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From Symbolic Recognition to Effective Rights: the Quasi-Constitutionality of the *Canadian Victims Bill of Rights* in Quebec Penal Practice

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Abstract:

Adopted in 2015, the *Canadian Victims Bill of Rights* (CVBR) brought together, for the first time in Canadian federal law, procedural rights applicable to the entire criminal justice system. Ten years later, the effect of this contribution remains mixed. Quebec and Canadian case law reveals that the CVBR has strengthened the recognition of the dignity, safety and, to a certain extent, the participation of victims, without giving them fully enforceable remedies. This article argues that the CVBR has a strengthened normativity, close in function to that of quasi-constitutional legislation, in particular because of sections 21 and 22, but that this normativity remains contained by the self-limitation clauses of the law, by the maintenance of the prosecutor's discretionary power and by the constitutional primacy of the rights of the accused. Based on a critical analysis of the case law decided between 2015 and 2025, the study highlights a differentiated effectiveness of rights: the right to protection is the one that has become the most institutionalized, while the rights to information, participation and especially to restitution remain more fragile. The article concludes by proposing avenues for the gradual activation of these rights that are compatible with the Canadian adversarial model.

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Introduction

The adoption of the CVBR in 2015 is a major reform of Canadian criminal law¹. For the first time, Parliament has grouped the procedural rights recognized for victims of crime around four pillars: information², protection³, participation⁴ and restitution⁵. This reform was in response to a long-standing criticism of the Canadian criminal justice system, which has historically been structured around the conflict between the state and the accused and has shown little attention to the place of victims⁶.

Ten years later, the overall assessment of its impact is mixed⁷. The CVBR⁸ has undeniably transformed the language of justice and fostered practices that are more sensitive to dignity and secondary re-victimization⁹. But it remains deprived of robust mechanisms of direct justiciability¹⁰. Hence the central question of this study: can the CVBR nevertheless function as a quasi-constitutional statute capable of guiding the interpretation and application of Canadian criminal law?

¹ Parliament of Canada, *Canadian Victims Bill of Rights SC 2015, c 13, s 2*, 2015, [online](#). For a history of the CVBR, see: Amissi Manirabona, *Introduction au droit des victimes d'actes criminels* Montreal: LexisNexis Canada Inc., 2020 at 44.

² *Canadian Victims Bill of Rights SC 2015, c 13, s 2*, *supra* Note 1 ss.6, 7 and 8.

³ *Ibid* ss. 9, 10, 11, 12 and 13.

⁴ *Ibid* ss. 14 and 15.

⁵ *Ibid* ss. 16 and 17.

⁶ United Nations General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 1985, [online](#).; United Nations General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 2006, [online](#).

⁷ *Giving Meaningful Effect to Victims' Rights: The Canadian Victims Bill of Rights as Quasi-Constitutional Legislation*, by Benjamin Perrin, Office of the Federal Ombudsperson for Victims of Crime, 9 April 2026 at p3, [online](#); *Victims' Rights in Canada in the 21st Century* by Alan N. Young and Kanchan Dhanjal, Department of Justice Canada, 2021 at 20-21, [online](#).

⁸ This paper was prepared prior to the enactment of Bill C-16 and therefore considers only the four rights under the *Canadian Victims Bill of Rights* (CVBR) that were in force at the time. It does not address the additional rights subsequently introduced under sections 5.1 and 5.2 of the CVBR.

⁹ Perrin, *supra* note 7 at 28-29.

¹⁰ *Canadian Victims Bill of Rights SC 2015, c 13, s 2*, *supra* note 1 ss. 28 et 29; Marie Manikis, *Imagining the Future of Victims' Rights: A Comparative Perspective* (2015) 13:1 Ohio St J Crim L 163-186 at p. 183; Benjamin Perrin, *Out of the Shadows: A Comparative Assessment of the Role of Victims at the International Criminal Court and in Canada* (2015) 93:2 The Canadian Bar Review at p. 499.

Based on Quebec penal law, the article argues that the CVBR has acquired a real interpretive force, especially in terms of victim protection, without succeeding in redistributing procedural power within the criminal trial¹¹. Part I examines its normative status (I); the second measures the differentiated effectiveness of its rights (II); the third identifies the structural resistances that limit its scope (III); the fourth proposes ways of gradually activating its normative potential (IV).

¹¹ Perrin, *supra* note 7 at 28-29; Amissi M Manirabona, *R c. Laurin Ou L'incompréhension du rôle de la déclaration de la victime* (2022) 100 Canadian Bar Review 163 at 183-185.

I. The *Canadian Victims Bill of Rights* as a quasi-constitutional instrument in Canadian law

The adoption of the CVBR is part of a broader movement to redefine the place of victims in the Canadian criminal justice system¹². For a long time, they were confined to an essentially evidentiary role, but they have gradually been recognised as legally relevant subjects of interest¹³. The question is therefore no longer that of the abstract existence of these interests, but that of the normative status of the text that enshrines them. Indeed, should the CVBR be understood as a mere legislative declaration or as a protective law with enhanced normativity? To answer this question, it is necessary to situate the CVBR in the Canadian tradition of fundamental rights legislation (1.1), and then to measure what brings it closer to and what distinguishes it from instruments that are recognized in doctrine and case law as having a stronger interpretive force (1.2). Finally, we will address the clauses by which Parliament intended to limit the effectiveness of the CVBR (1.3).

1.1 The CVBR and its Entrenchment in the Canadian Quasi-Constitutional Legislative Tradition

In the Canadian legal system, not all laws occupy the same place in the normative hierarchy. Between the Constitution and ordinary statutory law, there are certain protective laws whose function is to structure the interpretation of other statutes¹⁴. These are quasi-constitutional laws.

The Supreme Court of Canada has repeatedly recognized various federal or provincial statutes as falling within this category. In the *Insurance Corp* decision,

¹² N. Young and Dhanjal, *supra* note 7 at 5.

¹³ N. Young and Dhanjal, *supra* note 7; Jo-Anne Wemmers, "Introduction: Victims' Rights in an International Context" (2011) 44:2 *Criminology* 5; Manikis, "Imagining the Future of Victims' Rights in Canada," *supra* note 9 at 163.

¹⁴ Julie McCann, Martin Thiboutot and Denis Le May, *Grille d'analyse pour le droit du Québec*, Montréal, Wilson & Lafleur, 2022; Mélanie Samson and Sébastien Sénécal, " L'objet, la nature et l'interprétation des Chartes des droits » dans *Droits et peuples autochtones - Droit administratif*, Collection de droit 2025-2026, Montréal, Barreau du Québec, 2025-79; Mélanie Samson and Sébastien Sénécal, " La mise en œuvre des droits et libertés en vertu de la Charte canadienne, Collection de droit 2025-2026, Montréal, Barreau du Québec, 2025 187; Vanessa MacDonnell, « A Theory of Quasi-Constitutional Legislation » (2016) 53:2 *Osgoode Hall Law Journal* 508-539 at 510-511.

which marks the beginning of the doctrine of quasi-constitutionality, Lamer J., concurring with the majority, wrote of the British Columbia Human Rights Code:

When the subject matter of a law is said to be the comprehensive statement of the “human rights” of the people living in that jurisdiction, then there is no doubt in my mind that the people of that jurisdiction have through their legislature clearly indicated that they consider that law, and the values it endeavours to buttress and protect, are, save their constitutional laws, more important than all others.¹⁵

As a consequence of the importance given to the values protected by such a legislative instrument, the Court concluded that the Code takes precedence over all other laws where there is a conflict and that it must be “recognized for what it is, a fundamental law”.¹⁶

In *Ontario Human Rights Commission v. Simpsons-Sears*, on the Ontario Human Rights Code, the Supreme Court emphasized the need for a broad and liberal interpretation of such enactments¹⁷, writing that while such enactments are not constitutional in nature, they are of a “special nature”¹⁸. The Court added that “it is for the courts to seek out its purpose and give it effect”.¹⁹ The doctrine of the quasi-constitutionality of provincial human rights legislation is regularly applied by the Supreme Court²⁰. In 2000, it also applied it to the Quebec *Charter of Rights and*

¹⁵ *Insurance Corporation of British Columbia v. Heerspink*, [1982] 2 SCR 145 at 158, [online](#): (Supreme Court of Canada).

¹⁶ *Insurance Corporation of British Columbia v. Heerspink*, *supra* note 14.

¹⁷ *Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 SCR 536 at para. 12, [online](#): (Supreme Court of Canada).

¹⁸ *Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 SCR 536 at para. 12, [online](#): (Supreme Court of Canada).

¹⁹ *Ontario Human Rights Commission v. Simpsons-Sears*, *supra* note 16.

²⁰ *Zurich Insurance Co v. Ontario (Human Rights Commission)*, [1992] 2 SCR 321, [online](#): (Supreme Court of Canada); *Tranchemontagne v. Ontario (Director of the Ontario Disability Support Program)*, 2006 SCC 14, [online](#); *McCormick v. Fasken Martineau DuMoulin LLP*, [2014] 2 SCR 108, [online](#): (Supreme Court of Canada).

*Freedoms of the Person*²¹, adding to the relative primacy under section 52²² the clarification that it must guide the harmonious interpretation of other statutes, including the *Civil Code of Québec*²³.

In *Robichaud* and *C.N.*²⁴, the Supreme Court extended its reasoning relating to the quasi-constitutionality of provincial human rights legislation, to the *Canadian Human Rights Act*²⁵. It confirms their remedial and purposive functions²⁶. Thus, according to the Court, such laws must be interpreted with a view to giving them full effect, because they are not intended to punish, but to prevent anti-social and undesirable acts²⁷. This reasoning has also been followed consistently in subsequent cases involving the *Canadian Human Rights Act*²⁸. Outside the strict scope of human

²¹ *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, [online](#). (Supreme Court of Canada).

