



ENGAGEMENT • SUMMER 2017

Getting fair outcomes for victims in Canada's criminal justice system

Canadian Victims Bill of Rights

What is the *Canadian Victims Bill of Rights*?

The *Victims Bill of Rights Act*¹ was passed by Parliament on April 23, 2015, creating the *Canadian Victims Bill of Rights*² (CVBR) and amending other existing federal laws – specifically the *Criminal Code*, the *Corrections and Conditional Release Act* (CCRA), the *Canada Evidence Act* (CEA) and the *Employment Insurance Act*.

The CVBR provides rights for victims of crime at the federal level³, which include the right to information, protection, participation, and to seek restitution. Under the CVBR, victims also have the right to make a complaint to a federal department or agency if they believe that their rights have not been respected.

What rights do victims currently have under the CVBR?

The CVBR provides four main types or categories of rights – the right to information, protection, participation and restitution.

Right to information

Every victim has the right to general information, *on request*, about:

- > the criminal justice system and the role of victims
- > the services and programs available to victims, including restorative justice programs
- > their right to file a complaint for any infringement or denial of their rights under the CVBR

As well, every victim has the right to case-specific information, *on request*, about:

- > the status and outcome of the investigation
- > the location of the proceedings, when they will occur, and their progress and outcome

- > reviews related to conditional release of the offender, and the timing and conditions of release
- > reviews or release of accused who are found not criminally responsible or unfit to stand trial on account of a mental disorder
- > victims about its RJ programs and its victim-offender mediation services (though participation is voluntary)

Right to protection

Every victim has the right to:

- > have "their security considered by the appropriate authorities in the criminal justice system"
- > have "reasonable and necessary measures" taken to protect them from intimidation and retaliation
- > request that their privacy be considered
- > request their identity be protected when appearing as a witness
- > request testimonial aids when appearing as a witness in proceedings

Right to participation

Every victim has the right to:

- > convey their views about decisions in the criminal justice system that affect their rights under the CVBR and to have their views considered
- > present a victim impact statement and have it considered in the criminal justice system

Right to restitution

Every victim has the right to:

- > have the court consider making a restitution order against the offender

- > have the order entered as a civil court judgment that is enforceable against the offender, if a restitution order is made and but not paid

In addition to these four types of rights, the Act created a requirement for every federal department, agency or body in the criminal justice system with responsibilities under the CVBR to have a complaints mechanism in place. Mechanisms have been implemented to receive complaints from victims, review the complaints, take steps to resolve them, and make recommendations to correct any violation or denial of victims' rights, and inform victims about the results of the review, including any recommendations that were made.

- If the victim is not satisfied with the response to their complaint, they can seek a review by "any authority that has jurisdiction to review complaints in relation to that department, agency or body".

Limitations of the CVBR

- > The rights are to be interpreted and applied in a manner that is reasonable in the circumstances and not likely to interfere with the proper administration of justice (for example, by causing excessive delay in, or compromising or hindering, the investigation or prosecution, or by interfering with police, ministerial, prosecutorial discretion).
- > The Act is also not to be interpreted in a manner that could endanger an individual's life or safety or cause injury to international relations, national defence, or national security.
- > The CVBR does not grant victims or those acting on their behalf any "standing" or party status.
- > It does not apply to service offences and therefore excludes application in the military justice system.

Considerations

- > The CVBR provides victims with rights to specific types of information, *on request*. If victims are not aware of their rights, or even of the types of information available, how can they be expected to know to request it? Furthermore, no clear authorities or responsibilities have been assigned; there is a lack of clarity about who is responsible for providing the information and at what point in the criminal justice continuum.

- > The CVBR does not include a training strategy to ensure that criminal justice system personnel likely to come into contact with victims – for example, police, Crown, corrections and court staff, as well as victim services personnel – receive either general or specialist training on their obligations under the CVBR.
- > The CVBR specifies that victims should receive information but does not require agencies to provide victims with explanations about the decisions that are made throughout the process. For example, absent from the CVBR is the right to review a decision by police or the Crown not to lay charges, or a right to review a Crown decision not to prosecute.
- > The CVBR does not create any right to a civil cause of action or to damages in relation to any infringement or denial of a CVBR right. Nor does it create a right to appeal an order or judgment. Practically speaking, this means that victims are unable to initiate court action or seek damages if their rights under the CVBR are infringed or denied. Likewise, victims are unable to formally appeal any decision or order based on an alleged violation of their rights.

Ideas for change

- > Manikis has observed that, in Canada, a uniform document that describes each agency's role in informing victims at the various stages of the criminal justice system could help achieve increased compliance and accountability, reduce confusion among the various agencies and help to meet victims' expectations. Victims would be more readily able to identify the various agencies involved in breaching their rights. Manikis notes that "a possible way forward in Canada – supported by evidence of good practice in other jurisdictions – would be either to create more detailed and clear legislation or to have an accompanying guideline to [the] legislation with more detailed and comprehensive obligations regarding the different service rights, particularly the right to information."⁴
- > The Federal Ombudsman for Victims of Crime has put forward a number of recommendations for strengthening the CVBR which are available on the Office's website:
<http://www.victimfirst.gc.ca/res/pub/vbra-rs/index.html>.

More about the CVBR

The CVBR sets out the definition of a “victim” as “an individual who has suffered physical or emotional harm, property damage or economic loss as a result of the commission or alleged commission of an offence”. For the CVBR to apply, the victim has to be present in Canada, or be a Canadian citizen, or permanent resident.

A victim first acquires rights at the moment that the offence is reported to the authorities; it doesn't matter if the accused has been prosecuted or not, as long as a complaint has been made to the police or the Crown. The legislation applies to victims of criminal offences throughout the criminal justice process, from the time of

reporting, and through the investigation, prosecution, proceedings of courts and Review Boards (in respect of accused who are found not criminally responsible on account of mental disorder or unfit to stand trial), and the corrections and conditional release processes.

The CVBR provides that where the victim is deceased or incapable of acting on their own behalf (i.e., the victim is a child, ill or otherwise incapacitated), certain individuals, such as a spouse or common-law partner, a relative or a dependant, or someone responsible for the care or support of that person or of their dependant, by law or custody, may exercise the victim's rights on their behalf.

ENDNOTES

¹ *Victims Bill of Rights Act (S.C. 2015, c. 13)*

² *Canadian Victims Bill of Rights (S.C. 2015, c. 13, s. 2)*

³ The majority of provinces and territories have also enacted their own legislation listing a number of victims' rights.

⁴ Marie Manikis, “Imagining the Future of Victims' Rights in Canada: A Comparative Perspective”, *Ohio State Journal of Criminal Law*, (Vol 13:1), 2015, 163-186, p.173.