have enforceability behind the bill. We have provisions that pertain specifically to that in working with provincial ombudsmen and the <u>discretionary judicial remedies that exist already</u>.[124]

Section 19(1) of the CVBR has received some judicial consideration, which affirms the intention that it is imperative for the courts to give meaningful effect to victims' rights, given their central role in the administration of justice.

In *Canadian Broadcasting Corporation v Canada (Border Services Agency)*,[125] Judge Halfpenny MacQuarrie of the Provincial Court of Nova Scotia stated that s. 12 of the CVBR ("Every victim has the right to request that their identity be protected if they are a complainant to the offence or a witness in proceedings relating to the offence.") imposes "a duty, a positive duty, on the Court to provide such notice" to victims. In this case the CBC applied to have a sealing order lifted in relation to the 2020 mass shooting incident in Nova Scotia. At issue was the CVBR's applicability to the unsealing application and whether victims had rights in hearings regarding sealing orders.[126] Based on the text of the CVBR, Hansard, and the UN Declaration, the Court ruled that the CVBR applied and that victims had both procedural and substantive rights.[127] Regarding s. 19(1) of the CVBR, the Court stated the following:

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[123] See, e.g., *R v L.A.*, 2023 SKCA 136 at paras 56-69 (per Jackson JA for majority) and paras 204-216 (per Drennan JA in dissent), https://www.canlii.org/en/sk/skca/doc/2023/2023skca136/2023skca136.html (however, this decision fails to interpret and apply the CVBR as quasi-constitutional legislation, despite mentioning ss. 21, 22, CVBR).

[124] Canada, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 72 (9 April 2014) (P. MacKay), https://www.ourcommons.ca/Content/House/412/Debates/072/HAN072-E.PDF at p 4490 (emphasis added).

[125] *Canadian Broadcasting Corporation v Canada (Border Services Agency)*.

[126] While Judge Halfpenny MacQuarrie of the Provincial Court of Nova Scotia interpreted the CVBR using the modern approach to statutory interpretation, and did not explicitly reference any of the additional interpretive principles that are to be used with quasi-constitutional legislation (described above in Part 1(C)), her approach is nevertheless broadly consistent with them. See *Canadian Broadcasting Corporation v Canada (Border Services Agency)* at paras 21-109.

[127] *Canadian Broadcasting Corporation v Canada (Border Services Agency)* at para 105. Victims of crime also have privacy rights under the *Canadian Charter of Rights and Freedoms*, as noted in Part 2(A).

> There is no provision within the *Criminal Code* or otherwise, to permit victims to express the impact disclosure of their identify and/or personal information would have on a situation such as before the Court. However, it has been established through Hansard, the preamble and specific provisions of the Act, such was intended, and this Court is the mechanism for such, as those words appear in Section 19(1).
>
> It is the obligation of this Court to be the gatekeeper for the proper administration of justice. I find s. 19(1) of the Act to be a specific direction to Courts in that regard.[128] [...]
>
> The Minister of Justice was clear, the legislation was meant to be 'transformative', victims were to be at the 'epicentre of our justice system', 'at every stage' and were to have 'enforceable rights'.[129] [...]
>
> There is no ambiguity as to the crucial role victims have in terms of their rights in the criminal justice system. It specifically states that 'consideration of the rights of victims of crime is in the interest of the proper administration of justice'. That is very instructive and very defining.[130] [...]
>
> The Court is a gatekeeper in many aspects of the administration of justice. The rights and obligations, set out in the Act [CVBR] are key to the proper administration of justice. [...][131]

In this case, Judge Halfpenny MacQuarrie found that victims "have the right to convey their views as it relates to un-redacting sealed paragraphs within the judicial authorizations."[132] With respect to procedure, she stated: "Legal procedural jurisprudence and statutory regimes have to inform process. There is no established procedure for the conveying of victim views within the CVBR in the factual situation of these applications. The Court must develop the same."[133] Based on the applicable rights in the CVBR, as well as analogous caselaw and *Criminal Code* provisions, Judge Halfpenny MacQuarrie held that victims could submit a signed and dated "Statement of Victim Views" describing how their identity and/or privacy rights would be impacted by the release of currently redacted materials.[134]

A sixth way that rights in the CVBR are to be applied and enforced, in addition to courts, is through statutory tribunals (such as the Parole Board of Canada and review boards) which are obliged to follow the CVBR in their decisions.[135] In *Tranchemontagne v Ontario (Director, Disability Support Program)*, Justice Bastarache, for a majority of the Court, held that a statutory tribunal is obliged to follow human rights laws in its decision.[136] Given its quasi-constitutional status, the Supreme Court of Canada has stated that human rights legislation