²² Québec, *Charte des droits et libertés de la personne CQLR c C-12*, 1975; Pierre Bosset and Michel Coutu, "Acte fondateur ou loi ordinaire ? Le statut de la Charte des droits et libertés de la personne dans l'ordre juridique québécois" (2015) *Revue québécoise de droit international* 37-60 à p. 41.

²³ L'interprétation harmonieuse de la charte québécoise et du code civil du Québec : un sujet de discorde pour le tribunal des droits de la personne et les tribunaux de droit commun » (2015) 8 *Revue des droits de l'homme*; Samson and Senécal, *supra* note 13.

²⁴ *CN v. Canada (Canadian Human Rights Commission)*, [1987] 1 SCR 1114, [online](#): (Supreme Court of Canada); *Robichaud v. Canada (Treasury Board)*, [1987] 2 SCR 84, [online](#): (Supreme Court of Canada).

²⁵ Parliament of Canada, *Canadian Human Rights Act*, RSC 1985, c H-6, 1985.

²⁶ *Robichaud v. Canada (Treasury Board)*, *supra* note 23 at 8, 91; *CN v. Canada (Canadian Human Rights Commission)*, *supra* note 23 at 115. Also: Lorne Sossin, « The Quasi-Revival of the Canadian Bill of Rights and Its Implications for Administrative Law » (2004) 25 *Supreme Court Law Review* 191; MacDonnell, *supra* note 13.

²⁷ *CN v. Canada (Canadian Human Rights Commission)*, *supra* note 23 at 1134; *Robichaud v. Canada (Treasury Board)*, *supra* note 23 at 91.

²⁸ *Canada (House of Commons) v. Vaid*, 2005 SCC 30, [online](#). (Supreme Court of Canada); *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, [online](https://www.canlii.org/en/ca/scc/doc/2018/2018scc31/2018scc31.html): < <https://www.canlii.org/en/ca/scc/doc/2018/2018scc31/2018scc31.html> > (Supreme Court of Canada); *Canada (Attorney General) v. Mossop*, [1993] 1 SCR 554, [online](#). (Supreme Court of Canada).

rights legislation, the Court extended the doctrine of quasi-constitutionality to related statutes such as language rights²⁹ and access to information legislation³⁰.

From the foregoing, it follows that so-called quasi-constitutional laws share common characteristics. In addition to their precedence over other legislation and their purposive and remedial interpretation, their purpose is generally focused on the protection of fundamental interests, including the promotion of equality, dignity, security and democratic values. Through their enhanced interpretive function³¹, they are expressly intended to guide institutional practices³². Any ambiguities they contain must be resolved in a manner that is favourable to their protective purpose³³. This purpose justifies that the mechanisms put in place to achieve it are accessible³⁴. Such mechanisms must always promote a uniform and correct interpretation of the scope of these laws³⁵. They must, particularly in matters of language rights, be proactively protected in the judicial process³⁶.

1.2 The CVBR's Normative Status in the *Canadian Charter of Rights and Freedoms*

At the outset, the adoption of the CVBR does not preclude the application to victims of the relevant provisions of the *Canadian Charter of Rights and Freedoms* (hereinafter "*Charter*"). Indeed, both legal regimes contain equivalent or similar

²⁹ *R v. Mercury*, [1988] 1 SCR 234, [online](#). (Supreme Court of Canada); *Reference re Canada Assistance Plan (BC)*, [1991] 2 SCR 525, [online](#). (Supreme Court of Canada); *Mazraani v. Industrial Alliance*, [2018] 3 SCR 261, [online](#). (Supreme Court of Canada); *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 SCR 773, [online](#). (Supreme Court of Canada).

³⁰ *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, [2011] 2 SCR 306, [online](#). (Supreme Court of Canada).

³¹ MacDonnell, *supra* note 13 at 534.

³² Samson and Senécal, *supra* note 13; McCann, Thiboutot and Le May, *supra* note 13; MacDonnell, *supra* note 13 at 519-521.

³³ *Zurich Insurance Co. v. Ontario (Human Rights Commission)*, *supra* note 19 at 339; *New Brunswick (Human Rights Commission) v. Potash Corporation of Saskatchewan Inc.*, *supra* note 19 at para 19.

³⁴ *Tranchemontagne v. Ontario (Director of the Ontario Disability Support Program)*, *supra* note 19 at para 33.

³⁵ *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, *supra* note 27; *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, *supra* note 29.

³⁶ *Mazraani v. Industrial Alliance*, *supra* note 28.

protections that may be invoked by victims. These include the rights to dignity, equality, security and privacy. This leads some authors to say that victims' rights are also human rights³⁷. Others used the term "cumulative effects" to describe the situation where rights under the *Charter* could be as applicable as rights under the CVBR³⁸. For Benjamin Perrin, the cumulative effect of linked constitutional and quasi-constitutional rights means that such rights must receive "meaningful effect and they may carry additional weight, depending on the circumstances".³⁹ In other words, the CVBR is intended to serve as an interpretive guide to the rights of the *Charter* as they apply to victims of crime. The fact remains that when a victim of crime is considered like any other human person⁴⁰, all the rights provided for in the *Charter* are applicable to them depending on the circumstances. We can think of the right to freedom of religion of the victim testifying in court while wearing their niqab⁴¹ or the freedom of expression of the victim sued for defamation for having denounced the crimes suffered through social networks. Where the exercise of such rights is likely to conflict with the rights of the accused or certain principles of the proper administration of criminal justice, the question inevitably arises as to the normative status of the CVBR under the *Charter*.

Unlike the *Charter*, which is appended to the *Constitution Act*, 1982,⁴² the CVBR is an act of the Parliament of Canada. While the *Charter* can only be amended under the demanding constitutional review procedure, the amendment of the CVBR follows the ordinary legislative procedure. More than that, the CVBR does not allow for the invalidation of an inconsistent law or for remedies as provided for in section 24 of the *Charter*. However, its status cannot be fully understood through this unfavourable comparison with the *Charter*.

³⁷ Jo-Anne Wemmers, « Victims' rights are human rights: The importance of recognizing victims as persons » (2012) 15:2 *Temida* 71-83; Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties*, Hart Publishing, 2008.

³⁸ Perrin, *supra* note 7 at 2, 14, 20, 31, 36.

³⁹ *Ibid* at p. 14.

⁴⁰ Wemmers, « Victims' rights are human rights », *supra* note 36.

⁴¹ *R v. NS*, [2012] 3 SCR 726, [online](#); Faisal Bhabha, « *R v. N.S.*: What is Fair in a Trial? The Supreme Court of Canada's Divided Opinion on the Niqab in the Courtroom » (2013) 50:4 *Alberta Law Review* 871.

⁴² *Schedule B to the Constitution Act, 1982 (U.K.)*, 1982, c 11, 1982.

Indeed, sections 21 and 22 give the CVBR more than an exhortative value⁴³. Section 21 requires, "[t]o the extent that it is possible to do so", that the laws of Parliament, and the orders, rules and regulations made under them, be construed and applied in a manner consistent with the rights guaranteed by the CVBR⁴⁴. Thus, when the CVBR is likely to come into conflict with another federal law or legal rule, it is a question of favouring a mutually tenable interpretation. The phrase "to the extent that it is possible" indicates that a conciliatory interpretation cannot be sought at all costs. Thus, it is necessary to be able, in certain circumstances, to draw the necessary conclusions when an interpretation consistent with the CVBR is not possible, whether the CVBR must prevail or any other federal legislation applies⁴⁵.

In this regard, section 22 of the CVBR contains a conflict clause that enshrines its relative primacy⁴⁶. According to this section, in the event of a conflict, the CVBR prevails, subject to specific exceptions such as the *Canadian Bill of Rights*⁴⁷, the *Canadian Human Rights Act*⁴⁸, the *Official Languages Act*⁴⁹, the *Access to Information Act*⁵⁰ and the *Privacy Act*⁵¹.

While these exceptions suggest a downgrading of the CVBR by reference to other quasi-constitutional statutes, legislative history indicates that the quasi-constitutional status of CVBR has been indisputable from the outset⁵². Through the parliamentary debates of the time, Benjamin Perrin emphasizes that this was the will of Parliament, especially if we look at the declarations of the ministers of justice and

⁴³ Perrin, *supra* note 7 at 19.

⁴⁴ *Canadian Victims Bill of Rights* SC 2015, c 13, s 2, *supra* note 1, ss. 21-22.

⁴⁵ To this end, according to the doctrine of quasi-constitutionality, the application of the quasi-constitutional law may be set aside if a more specific law is applicable to the legal reporting at hand: *Canada (House of Commons) v. Vaid*, *supra* note 27. Similarly, however generous the interpretation of such a statute may be, it must remain bound to the text: *McCormick v. Fasken Martineau DuMoulin LLP*, *supra* note 19.

⁴⁶ Perrin, *supra* Note 7 at 19-21.

⁴⁷ Parliament of Canada, *Canadian Bill of Rights*, Consolidated Laws 1960, [online](#).

⁴⁸ *Canadian Human Rights Act*, RSC 1985, c H-6, *supra* note 24.

⁴⁹ Parliament of Canada, *Official Languages Act*, 1985, [online](#).

⁵⁰ Parliament of Canada, *Access to Information Act*, 1985, [online](#).

⁵¹ Parliament of Canada, *Privacy Act* (R.S.C., 1985, c. P-21), 1985.

⁵² Perrin, *supra* Note 7 at 19-21; Manirabona, *supra* note 1 at 13.

public safety at the time as well as the unanimous adoption of the law⁵³. This author argues that sections 21 and 22 “alone are sufficient to establish the CVBR as quasi-constitutional”, in addition to the fact that it is “rights-based legislation” and that “the preamble also repeatedly uses the term ‘victims’ rights”.⁵⁴ Thus, despite the terms of section 22(2), which might suggest a hierarchical reporting between the CVBR, and other quasi-constitutional statutes cited in that provision, legislative history shows that they are on an “equal footing” such that the courts must interpret these statutes in such a way as to reconcile the rights they guarantee⁵⁵. It follows, therefore, that where reconciliation is not possible, any precedence between such laws could only be contextual. The triangulation of interests approach, which requires a balancing of the rights of the accused, the victim and society in terms of procedural fairness⁵⁶, is equally applicable to the resolution of conflicts between quasi-constitutional statutes.

From the above, the normative status of the CVBR is determined by the circumstances of each case. Its relationship to the *Charter* is not automatically one of subordination, considering that the CVBR and the *Charter* overlap regarding certain guarantees offered to victims, particularly in terms of dignity, equality and security. As in the CVBR's relationship to other quasi-constitutional statutes, a balance of rights must be imposed, and any precedence can only be contextual. On the other hand, in the presence of a normative vacuum or an instrument of ordinary legislative rank, the CVBR must be given greater interpretive weight and practical effect.

Judicial practice over the last 10 years illustrates this reasoning. In *Canadian Broadcasting Corporation v. Canada (Border Services Agency)*,⁵⁷ the Provincial Court of Nova Scotia heard an application to lift sealing orders in the context of a tragedy that resulted in 17 deaths and numerous injuries. The Court found that the *Criminal Code* did not adequately provide victims an opportunity to express their concerns

⁵³ Perrin, *supra* Note 7 at 19-21.

⁵⁴ *Ibid* at 19.

⁵⁵ This was the position of the Minister of Justice at the time, Peter Mackay: *Ibid* at 21.

⁵⁶ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] SCR 817, [online](#): (Supreme Court of Canada); *R v. Mills*, [2019] 2 SCR 320, [online](#): (Supreme Court of Canada).

⁵⁷ *Canadian Broadcasting Corporation v. Canada (Border Services Agency)*, [2021 NSPC 48], [online](#): (Provincial Court of Nova Scotia).

about the impact of disclosure of their identity and personal information⁵⁸. Applying the modern principle of interpretation, the court noted that the preamble of the CVBR is "very clear" and that the statement that the consideration of victims' rights is "in the interest of the proper administration of justice" is "very instructive and very defining".⁵⁹ The Court concluded that "the *Canadian Victims Bill of Rights* applies to this unsealing application and such rights are both procedural and substantive" and added that the preamble "cannot simply be a suggestion".⁶⁰ This decision is important. It does not reduce the CVBR to a statement of political principles but treats it as an interpretive standard that can fill in the gaps in the *Criminal Code*.

The scope of this approach was confirmed in subsequent proceedings in the same case. In its 2023 decision on the merits, the Court reaffirms that victims have the right under section 14 to make their views known in proceedings that may affect their rights, including in a request for disclosure of court documents, and establishes a specific Statement of Victim Views procedural mechanism to give effect to this right⁶¹. At the same time, the court clarified that nothing in the CVBR "raises the position of victims to parties and/or gives them intervener status" and that the views thus submitted do not become subject to automatic cross-examination⁶².

In *Mund*, the Court of Quebec stated that the CVBR, "bestowed with quasi-constitutional status",⁶³ requires that the *Criminal Code* and the *Canada Evidence Act* be applied in accordance with its enumerated rights. According to Justice Compagnone, the preamble to the CVBR makes the dignity and psychological safety of victims' values that should guide litigants and decision-makers who apply this law⁶⁴. Although this is a trial decision, it reflects a judicial interpretation of the CVBR that goes beyond mere rhetoric.

⁵⁸ *Ibid* at para 86.

⁵⁹ *Ibid* at para. 104-105.

⁶⁰ *Ibid* at para. 105-107.

⁶¹ *Canadian Broadcasting Corporation v. Canada (Border Services Agency)*, [2023 NSPC 6](#), at para. 139-144, [online](#). (Provincial Court of Nova Scotia).

⁶² *Ibid* at paras. 143-144.

⁶³ *R c. Mund*, [2024 QCCQ 5149](#), at para 68-70, [online](#). (Cour du Québec).

⁶⁴ *Ibid* at paras. 70-73.

That said, however, neither *Mund* nor the decisions of other Canadian jurisdictions elevate the CVBR to the status of a constitutional law. This was the contention of the applicants in the *CBC* case in Nova Scotia, who argued that while the CVBR prevails over certain inconsistent laws, it "does not rise to the level of constitutional law".⁶⁵ The Court refused to infer from this a lack of normative force. Thus, the qualifier "quasi-constitutional" must be understood here in a functional and interpretive sense. The CVBR is certainly not a constitutional charter, but a federal statute with a compatibility clause, a relative primacy and a fundamental purpose sufficiently asserted to guide the interpretation of other federal statutes in the criminal justice system⁶⁶. It is precisely this enhanced yet incomplete normativity that justifies speaking, with caution, of a quasi-constitutional potential.

1.3 Self-limitation clauses and the legislative desire to contain justiciability

The interpretive scope and relative primacy recognized in sections 21 and 22 must, however, be read in conjunction with the self-restraint clauses of the Act. Sections 19 to 29 provide a framework for the implementation of victims' rights in such a way as to prevent them from destabilizing the general scheme of the criminal trial.

Section 19 thus requires the exercise of rights "through the mechanisms provided by law" consistent with the proper administration of justice and the discretionary powers of the police, the public prosecutor's office, ministers and correctional authorities⁶⁷. Section 27 specifies that the victim does not acquire the status of party or intervener. Sections 28 and 29 exclude any civil action and, in essence, any independent remedy based on a violation of the *CVBR*. The *CVBR* therefore asserts rights but refuses to provide the ordinary means of enforcement. This is an exception to other constitutional or quasi-constitutional statutes that typically are accompanied by enforcement and oversight mechanisms⁶⁸.

⁶⁵ Provincial Court of Nova Scotia, 13/09/2021 *Canadian Broadcasting Corporation v. Canada (Border Services Agency)*, *supra* note 56 at para 18-19, 105-108.

⁶⁶ Perrin, *supra* note 7 at 19, 28-29.

⁶⁷ *Canadian Victims Bill of Rights* SC 2015, c 13, s 2, *supra* note 1, s. 19.

⁶⁸ Perrin, *supra* note 7 at 6; *Rethinking justice for survivors of sexual violence: a systemic investigation*, by Office of the Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsperson for

Recent case law confirms this logic. In *Mund*, the court relied on the CVBR to interpret the *Canada Evidence Act* in a manner consistent with the dignity and psychological safety of victims⁶⁹. Similarly, in *Canadian Broadcasting Corporation*, the participatory rights of the CVBR help to shape a procedure that allowed victims to make their views known in an exceptional context⁷⁰. These decisions confirm that the law has a real normative scope. But they also show that this impact remains essentially indirect. It acts through the interpretation of the other rules rather than through an autonomous recovery mechanism.

This situation is not accidental. It is the result of a choice of legal policy that consists less in opposing the rights of victims head-on to the state's monopoly of prosecution than in integrating them in a limited way into a trial that remains fundamentally structured by the state. Garvin and Beloof show that contemporary systems have gradually incorporated values of dignity, fairness, and respect for the privacy of victims, but that these values only become effective if victims have a real capacity to make informed choices about their participation in the process⁷¹. Their criticism is aimed precisely at systems that place an almost exclusive emphasis on reporting to the authorities and cooperating with the prosecution, to the detriment of the victims' ability to direct their own engagement in the criminal process⁷². From this perspective, the central problem is not only the symbolic inadequacy of recognition, but the absence of institutional mechanisms to transform this recognition into effective procedural power, through the independent legal representation of victims⁷³.

Campbell's observations on victim impact statements in Quebec are in the same vein: without calling into question the adversarial structure of the criminal trial, she shows that Canadian law has indeed created spaces for victims to speak, but that

Victims of Crime, September 10, 2024, at 10-19, [online](#). Last Modified: 2026-03-27; Manikis, "Imagining the Future of Victims' Rights in Canada", *supra* note 9 at 179; Perrin, "Out of the Shadows", *supra* note 9 at 499.

⁶⁹ *R c. Mund*, *supra* note 62.

⁷⁰ *Canadian Broadcasting Corporation v. Canada Border Services Agency*, 2022 NSPC 22 (CanLII), [online](#). (Provincial Court of Nova Scotia).

⁷¹ Margaret Garvin et Douglas E Beloof, « Crime Victim Agency: Independent Lawyers for Sexual Assault Victims » (2015) 13:1 Ohio State Journal of Criminal Law 67-88 at 67-68.

⁷² *Ibid* at pp. 68, 75.

⁷³ *Ibid* at pp 80-82, 86-87.

their function remains narrowly circumscribed. They serve to inform the court of the consequences of the crime, not to dictate punishment, and their exact legal status continues to fuel uncertainty⁷⁴. Campbell further points out that, despite their growing presence in judicial discourse, judges continue to question the nature of these interventions and their true impact on criminal decisions, confirming that the procedural recognition of victims remains partial and mediated through the classic framework of criminal trial⁷⁵.

The decisive distinction is therefore that between normative force and enforceability. The CVBR can guide interpretation, influence procedural choices, and justify protection or participation measures. On the other hand, its enforceability remains limited by the absence of direct remedies, by the maintenance of institutional discretionary power and by the refusal to recognise the victim as having an autonomous procedural status. It is thus legally significant without yet being legally decisive.

⁷⁴ Kathryn M Campbell, « Judicial Attitudes regarding Victim Impact Statements: Perspectives from Québec » (2015) 19:3 Canadian Criminal Law Review 341-372 at 342–346.

⁷⁵ *Ibid* at pp 368-369.

II. Ten years of case law: a differentiated effectiveness of victims' rights

Since 2015, the CVBR has not produced structured constitutional jurisprudence comparable to that of the *Charter*. The courts use it mainly as an interpretive or contextual standard. This practice highlights a differentiated effectiveness. Indeed, some rights, including the right to protection, have acquired practical significance, while others remain largely dependent on institutional discretion.