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[128] *Canadian Broadcasting Corporation v Canada (Border Services Agency)* at paras 86-87.
[129] *Ibid* at para 93.
[130] *Ibid* at para 104.
[131] *Ibid* at para 108.
[132] *Ibid* at para 9.
[133] *Ibid* at para 45.
[134] *Ibid* at para 46.
[135] CVBR, s 5(b)-(c).
[136] *Tranchemontagne v Ontario*.

does not require "an expert human rights body exercising a supervisory role over human rights jurisprudence".[137]

Seventh, subject to s. 20 of the CVBR (discussed above in Part 2(D)), the CVBR must be respected by all public authorities in the criminal justice system, including investigations, prosecutions, corrections and conditional release processes, and proceedings before courts and review boards in relation to accused found not criminally responsible on account of mental disorder or unfit to stand trial.[138]

Finally, while the CVBR provides for a complaint mechanism in s. 25 for federal entities, and in s. 26 for provincial/territorial entities, it also specifies in s. 27 that "[n]othing in this Act is to be construed as granting to, or removing from, any victim or any individual acting on behalf of a victim the status of party, intervenor or observer in any proceedings." In other words, ss. 25 and 26 of the CVBR are non-exhaustive of the remedies that a victim may pursue to enforce their rights. Victims are precluded, however, from launching their own cause of action or appeal based on an infringement or denial of their rights under the CVBR, by virtue of ss. 28 and 29.

[137] *British Columbia (Workers' Compensation Board) v Figliola*, 2011 SCC 52 at para 53 (per Abella J), https://www.canlii.org/en/ca/scc/doc/2011/2011scc52/2011scc52.html.
[138] CVBR, ss. 5, 18.

Conclusion

The CVBR establishes that victims have substantive and procedural rights throughout their interactions within the criminal justice system. It is clearly quasi-constitutional legislation because of its expansive interpretive and primacy clauses in ss. 21-22(1) and legislative history. The CVBR is also rights-based legislation.

As quasi-constitutional legislation, the CVBR is endowed with the following key characteristics:

- Broad, purposive interpretation: The CVBR should be interpreted using the modern approach to statutory interpretation, together with a broad, liberal, and purposive interpretation to ensure that it achieves its broad public purposes, while remaining faithful to the text and context of the legislation.
    - The inter-related broad public purposes of the CVBR are to: (i) recognize and affirm that victims of crime have constitutional rights under the *Charter* as well as new quasi-constitutional procedural and substantive rights; (ii) ensure that these rights are considered throughout the criminal justice system; and (iii) serve as a catalyst for transformative change to how the criminal justice system has historically treated victims.
    - It is inappropriate to rely solely on a strictly grammatical analysis of the CVBR, and ambiguity must be interpreted in a way that best reflects its remedial goals.
    - As human rights legislation, exceptions to the CVBR should be narrowly construed, including because such legislation is designed to protect victims of crime who are among the most vulnerable members of society.
- Pre-eminence over ordinary legislation and the common law: The CVBR has legal pre-eminence over ordinary legislation and the common law, and may be relevant in the application of common law legal tests and evidence law.
    - All ordinary federal legislation (as well as regulations, rules, and orders under such legislation), such as the *Criminal Code*, *Canada Evidence Act*, *Corrections and Conditional Release Act*, and *Youth Criminal Justice Act,* are to be interpreted and applied consistently with the rights set out in the CVBR, to the extent that is possible to do. If any inconsistency remains, the CVBR prevails to the extent of the inconsistency.
    - As quasi-constitutional legislation, the CVBR is generally subordinate to the *Canadian Charter of Rights and Freedoms*. However, victims also have

constitutional rights that are protected under the *Charter*. Where related constitutional and quasi-constitutional rights are both enjoyed by an individual, they may produce cumulative effects.

- Primacy over ordinary legislation: To the extent that there is any inconsistency between the CVBR and ordinary legislation, the former prevails, rendering the latter inapplicable.

In addition to the foregoing, there are several additional mechanisms provided by law for the CVBR to have a meaningful effect, including discretionary judicial remedies, in decisions of administrative tribunals, and federal/provincial complaint mechanisms in ss. 25 and 26 of the CVBR, respectively. Victims' rights in the CVBR must also be respected by all public authorities in the criminal justice system. However, victims are precluded from bringing their own cause of action or appeal for an infringement or denial of their rights under the CVBR by virtue of ss. 28 and 29.