2.1 The right to information: a fragile right dependent on institutional discretion

The right to information, enshrined in sections 6 to 8 of the CVBR, is intended to correct the informational asymmetry that has long relegated victims to the status of mere witnesses. It includes the right to be informed of the status of an investigation, the progress of legal proceedings and certain decisions concerning the offender⁷⁶. It should be the basis for informed participation. However, case law shows that it remains one of the most fragile rights⁷⁷.

In Quebec, the case law identified on CanLII relating to victims' rights to information remains remarkably thin. In criminal matters *stricto sensu*, *R. v. Letourneau* appears to be the only judgment in which the violation of the CVBR is found in an ordinary prosecution⁷⁸. The accused pleaded guilty to multiple counts of criminal harassment and uttering threats and the Crown and defence made a joint sentencing recommendation without informing the victims as required by s. 606(4.1) *Criminal Code*. The judge noted this violation but drew no consequences for the proceedings or the validity of the process. The right to information thus appears less as an enforceable right than as a requirement of sound administration, the failure to comply with which does not in itself trigger a remedy⁷⁹.

The other two Quebec decisions identified, concern the information due to victims in relation to not criminally responsible verdicts. In *D.B. and Head of Hospital A*, an

⁷⁶ *Canadian Victims Bill of Rights* SC 2015, c 13, s 2, *supra* note 1, ss.6-8.

⁷⁷ *Information as a gateway right: examining complaints related to the Canadian Victims Bill of Rights*, by Heidi Illingworth and Nadia Ferrara, Office of the Federal Ombudsperson for Victims of Crime, 2021 at 5-7, [online](#).

⁷⁸ *R c. Letourneau*, 2021 QCCQ 758, [online](#): (Court of Québec).

⁷⁹ Illingworth and Ferrara, *supra* note 76 at 5-7; Perrin, «Out of the Shadows», *supra* note 9 at 499.

accused was found not criminally responsible for criminal harassment and threats. A person by the name of L.B. was recognized as a victim and granted, on the basis of s. 8 of the CVBR, a copy of the decision, including the terms and conditions of discharge, as well as the disclosure of the proposed place of residence of the accused under s. 672.5(5.2) *Criminal Code*⁸⁰. The same logic is repeated in *A.D. and Head of Institute A*, where the Commission allows the victim's request to obtain the decisions that have been issued and the intended place of residence of the accused⁸¹. These two decisions show that, in Quebec practice, the right to information is mainly given operational content when it is already relayed by a specific legislative mechanism governing the circulation of information on the offender.

Outside Quebec, the case law is not much more generous. Because sections 28 and 29 of the CVBR deprive victims of an autonomous right of action, litigation arises mainly through access to information laws. In *Waterloo Regional Police Services Board (Re)*, pursuant to section 7 of the CVBR, the applicant requested an occurrence report to assess the possibility of seeking a new investigation, to protect his reputation and to consider other remedies. The adjudicator rejected the CVBR argument on the ground that it "does not apply", since "the investigation was concluded, no charges were laid and there are no proceedings".⁸² In *Alberta Justice and Solicitor General (Re)*, where the victim sought access to the investigation and prosecution file in order to correct errors that she considered prejudicial, the adjudicator responded that "[t]he right to request information does not extend to the prosecutor's file" and stated that the CVBR must be interpreted in a manner consistent with the discretion of the prosecuting authorities⁸³. In both cases, the CVBR is therefore read as a contextual standard, subordinate to access regimes and institutional imperatives, rather than as a stand-alone source of disclosure.

⁸⁰ *DB and Head of Hospital A*, 2017 QCTAQ 12696 at paras. 39–40, [online](#): (Administrative Court of Québec).

⁸¹ *AD and Head of Institute A*, 2021 QCTAQ 0388 at paras. 33–36, [online](#): (Administrative Court of Québec).

⁸² *Waterloo Regional Police Services Board (Re)*, 2019 CanLII 115227 (ON IPC) at para 45, [online](#): (Information and Privacy Commissioner of Ontario).

⁸³ *Alberta Justice and Solicitor General (Re)*, 2017 CanLII 29249 (AB OIPC) at para 41, [online](#): (Office of the Information and Privacy Commissioner).

Other decisions confirm the indirect and fragmentary nature of this right. In *B.Q. v. 1900119 Ontario Inc. o/a The Augusta House*, the applicant argued that the lack of information on the outcome of the criminal case explained the delay in reactivating its human rights action. The Tribunal rejected the argument, finding that it was "not clear why" the applicant did not, within the time limit, verify whether the Crown intended to appeal⁸⁴. Conversely, *R. v. S.W.* recognizes the right to information in an atypical context. The accused in the criminal case was also a complainant in previous criminal proceedings involving the same person. The judge emphasized that S.W. "may therefore have a greater right to information" and that s. 7(a) CVBR gives him the right to information on "the status and outcome of the investigation".⁸⁵ This reference is primarily used to justify an order for partial disclosure of police records in the context of a *Mills* application, under strict redactions, sealing and non-dissemination orders.

Taken together, these judgments show that, ten years after the adoption of the CVBR, the right to information remains a fragile right⁸⁶. It is recognized, sometimes acted upon, but rarely interpreted by the criminal courts as a fully justiciable right⁸⁷. Canadian research on the experience of victims converges to show that information remains one of the most frequently unmet needs in the judicial process⁸⁸.

2.2 The right to protection: towards greater judicial effectiveness

The right to protection has had the most tangible impact of the four categories of rights enshrined in the CVBR⁸⁹. Sections 9 to 13 are aligned with already well-established *Criminal Code* mechanisms such as publication bans, vulnerable

⁸⁴ *BQ v. 1900119 Ontario Inc o/a The Augusta House*, 2025 HRT0 654 at para 24, [online](#): (Human Rights Tribunal of Ontario).

⁸⁵ *R v. SW*, 2015 ONCJ 562 (CanLII) at para 30, [online](#): (Ontario Court of Justice).

⁸⁶ Illingworth and Ferrara, *supra* note 76 at 5-7; Fatima Fayyaz and Nadine Badets, «What do Canadians Know about the *Canadian Victims Bill of Rights*? » (2023) 16 Victims of Crime Research Digest, [online](#) p 40.

⁸⁷ Manikis, « Imagining the Future of Victims' Rights in Canada », *supra* note 9 at 183; Perrin, "Out of the Shadows", *supra* note 9 at 499.

⁸⁸ Katie Cyr and Jo-Anne Anne Wemmers, "Empowerment of Victims of Crime" (2011) 44:2 Criminology 125-155; Jo-Anne Wemmers and Émilie Raymond, « Justice and Victims: The 'Importance of the Information' for victims » (2011) 44:2 Criminology 157-169.

⁸⁹ Perrin, *supra* note 7 at 28-29.

witness protection measures and special rules on private records⁹⁰. These mechanisms provide explicit normative support for the right to protection by preventing the risks of secondary victimization during the judicial process⁹¹.

Recent case law illustrates this growing reliance on the normative framework offered by the CVBR. In *R. v. Viens*, the Superior Court had to decide whether the CAVAC file should be treated as an element of ordinary disclosure by the prosecution⁹². The complainant, the accused's ex-spouse, did not immediately report the alleged sexual assault. The complainant reported to the authorities after meetings with a psychologist and a CAVAC worker⁹³. Justice Dadour rejected the submission that CAVAC was an "extension" of the Crown, noting instead the confidential, voluntary and psychosocial nature of its services⁹⁴. He concluded that the information sent to CAVAC was part of a "private record" within the meaning of s. 278.1 *Criminal Code*⁹⁵, which triggers the regime of sections 278.1 et seq. The court's reasoning is based directly on *Quesnelle*, where the Supreme Court states that the definition of "record" is broad and that disclosure of intimate or personal information "may do particularly serious violence to the dignity and self-worth" of the person concerned⁹⁶. The *Viens* case is an example of how the CVBR, especially s. 11, reinforces a protective interpretation of the rules of disclosure when the victim's privacy is at stake.

The same logic emerges from *DPCP v. Laframboise*, where an order excluding the public from the courtroom was granted to allow a victim of sexual assault to testify without traumatic public exposure. The court relied on the intimate and traumatic nature of the testimony, on the violation of the dignity of the victim and on the need to avoid secondary victimization⁹⁷. Protection therefore no longer appears as a

⁹⁰ Parliament of Canada, *An Act respecting criminal law*, 1985 art 278.1 et seq.486.1-487.7, [online](#).

⁹¹ *Canadian Victims Bill of Rights SC 2015, c 13, s 2, supra note 1, ss. 9-13.*

⁹² *R c. Viens*, 2019 QCCS 5251, [online](#). (Superior Court).

⁹³ *Ibid* at paras. 44, 54. CAVAC is the Centre d'aide aux Victimes d'actes Criminels or Crime Victims Assistance Centres.

⁹⁴ *Ibid* at para.16-20, 26, 37.

⁹⁵ *Ibid* at para. 45-49.

⁹⁶ *R v. Quesnelle*, 2014 SCC 46 at para. 22, 32-34, [online](#).

⁹⁷ *Director of Criminal and Penal Prosecutions v. Laframboise*, [2022] QCCS 3681 at para 43-44, [online](#): (Cour supérieure).

simple derogation from the principle of publicity, but as a competing requirement of justice.

In *Kalymialaris*, the Superior Court authorized the testimony of a young adult complainant in the presence of a dog handler and a support dog. The judge expressly pointed out that s. 13 of the CVBR recognizes the right of the victim to request measures to facilitate their testimony⁹⁸. Above all, he held that following the 2015 amendments, it is no longer required to establish a strict "necessity" to justify an order for a testimonial aid. It is sufficient to show that the measure would facilitate a full and frank account or would serve the proper administration of justice⁹⁹. After considering the complainant's age, the sexual nature of the charges, the relationship of authority with the accused, and the complainant's state of anxiety, he concluded that the measure protected the victim without compromising the fairness of the trial¹⁰⁰.

This dynamic is also apparent in *R. v. Letourneau*. At trial, Justice Galiatsatos opened his reasons by reciting s. 9 of the CVBR which accords, every victim the right to have their safety considered¹⁰¹. Seized of a case of criminal harassment, death threats and repeated breach of conditions targeting the accused's attending physician and social worker, he refused to trivialize the dangerousness revealed by the accused's thousands of threatening emails and the victims' statements¹⁰². The court overturned the release order, issued a warrant for his arrest, prohibited communication with the victims and ordered that a copy of the court's reasons be sent to them. On appeal, however, the Court of Appeal refocused the analysis on the strict framework of joint submissions and reinstated the joint submission¹⁰³. The case is revealing. The protection of victims is progressing, but it remains mediated by the structural constraints of the criminal law.

Finally, the cases of *Ballouz* and the *Canadian Broadcasting Corporation v. Canada (Border Services Agency)* show that the right to protection does not end at the hearing

⁹⁸ *R. c. Kalymialaris*, 2020 QCCS 359 at para 9–10, [online](#): (Cour supérieure).

⁹⁹ *Ibid* at para. 11-13.

¹⁰⁰ *Ibid* at para. 17-22.

¹⁰¹ *R. c. Letourneau*, *supra* note 77 at para 2.

¹⁰² *Ibid* at para. 4-6, 15-23.

¹⁰³ *Letourneau v. R.*, 2023 QCCA 592, [online](#): (Quebec Court of Appeal).

or at the victim's testimony. In *Ballouz*, the Superior Court noted that the CVBR also protects the privacy and identity of victims¹⁰⁴, and linked these protections to dignity when the disclosure of fundamental personal information is likely to cause real psychological suffering¹⁰⁵. It is on this basis that it maintained certain restrictions on the disclosure of medical, psychological or intimate information in victim impact statements, where their publication could cause significant psychological harm or identify the victim¹⁰⁶.

Similarly, in the *CBC* decisions, the Nova Scotia Provincial Court recognizes that victims have "active" rights under the CVBR when an application to unseal their identity or privacy could be compromised¹⁰⁷. It provides them with procedural space to express their protective concerns, while specifying that they do not become parties or interveners¹⁰⁸. The judicial protection of victims now includes the prevention of secondary harm likely to result from the public disclosure of sensitive information concerning them.

These decisions reflect a significant change in judicial culture. The CVBR has provided courts with an explicit normative framework to justify safeguards that previously may have appeared to be exceptions to the principle of openness or the ordinary rules of evidence. The protection of victims thus tends to be seen no longer as a one-off concession granted by the courts, but as a legitimate component of the administration of justice.

2.3 The right to participate: between symbolic recognition and judicial oversight

Sections 14 and 15 of the CVBR enshrine a right of participation, the effectiveness of which remains limited¹⁰⁹. Courts are increasingly recognizing the value of victims' voices, but such participation remains subject to "legal mechanisms" and does not

¹⁰⁴ *R v. Al Ballouz (Ballouz)*, 2025 QCCS 140 at para 38, [online](#): (Cour supérieure).

¹⁰⁵ *Ibid* at para. 39-40.

¹⁰⁶ *Ibid* at para. 57-60, 64-66.

¹⁰⁷ *Canadian Broadcasting Corporation v. Canada (Border Services Agency)*, 2021 NSPC 48, [online](#): (Provincial Court of Nova Scotia).

¹⁰⁸ *Canadian Broadcasting Corporation v. Canada Border Services Agency*, *supra* note 69 at para 15-19; *Canadian Broadcasting Corporation v. Canada (Border Services Agency)*, *supra* note 60 at para 143.

¹⁰⁹ Manirabona, *supra* note 10 at 168, 183-185.

alter the procedural status of the victim or the adversarial structure of the trial¹¹⁰. Even with a strengthened interpretive function, the CVBR does not transform the victim into a party to the dispute¹¹¹.

In Quebec, the case law illustrates a favourable reception of the victim impact statement as a source of understanding of the harm caused. In *Sklivas*, the judge expressly reiterated that the victim has the right to present a statement and that it must be considered, and then relied on it to measure the isolation, panic attacks, shame and lasting disorganization caused by the assault¹¹². However, he refuses to consider more serious elements, such as suicide attempts, for lack of sufficient proof of the causal link¹¹³. Participation is therefore real but remains subject to the ordinary requirements of relevance and causality¹¹⁴.

The *Poulin* decision is in the same vein, noting that the victim provided a statement expressing persistent fears for her safety and that of her mother¹¹⁵. The court criticized the defence's strategy of minimizing some of the consequences of the crime because the victim did not wish to testify orally, stating that such an approach does not sit well with s. 15 CVBR¹¹⁶. The written statement was a legitimate and autonomous means of participation.

In *Larouche*, the right to participate takes a more atypical form. In deciding the issue of whether to view child pornography images at the sentencing stage, the judge recognized that the CVBR requires that the rights of victims, including to safety and privacy, be taken into account¹¹⁷. However, he refuses to assume what the victims would want and considers that such a conclusion would be stereotypical¹¹⁸. Their participation can therefore only be done from their own voice, not by substitution.

¹¹⁰ *R v. LA*, 2023 SKCA 136 (CanLII) at para 57–58, 204–205, [online](#): (D&P Court of Saskatchewan).

¹¹¹ Perrin, *supra* note 7 at p 19; Manikis, « Imagining the Future of Victims' Rights in Canada », *supra* note 9 at 183.

¹¹² *R v. Sklivas*, 2020 QCCQ 3905 at para. 33, 75–82, [online](#): (Court of Québec).

¹¹³ *Ibid* at 88-90.

¹¹⁴ Manirabona, *supra* Note 10 at 183-185.

¹¹⁵ *R c. Poulin*, 2023 QCCQ 7556 at para 8, [online](#): (Court of Québec).

¹¹⁶ *Ibid* at para 17.

¹¹⁷ *R c. Larouche*, 2022 QCCQ 6917 (CanLII) at para 19–21, [online](#): (Court of Québec).

¹¹⁸ *Ibid* at para. 26-27.

Outside Quebec, the same tension is clearly apparent. In *MacRoberts*, the victim and her mother read their statement in court, and the court treated this as essential to understanding the extent of the trauma and the depth of the family breakdown¹¹⁹. In *I.F.L.*, the judge reaffirmed that the victim's participation was "an important and essential part of the sentencing process",¹²⁰ but immediately stated that this participation must comply with the forms prescribed by s. 722, precisely to avoid vindictive remarks or inappropriate recommendations on the sentence¹²¹. The flexibility allowed in this case remains exceptional and closely controlled.

Roberts-Stevens reveals another side of this participation, the institutional obligation to recognize victims' place at the sentencing stage. In denying a request for recusal, the judge emphasized that it was legitimate to inform the victim's family of their right to produce a statement about the impact of the crime, since it is a recognized right and such a statement must be considered in sentencing¹²². But this recognition does not detract from the fact that the judge remains solely responsible for determining the sentence.

The structural limits are even clearer in *Reid* and *L.A.* In *Reid*, the court recognized that the victim impact statement gives the victim impact statement a voice, informs the judge and reinforces the legitimacy of the process¹²³, but refused to order a publication ban on the contents of the statement, even though the absence of such a measure might deter the victim from participating.¹²⁴ In *L.A.*, the Court of Appeal affirmed even more clearly that victims can describe the harm suffered but not directly influence the severity of the penalty. Appeals for leniency, especially from minor or young adult victims of intra-family sexual abuse, must be received with extreme caution¹²⁵.

The *CBC* series of decisions confirm that section 14 can operate outside the framework of sentencing. The Court recognizes that victims have "active" rights

¹¹⁹ *R v. MacRoberts*, [2018] CFSP 7 at para 21–22, [online](#): (Supreme Court of Prince Edwards Island).

¹²⁰ *R v. IFL*, 2022 ONCJ 310 at para 3–4, [online](#): (Ontario Court of Justice).

¹²¹ *Ibid* at para. 5–7, 11.

¹²² *R v. Roberts-Stevens*, 2018 ONSC 6184 at para 45, [online](#): (Ontario Superior Court of Justice).

¹²³ *R v. Reid*, 2019 ONCJ 492 (CanLII) at para 5–7, [online](#): (Ontario Court of Justice).

¹²⁴ *Ibid* for 8–12, 14–19.

¹²⁵ *R v. L.A.*, *supra* footnote 109 at para 73–75, 88–91, 204–205.

under the CVBR and allows them to express their views in litigation to unseal information, without conferring party status on them or turning their participation into an ordinary adversarial process¹²⁶.

In short, participation recognized by the CVBR remains expressive rather than determinative¹²⁷. The law on sentencing and on victim impact statements confirms that the victim's voice is recognized as contributing to the criminal process, but not as a real procedural counterweight¹²⁸.

2.4 The right to restitution: an unfulfilled promise of reparation

Sections 16 and 17 provide that "Every victim has the right to have a restitution order against the offender considered by the court" and that the victim for whose benefit such an order is made has the right, in the event of non-payment, to have it registered as an enforceable civil judgment¹²⁹. Yet, ten years after the adoption of the CVBR, these provisions appear to have produced very little significant case law benefitting individual victims¹³⁰.

The limited use of these provisions is primarily due to a problem with the definition of a victim. The CVBR defines a victim as an individual who has suffered property, bodily injury, mental distress or economic loss as a result of the commission of an offence¹³¹. This definition does not include legal persons. However, the few decisions in which sections 16 and 17 are explicitly mentioned often concern companies rather than an individual person. The clearest example is the *McLean* case, where the court cited sections 16 and 17 and then ordered restitution of \$225,000 to a commercial

¹²⁶ Provincial Court of Nova Scotia, 13/09/2021 *Canadian Broadcasting Corporation v. Canada (Border Services Agency)*, *supra* note 56 at para 23-24; *Canadian Broadcasting Corporation v. Canada (Border Services Agency)*, *supra* note 60 at paras 37, 60.