As noted at the outset of this paper, there are persistent concerns that while the CVBR has quasi-constitutional status, "it is often treated as optional or symbolic."[139] This is not an isolated concern for rights-based quasi-constitutional regimes and requires sustained commitment from the judiciary and other justice system participants to overcome.[140] Indeed, in the context of language rights, the Supreme Court of Canada has cautioned: "Absent vigilance on the judge's part, this bilingual status is purely symbolic."[141] Indeed, giving meaningful effect to the rights of victims of crime, as intended by Parliament, by bestowing the CVBR with quasi-constitutional status is crucial to the realization of the promise it makes to victims and to ensuring the proper administration of justice.

[139] *Rethinking Justice for Survivors of Sexual Violence* at p 10-18.

[140] Additionally, as the OFOVC has stated: "In our view, since it was the intention of the federal government to bestow quasi-constitutional status on the CVBR, the Department of Justice should be examining all criminal and correctional legislation for compliance with the CVBR and victims' *Charter* rights.": *ibid*, at p 10-17.

[141] *Mazraani v Industrial Alliance Insurance and Financial Services Inc.*, 2018 SCC 50 at para 28, https://www.canlii.org/en/ca/scc/doc/2018/2018scc50/2018scc50.html.

Appendix

Excerpts from the *Canadian Victims Bill of Rights*
S.C. 2015, c. 13, s. 2

Assented to 2015-04-23

An Act for the Recognition of Victims Rights

[Enacted by section 2 of chapter 13 of the Statutes of Canada, 2015, in force July 23, 2015.]

Preamble

Whereas crime has a harmful impact on victims and on society;

Whereas victims of crime and their families deserve to be treated with courtesy, compassion and respect, including respect for their dignity;

Whereas it is important that victims' rights be considered throughout the criminal justice system;

Whereas victims of crime have rights that are guaranteed by the *Canadian Charter of Rights and Freedoms*;

Whereas consideration of the rights of victims of crime is in the interest of the proper administration of justice;

Whereas the federal, provincial and territorial governments share responsibility for criminal justice;

Whereas, in 1988, the federal, provincial and territorial governments endorsed the *Canadian Statement of Basic Principles of Justice for Victims of Crime* and, in 2003, the *Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003*;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the *Canadian Victims Bill of Rights*.

[...]

Exercise of rights

19 (1) The rights of victims under this Act are to be exercised through the mechanisms provided by law.

[...]

Interpretation of this Act

20 This Act is to be construed and applied in a manner that is reasonable in the circumstances, and in a manner that is not likely to

(a) interfere with the proper administration of justice, including

(i) by causing interference with police discretion or causing excessive delay in, or compromising or hindering, the investigation of any offence, and

(ii) by causing interference with prosecutorial discretion or causing excessive delay in, or compromising or hindering, the prosecution of any offence;

(b) interfere with ministerial discretion;

(c) interfere with the discretion that may be exercised by any person or body authorized to release an offender into the community;

(d) endanger the life or safety of any individual; or

(e) cause injury to international relations or national defence or national security.

Interpretation of other Acts, regulations, etc.

21 To the extent that it is possible to do so, every Act of Parliament enacted — and every order, rule or regulation made under such an Act — before, on or after the day on which this Act comes into force must be construed and applied in a manner that is compatible with the rights under this Act.

Primacy in event of inconsistency

22 (1) If, after the application of sections 20 and 21, there is any inconsistency between any provision of this Act and any provision of any Act, order, rule or regulation referred to in section 21, the provision of this Act prevails to the extent of the inconsistency.

Exception — Acts, regulations, etc.

(2) Subsection (1) does not apply in respect of the *Canadian Bill of Rights*, the *Canadian Human Rights Act*, the *Official Languages Act*, the *Access to Information Act* and the *Privacy Act* and in respect of orders, rules and regulations made under any of those Acts. It also does not apply in respect of Division 1.1 of Part III of the *National Defence Act* and in respect of any orders, rules and regulations made under that Act to the extent that they apply in relation to that Division.

[...]

No cause of action

28 No cause of action or right to damages arises from an infringement or denial of a right under this Act.

No appeal

29 No appeal lies from any decision or order solely on the grounds that a right under this Act has been infringed or denied.

Full text: https://www.canlii.org/en/ca/laws/stat/sc-2015-c-13-s-2/latest/sc-2015-c-13-s-2.html