¹²⁷ Manirabona, *supra* note 10 at 184.

¹²⁸ Richard Dubé and Margarida Garcia, « Le juge et la victime dans le cadre du processus de détermination de la peine » (2019) 60:4 cd1 909–935, [online](#).¹; Elizabeth Janzen, «The Dangers of a Punitive Approach to Victim Participation in Sentencing: Victim Impact Statements after the Victims Bill of Rights Act» (2020) 43:4 Manitoba Law Journal 85; Manirabona, *supra* Note 10 at 183-185.

¹²⁹ *R v. McLean*, 2016 BCSC 2191 at para 32, [online](#): (Supreme Court of British Columbia).

¹³⁰ *Compensation for Victims of Crime*, by Jo-Anne Wemmers, Office of the Federal Ombudsperson for Victims of Crime (OFOVC), March 2021 at 37-38.

¹³¹ *R v. Larivière*, 2017 QCCQ 9570, [online](#): (Court of Québec).

company identified as a victim of the fraud¹³². The close relationship between the officer-owner and the company, which reflected the impact of the crime on both of them¹³³, appears to be the reason for the invocation of the CVBR.

It is surprising, however, that in the end, the court only ordered compensation for the benefit of the company, thus placing itself under the *Criminal Code*, which is less enforceable than the CVBR. It is on the strength of this difference between the two legal frameworks that the court denied the defence's argument in *Larivière*, which relied on the CVBR to argue that there was no basis to order compensation for the benefit of a corporation¹³⁴.

These rare precedents illustrate the largely symbolic value of the right to restitution under the CVBR¹³⁵. This difficulty helps to explain why research based on the CVBR and sections 16 and 17 identifies so few decisions in which an individual victim would have actually obtained compensation. In practice, when restitution is contemplated, prosecutors and courts seem to look first to the more familiar framework of the *Criminal Code*, namely sections 738 et seq., rather than to sections 16 and 17 of the CVBR. This is reflected in the *McLean* decision. The court replicates both the provisions of the CVBR and the sentencing objectives of the *Criminal Code*, including that of "providing reparations for harm done to the victim and to the community."¹³⁶ In other words, restitution is still thought of primarily as a component of the law of sentencing, not as the autonomous effect of a subjective right recognized to victims by the CVBR¹³⁷.

This marginality can also be explained by the very structure of the regime. As Wemmers points out, Canada has gradually shifted the focus from public compensation to the offender's responsibility to compensate the victim, particularly since the adoption of the CVBR and the standardized restitution application form. But this approach faces a very concrete limitation: "offenders are often poor, which means that the judge is unlikely to impose a restitution order"; furthermore, when the

¹³² *R v. McLean*, *supra* note 128 at para 67.

¹³³ *Ibid* at para. 25-27.

¹³⁴ *R v. Larivière*, *supra* note 130 at paras 44 et seq.

¹³⁵ Wemmers, *supra* note 129 at 37-38; Perrin, «Out of the Shadows», *supra* note 9 at 499.

¹³⁶ *R v. McLean*, *supra* note 128 at para 33-34.

¹³⁷ Wemmers, *supra* note 129 at 37-38.

order is not enforced, "the victim's only recourse is to have the order registered in civil court as a judgment," which remains costly and uncertain¹³⁸.

Wemmers is even clearer about the structural nature of the problem. According to her, the CVBR "fails to mention state compensation programs," an omission she described as "a noteworthy omission given the importance of compensation programs for victims."¹³⁹ Further, she adds that "restitution by the offender is not an option for most victims and, if the offender is not able to compensate the victim, the state has an obligation to help victims."¹⁴⁰ This analysis confirms that the limited effectiveness of sections 16 and 17 is not only the result of under-use of litigation.¹⁴¹ It reflects a more profound absence of institutionalization of a true public reparations regime at the federal level¹⁴².

In this regard, Quebec offers an important counterpoint. As Wemmers shows, interprovincial differences in compensation remain significant, and access to compensation varies widely across the country due to the lack of consistent federal standards¹⁴³. In this fragmented landscape, the *Act to Assist Persons who are Victims of Criminal Offences and to Facilitate their Recovery* (LAPVIC) is precisely intended to compensate, at least in part, for the inadequacy of penal restitution mechanisms by strengthening an administrative framework for the support, compensation and recovery of victims¹⁴⁴. Recent Quebec literature shows that, particularly for victims of sexual or domestic violence, effective reparation occurs much more through administrative regimes than through penal restitution orders¹⁴⁵.

Finally, the number of references to reparation in cases that do not truly fall within the scope of sections 16 and 17 of the CVBR must be qualified. The article by

¹³⁸ *Ibid.*

¹³⁹ *Ibid* at p. 5.

¹⁴⁰ *Ibid* at 9.

¹⁴¹ *Ibid* at p. 5.

¹⁴² *Ibid* at 9.

¹⁴³ *Ibid* at pp 18-19, 41-46.

¹⁴⁴ Government of Quebec, *An Act to assist and promote the recovery of victims of criminal offences*, 2021 1st, [online](#).

¹⁴⁵ Michaël Lessard, "L'indemnisation des victimes d'actes criminels au Québec: la loi exclut-elle les victimes de violences sexuelles ou conjugales", *Érudit* (2020) 61:4 Les Cahiers de droit 1097-1154, [en ligne](#).

Manirabona and Lap  rou-Schneider on the remediation agreement with NLS-Lavalin is helpful in this regard. The authors show that, in this context, reparation derives from the special regime of reparations agreements of the *Criminal Code*, which expressly provides that the agreement must contain "an indication of any reparations" for the harm caused to victims including restitution referred to in sections 738(1)(a) or (b) *Criminal Code*¹⁴⁶. In the *NLS-Lavalin* case, the remedy took the form of an amount agreed upon by the prosecution and the defence, subsequently approved by the court, namely \$3,492,380 for the benefit of the Jacques Cartier Champlain Bridge Corporation Inc¹⁴⁷. This mechanism is therefore not a true illustration of the autonomous effectiveness of sections 16 and 17 of the CVBR. It is subject to a specially negotiated regime, distinct from the ordinary law of individual victims. In this sense, the CVBR does recognize a right to restitution, but it has neither normalized its judicial use nor institutionalized the conditions necessary for its effective realization.

A comparative perspective allows us to better understand the limitations of the Canadian model. Within the European Union, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime imposes an obligation on Member States to ensure effective access to redress and compensation for victims¹⁴⁸. In this context, restitution is a structuring objective of criminal justice. Conversely, Canada has favoured a fragmented federal approach, leaving the provinces with the primary responsibility for ensuring financial compensation for victims. This is part of the structural constraints of the CVBR, which now need to be examined.

¹⁴⁶ Amissi Manirabona, " L'int  r  t de la victime dans l'accord de r  paration obtenu par SNC-Lavalin : analyse critique    la lumi  re du droit fran  ais » (2022) 56:3 Amissi Manirabona, « L'int  r  t de la victime dans l'accord de r  paration obtenu par SNC-Lavalin : analyse critique    la lumi  re du droit fran  ais » (2022) 56:3 *Revue juridique Th  mis de l'Universit   de Montr  al*. 509-525 at 511, 520-521.

¹⁴⁷ *Ibid* at pp 521-524.

¹⁴⁸ European Parliament and Council of the European Union, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA, OJ L 2012, [online](#).

III. Structural resistance to the effectiveness of victims' rights

An analysis of the first ten years of the CVBR shows that it has changed certain practices and, above all, the legal language relating to victims. But this evolution has not shifted the centre of gravity of the criminal trial. Three structural resistances explain this discrepancy between normative recognition and effectiveness: the centrality of the prosecutor's discretionary power (3.1), the absence of an autonomous procedural status for the victim (3.2) and the constitutional primacy of the rights of the accused (3.3).

3.1 Crown Discretion

The first structural limit is the state monopoly of prosecution. In the Canadian adversarial tradition, the Crown decides the appropriateness of charges, the presentation of the evidence and, to a large extent, the strategy of the case. The victim, even if recognized as the holder of certain rights, does not become a co-holder of the public action. The case law clearly demonstrates this.

In *Waterloo Regional Police Services Board (Re)*, the adjudicator refused to transform the victim's right to information into a real right of access to or control over police and institutional decisions. Similarly, in *Alberta Justice and Solicitor General (Re)*, it is made clear that the CVBR does not remove the discretion of the prosecutor or that of the public authorities called upon to manage criminal investigations. In these cases, the CVBR is recognized as a source of guidance, but it is not accepted as a basis for review of the discretionary decisions.

The *Letourneau* decision illustrates even more clearly the practical immunity of the power of prosecutorial discretion¹⁴⁹. The court found that the victim had not been adequately informed of a joint sentencing submission made by the prosecutor and defence, despite the normative expectations of the *Criminal Code* and, more broadly, the CVBR. However, no procedural consequences flowed from this breach. The judge acknowledged the deficiency but refused to intervene in a way that would affect the prosecution's management of the case. The obligation was recognized but not enforced.

¹⁴⁹ *R c. Letourneau*, *supra* note 77.

This gap between recognition and remedy is at the heart of the problem¹⁵⁰. As long as discretionary decisions by the public prosecutor's office cannot be subject to targeted review, the rights of victims remain dependent on institutional culture, internal protocols and the varying quality of local practices. Authors on victims' rights describe this dependence precisely as one of the most persistent gaps between formal recognition and real effectiveness¹⁵¹.

International comparison highlights this reality. In the United States, the *Crime Victims' Rights Act* of 2004 provides, in certain circumstances, for the possibility for the victim to apply to a federal court when they believe that some of their procedural rights have been violated. In the European Union, Directive 2012/29/EU requires Member States to ensure an effective remedy and a minimum level of procedural protection. Canada has made a different choice, that of preserving the integrity of the monopoly of prosecution, even if it means reducing the coercive scope of victims' rights.

3.2 The Lack of Autonomous Procedural Status of the Victim in the Criminal Trial

The second structural limitation lies in the absence of an autonomous procedural status for the victim. The crime continues to be conceived primarily as a breach of public order, which justifies pitting the state against the accused. Although the victim is concerned by the judicial handling of the crime, they are neither a subject of public prosecution nor a party to the trial, so they do not have equal rights before the law or equality under the law¹⁵².

This exclusion is noticeable in all the case law relating to the right to participate. In *Sklivas*¹⁵³, the victim impact statement is accepted and used to inform the analysis of aggravating factors at the time of sentencing. In *Poulin*¹⁵⁴, the court also accepted the written victim impact statement as a legitimate means of contextualizing the

¹⁵⁰ Manikis, « Imagining the Future of Victims' Rights in Canada », *supra* note 9 at 183; Perrin, "Out of the Shadows", *supra* note 9 at 499.

¹⁵¹ N. Young and Dhanjal, *supra* note 7 at 40; Wemmers and Raymond, "Justice and the Victims", *supra* note 87; Illingworth and Ferrara, *supra* note 76 at 5-7.

¹⁵² Daniel Proulx, "Le droit à l'égalité : pierre angulaire de la Charte québécoise ?" (2015) *Revue québécoise de droit international*.

¹⁵³ *R c. Sklivas*, *supra* note 111.

¹⁵⁴ *R c. Poulin*, *supra* note 114.

consequences of the crime. In both cases, the victim's word is recognized as relevant. But this recognition does not change the structure of the adversarial debate, nor the control of the evidence, nor the decision-making power of the judge. The victim intervenes in the trial, without intervening in the trial¹⁵⁵.

These limits are even clearer in *Reid* and *L.A.*¹⁵⁶. In *Reid*, the victim wanted to make a statement of the impact of the crime on them on the condition that there be a publication ban on the contents of that statement. This evokes the private nature of the consequences of the crime and the public nature of its use¹⁵⁷. The court refused the publication ban sought by the victim, for lack of sufficient legal basis but above all in the name of the public's right to know and in the name of the proper administration of justice¹⁵⁸. In *L.A.*, one of the accused's grounds of appeal is that the trial judge refused to hear orally from the victims whose statement of the impact of the crime on them implored leniency for their abusive father. On appeal, these victims are reduced to producing, via the accused, affidavits to inform the court of their point of view. The Court of Appeal noted that victims can describe the harm they have suffered, but do not have a right to recommend leniency or the severity of the sentence as if they themselves were participating in the trial. Their right to participate did not elevate them to the status of a party, so it is up to the prosecutor to ensure that their statement does not contain inappropriate comments¹⁵⁹. Their words remain admissible as contextualization, not as autonomous normative intervention¹⁶⁰.

The Canadian doctrine on *empowerment* and the experience of victims is consistent with this observation. The work of Cyr and Wemmers clearly shows that victims can be recognized, listened to and consulted while remaining structurally deprived of effective representation in the system¹⁶¹. In a similar manner, Dubé and Garcia show

¹⁵⁵ Manirabona, *supra* Note 10 at 183-185; Manikis, «Imagining the Future of Victims' Rights in Canada», *supra* note 9 at 183.

¹⁵⁶ *R v. Reid*, *supra* note 122; *R v. L.A.*, *supra* note 109.

¹⁵⁷ *R v. Reid*, *supra* note 122 at paras 9, 36.

¹⁵⁸ *Ibid* at paras. 67-68.

¹⁵⁹ *R v. L.A.*, *supra* note 109 at para 67.

¹⁶⁰ Manirabona, *supra* note 10 at 184.

¹⁶¹ Cyr and Anne Wemmers, *supra* note 87.

that, in the context of sentencing, the victim acquires increased visibility without becoming a true autonomous centre of legal claims¹⁶². Janzen, for his part, insists on the fundamentally regulated nature of participation by victim declaration, which should not be confused with a transformation of the procedural structure itself¹⁶³.

There are certainly some signs of change. In *Larouche*, the court considered the possibility of appointing a lawyer to represent the interests of certain victims in a sensitive procedural context¹⁶⁴. Such decisions are important because they suggest that Canadian law may allow, on an exceptional basis, a form of differential representation of victims¹⁶⁵. But it remains precisely that: exceptional. It does not change the general status of the victim. It reveals only a still marginal potentiality.

3.3 The Constitutional Primacy of the Rights of the Accused

The third limitation has to do with the hierarchy of norms. The CVBR has a strengthened normativity, but it remains subordinate to a constitutional order in which the guarantees of the accused occupy a superior place. Any interpretation of the CVBR must be consistent with sections 7 and 11 of the *Charter*. As soon as a claim based on victims' rights comes into tension with these guarantees, the courts are inclined to give precedence to the rights of the accused or the constitutional principles that structure the criminal trial.

The *Reid* decision provides a clear illustration of this. The court refused a measure requested for the benefit of the victim because it would risk affecting the publicity of the proceedings, which is part of the integrity and constitutional legitimacy of the trial. Similarly, in *L.A.*, the Saskatchewan Court of Appeal reiterated that the victim's right to participation cannot infringe on judicial autonomy in sentencing. In these decisions, victims' rights are recognized, but they are hierarchically contained.

This point is essential. The rights of the accused are not only older or more developed. They are accompanied by powerful redress mechanisms that may include the

¹⁶² Dubé and Garcia, *supra* note 127.

¹⁶³ Janzen, *supra* note 127.

¹⁶⁴ *R c. Larouche*, *supra* note 116 at para 28.

¹⁶⁵ Manikis, « Imagining the Future of Victims' Rights in Canada », *supra* note 9 at 183.

violation of the *Charter*, the exclusion of evidence, a stay of cases and constitutional remedies¹⁶⁶. They have no equivalent for victims. As contemporary analyses of the role of constitutional guarantees in criminal procedure show, the entire Canadian structure was first constructed to limit the state vis-à-vis the accused, not to arm the victim against the state or within the trial¹⁶⁷.

The CVBR is not without significance, however. Some recent decisions show that it is beginning to have effect in the interpretation of ordinary statutes, as long as that interpretation remains consistent with the constitutional guarantees of the trial. In *Mund*, the court integrated the CVBR into the application of the *Canada Evidence Act*¹⁶⁸, emphasizing the dignity and psychological safety of victims. In *Canadian Broadcasting Corporation*, the logic of the CVBR inspires the establishment of a specific procedure for the expression of victims' views.

These decisions demonstrate that the CVBR can act as interpretive aid where existing law leaves room for a solution that is more protective of victims' rights. It retracts when a genuine conflict arises with the constitutional rights of the accused. In this sense, it is in line with a more relational conception of criminal justice, in which the response to the crime is not reduced to punishment, but also includes the recognition of the harm and the consideration of its effects on the victim¹⁶⁹. The question arises as to how to activate the normative potential of the CVBR without upsetting the foundations of the Canadian criminal adversarial model?

¹⁶⁶ *Schedule B to the Constitution Act, 1982 (U.K.), 1982, c 11, supra note 41 art 24.*

¹⁶⁷ Terry Skolnik, "Rééquilibrer le rôle de la Cour suprême du Canada en procédure criminelle" (2022) 67:3 McGill Law Journal 259, [online](#).

¹⁶⁸ Parliament of Canada, *Canada Evidence Act (R.S.C., 1985, c. C-5)*, 1985, [online](#).

¹⁶⁹ Tinneke Van Camp and Jo-Anne Wemmers, "La justice réparatrice et les crimes graves" (2011) 44:2 crimino 171–198, [online](#).

IV. Perspectives for Practice: Activating the Normative Potential of the CVBR

If the CVBR suffers less from a lack of recognition than from a lack of effectiveness, the challenge is not to overturn the adversarial model, but to make its application more effective¹⁷⁰. This implies action on judicial interpretation (4.1), professional practices (4.2) and institutional monitoring mechanisms (4.3).

4.1 The CVBR as a structuring interpretive tool for the courts

The first avenue to activate the normative potential of the CVBR is to recognize more explicitly its structuring interpretative function¹⁷¹. Sections 21 and 22 already allow the CVBR to be treated as a preferred policy standard when a criminal, evidentiary or procedural provision leaves room for more than one plausible reading. The courts should therefore engage the CVBR more systematically in the interpretation of the *Criminal Code*, the *Canada Evidence Act* and the collateral rules applicable to criminal trials. Such an approach would be consistent with the principle, well established in Canadian and Quebec law, that rights protection statutes must be given a broad, purposive and purposive interpretation¹⁷².

In this light, the example provided by *Mund* is particularly revealing. By integrating the CVBR into the interpretation of the *Canada Evidence Act*, the judge implicitly recognizes that she can play a role in normative mediation between the interests of victims and the technical requirements of the trial. This approach could be extended in other contexts, such as the disclosure of personal records, the manner of testimony, publication bans or sentencing requests. The CVBR could then function, if not as a fully enforceable charter, at least as a strong interpretive presumption in favour of a reading of the law compatible with the dignity and psychological safety of victims.

In the same spirit, it would be appropriate to introduce graduated appeal mechanisms, limited to the review of procedural regularity rather than to the review

¹⁷⁰ Perrin, *supra* note 7 à la p 3; Manikis, « Imagining the Future of Victims' Rights in Canada », *supra* note 9 at 183.

¹⁷¹ Perrin, *supra* note 7 at 28-29.

¹⁷² Samson, "L'interprétation harmonieuse de la charte québécoise et du code civil du Québec". *supra* note 22; Samson and Senécal, *supra* note 13; McCann, Thiboutot and Le May, *supra* note 13.

of the appropriateness of prosecution decisions. The American model of the *Crime Victims' Rights Act* of 2004 offers an interesting source of inspiration here¹⁷³. Without conferring on victims, a right to direct public proceedings, this regime allows, in certain circumstances, a judicial referral when clearly established procedural rights have been violated.

In the same vein, the role of federal and provincial ombudspersons should be strengthened. Sections 25 and 26 of the CVBR already recognize the importance of complaint mechanisms, but the resulting recommendations generally remain non-binding. Without going so far as to establish a comprehensive litigation regime, these institutions could be strengthened by giving them certain powers of administrative direction, mandatory mediation or systematic monitoring of complaints. Such a development would be a first step towards what might be termed a functional justiciability, i.e. the rights of victims would not yet be fully enforceable in the constitutional sense, but they would cease to be entirely dependent on institutional goodwill.

Finally, the recognition of a right to independent representation in certain sensitive proceedings would strengthen the interpretive function of the CVBR. The recognition of rights has real effect only if their holders have means to assert them. In specific contexts such as debates on certain publication bans, representation of victims' collective interests in complex cases, the ad hoc appointment of an independent lawyer could ensure a minimum procedural presence for the interests of the victim, without conferring on the victim the status of a principal party to the litigation. The initiative observed in *Larouche* shows that such a path is legally possible. It would benefit from being institutionalized.

4.2 The role of judges, prosecutors and lawyers in the implementation of rights

The implementation of the CVBR also depends on the actors who bring the law to life on a daily basis. Judges, prosecutors and lawyers must integrate its principles not as mere discursive ornaments, but as relevant elements of reasoning and professional conduct.

On the judges' side, the main issue is the ability to use the CVBR as a framework of reasoning. Recent case law shows signs of progress in this direction, particularly

¹⁷³ *Crime Victims' Rights Act*, 18 US Code § 3771 2004, [online](#).

where courts rely on dignity, psychological safety or the prevention of re-victimization to justify certain procedural measures. This trend should be consolidated by improved continuing training of judges on the realities of victimhood, the effects of trauma and the modalities of respectful judicial communication.

Quebec has already opened a promising path in this regard with the training developed as part of the specialized courts in sexual violence and domestic violence, established in 2021¹⁷⁴. These initiatives demonstrate that it is possible to articulate procedural law, understanding of trauma and attention to the experience of victims more closely without undermining the fundamental guarantees of the accused. A gradual expansion of this type of training, at the federal and provincial levels, would help to make the CVBR more effective where it is already potentially effective, namely in the interpretation of existing rights.

The role of the public prosecutor's office is just as central. As long as prosecutions retain a monopoly on prosecution, the effectiveness of victims' rights will depend largely on how prosecutors integrate the CVBR into their practice. This involves, at a minimum, clearer internal protocols on the duty to inform, consultation with victims before certain important decisions, the management of victim impact statements and the consideration of psychological safety in the conduct of the proceedings. Greater transparency in these practices would help to reduce the gap between the rights proclaimed by the CVBR and their actual implementation.

Defence lawyers also have a role to play, even if this role is more indirect. From a more relational criminal justice perspective, the protection of the rights of the accused and the consideration due to victims should not be conceived as systematically antagonistic interests. Professional practice that is sensitive to the dignity of victims, for example in the conduct of cross-examination, in the handling of requests for access to personal records, or in the positions taken on certain protective measures, can contribute to a more balanced implementation of the CVBR without sacrificing the requirements of full answer and defence¹⁷⁵.

¹⁷⁴ Catherine Gareau-Blanchard et al, *Formation Rebâtir : violence sexuelle : rapport final déposé au ministère de la Justice - Gouvernement du Québec*, Montréal, CRIPCAS, Centre de recherche interdisciplinaire sur les problèmes conjugaux et les agressions sexuelles, 2023.

¹⁷⁵ Elaine Craig, « The Ethical Obligations of Defence Counsel in Sexual Assault Cases » (2014) 51:2 Osgoode Hall Law Journal 427.

More broadly, the role of legal actors should be considered in the light of a gradual transformation of the professional culture of criminal trials¹⁷⁶. The purely adversarial logic, so central to the adversarial tradition, can make the relational and human dimension of criminal conflict invisible. However, the CVBR introduces a vocabulary (dignity, respect, safety, participation) that calls for a different way of thinking about the place of the victim in the process. Integrating this vocabulary into the daily practices of judges, prosecutors and lawyers is an essential condition for the CVBR to cease to be a peripheral norm.

4.3 Pragmatic and legally realistic avenues for reform

More structural reforms are needed to make the CVBR coherent.

A first avenue lies in the institutionalization of the monitoring and evaluation of victims' rights. Today, the implementation of the CVBR is based on a complex network of federal and provincial programs, with no centralized accountability mechanism. The lack of systematic empirical data on the number of complaints, the nature of the alleged violations, the decisions rendered and the level of satisfaction of victims precludes a serious assessment of the practical effects of the law. However, it is difficult to reinforce what we do not measure.

In this regard, a federal model for a mandatory annual report consolidating statistics nationally on the application of the CVBR would be both a modest and a structuring reform. Such a mechanism could be coordinated by the Office of the Federal Ombudsperson for Victims of Crime, in partnership with Statistics Canada and provincial departments of justice. It would harmonise data collection practices, identify gaps between jurisdictions and enhance the transparency of the system. In the absence of such monitoring, the effectiveness of the CVBR will continue to be assessed in an impressionistic manner rather than on the basis of comparable and cumulative data.

This data collection should be accompanied by increased intergovernmental cooperation. Canadian federalism justifies a shared implementation of policies relating to victims, but it should not be used as an excuse for the dispersion of standards. An annual conference of ministers of justice dedicated to the evaluation

¹⁷⁶ Elaine Craig, *Putting Trials on Trial. Sexual Assault and the Failure of the Legal Profession*, Montreal, McGill-Queen's University Press, 2018 publisher: Université Laval Faculty of Law.

of the CVBR, supported by a pan-Canadian performance framework, would monitor progress and share some best practices. Measurable indicators such as victim information rates, timeliness of complaint responses, remedies exercised, self-satisfaction and access to safeguards could help establish a culture of evidence-based ongoing evaluation.

Beyond governance, the implementation of the CVBR would benefit from being more clearly aligned with a philosophy of relational justice. At present, the CVBR mainly improves the management of victims within the traditional criminal trial. It does little to change the way in which the justice system conceives the relationship between the state, the perpetrator and the victim. This is why the more explicit integration of restorative approaches deserves to be considered as a complementary avenue for reform. Restorative justice, already experienced in several Canadian contexts, does not replace the criminal trial, but can complement its meaning by offering a space where the victim participates in the recognition of the wrong and the reconstruction of social ties¹⁷⁷.

Finally, empirical research and the dissemination of knowledge must be more valued. Partnerships between researchers, judges, prosecutors, victim support organizations and policymakers are essential to transform theoretical advances into institutional practice. The most promising reforms will be those that combine institutional prudence and normative ambition, with a view to progressive justiciability rather than a brutal break with the Canadian model.

¹⁷⁷ Van Camp and Wemmers, *supra* note 168.

Conclusion

The case law from 2015 to 2025 reflects an ambivalent approach to the CVBR¹⁷⁸. On the one hand, the CVBR has consolidated the place of victims in the judicial discourse. On the other hand, it remains locked in a declaratory regime that proclaims rights without conferring on them any really binding means of enforcement. A study of the decisions released since its enactment demonstrates a differentiated effectiveness in this respect. The rights to protection and participation have made significant progress, while the rights to information and restitution remain fragile, intermittent and often dependent on institutional discretion¹⁷⁹.

This asymmetry is not trivial. It reveals the persistence of deep-seated structural checks and balances in the Canadian criminal justice system. The restrictive covenants in the CVBR, particularly those in sections 19 to 29, reflect Parliament's explicit desire to preserve the primacy of the state in the conduct of the criminal trial. Crime continues to be conceptualized above all as an attack on public order rather than on the person. In this context, the victim can be recognized, consulted, protected, sometimes heard, but they are not yet vested with a real capacity for legal action. The CVBR has therefore not changed the structure of the criminal trial. Rather, it has initiated a cultural shift towards a more empathetic, caring and, to some extent, more inclusive justice.

The real challenge for the next decade is not to break with the foundations of the Canadian adversarial model. Rather, it lies in the ability of legislators, courts and penal institutions to transform the CVBR from a policy standard to a more effective enforcement instrument. This presupposes a more graduated justiciability, based on targeted remedies and on the possibility, in certain sensitive proceedings, of independent legal representation of the victim's interests. It also requires a more rigorous institutionalization of rights monitoring, in order to make implementation gaps visible, promote accountability, and reduce the disparities produced by federal fragmentation. Finally, it implies a more profound transformation of judicial practices themselves, through training, empirical research and the integration of restorative and relational approaches.

¹⁷⁸ Perrin, *supra* note 7 at 3; N. Young and Dhanjal, *supra* Footnote 7 at 20-21.

¹⁷⁹ Perrin, *supra* note 7 at 28-29; Illingworth and Ferrara, *supra* note 76 at 5-7; Wemmers, *supra* note 129 at 37-38.



These developments are not intended to subvert the logic of Canadian criminal law, but to complete its normative coherence. They are based on the premise that justice is not only measured by the ability to punish the perpetrator of an offence, but also by the ability to fully recognize the harm suffered by the victim and to respond to it seriously. From this perspective, the CVBR occupies a unique place in the Canadian history of victims' rights. It is situated between symbolism and effectiveness, between recognition and execution, between the word granted and the action still refused.

Its future will ultimately depend on the ability of Canadian law to make this recognition a true normative force¹⁸⁰. The challenge is no longer just to have a justice system that listens to victims, but to build one that gives them real ways of information, protection, participation and, where possible, restitution.

¹⁸⁰ Perrin, *supra* note 7 at 29.