

Canadian Victims Bill of Rights

Victim Service Worker Webinar

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*Please Note:

This presentation is intended to be a high level overview and is not intended to provide legal advice.

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Webinar Format

- ▶ If you are using the conference call line, please mute your phone by dialing *6
- ▶ Write in your questions via Lync at any time during the webinar.
- ▶ The Panel will address questions and areas of interest towards the end the session.
- ▶ If you're joining by conference call, the panel will also invite you to ask questions towards the end of the webinar.

Canadian Victims Bill of Rights

CANADIAN VICTIMS BILL of RIGHTS

The Canadian Victims Bill of Rights will be enacted in 2015.

As set by the Department of Justice

Victims will have a better understanding of their own rights.

Victims will be able to make decisions about their future, including how to handle their recovery and safety.

Victims will be able to exercise their rights to understand the criminal justice system.

Where victims of violence experience an emergency

Victims will have a better understanding of their rights.

Victims will be able to make decisions about their future, including how to handle their recovery and safety.

Victims will be able to exercise their rights to understand the criminal justice system.

Where victims of violence experience an emergency

Victims will have a better understanding of their rights.

Victims will be able to make decisions about their future, including how to handle their recovery and safety.

Victims will be able to exercise their rights to understand the criminal justice system.

RIGHT TO INFORMATION

Every victim has the right to request information about:

- (1) the criminal justice system and the role of victims in it;
- (2) the services and supports available to victims, including recovery services; and
- (3) the right to file a complaint for a violation or denial of any of their rights under this Act.

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RIGHT TO PARTICIPATION

Every victim has the right to express their views about decisions to be made by appropriate authorities in the criminal justice system that affect the victim's rights under this Act and to have their views considered.

Every victim has the right to present a victim impact statement to the appropriate authorities in the criminal justice system and to have it considered.

RIGHT TO PROTECTION

Every victim has the right to have their identity protected by the appropriate authorities in the criminal justice system.

Every victim has the right to have their name and recovery measures, including the appropriate authorities in the criminal justice system, to protect the victim from re-victimization and retaliation.

Every victim has the right to have their privacy protected by the appropriate authorities in the criminal justice system.

Every victim has the right to request that their identity be protected if their law-enforcement file affects it in a way that is prejudicial to the victim.

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[Signature]
Hon. Stephen Harper, PC
Prime Minister of Canada

Overview of Bill C-32

- ▶ Bill C-32: *An Act to Enact the Canadian Victims Bill of Rights and to Amend Certain Acts* will come into force *July 23, 2015.
- ▶ The Act creates the new Canadian Victims Bill of Rights (CVBR) and amends other related federal legislation including the *Criminal Code of Canada (CCC)*, *Corrections and Conditional Release Act (CCRA)* and *Canada Evidence Act (CEA)*.
 - The CVBR creates statutory rights at the federal level for victims of crime.
 - The Bill is intended to provide victims of crime a more effective voice in the criminal justice system.
 - The CVBR introduces a new definition of “victim” and defines who may exercise rights on behalf of a victim.
 - The CVBR also includes a right for a victim to file a complaint if they believe their rights under the CVBR have been denied or infringed.

*Some CCRA amendments will be coming into force at a later date.

When does the CVBR Apply?

- ▶ To offences under **5 Federal Statutes** – *Criminal Code*, the *Youth Criminal Justice Act*, the *Crimes Against Humanity and War Crimes Act*, and to some offences under the *Controlled Drugs and Substances Act* and the *Immigration and Refugee Protection Act*.
- ▶ To victims defined as “an individual who has suffered physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of an offence (this includes direct and indirect victims).

B.C. Victims of Crime Act (VOCA)

- ▶ The provincial *Victims of Crime Act* (VOCA) established in 1996 continues to apply and provides victims with similar rights to information as the CVBR. VOCA applies to victims of offences under all federal and provincial legislation.
- ▶ The Victims of Crime Act provides specific rights to victims of crime including the right to:
 - Be treated with courtesy and respect
 - Receive general information about the justice system
 - Receive certain case-specific information upon request
 - Reasonable opportunity to provide victim impact information
 - Receive independent legal representation where application for disclosure of personal information if eligibility criteria are met

VOCA and the CVBR

How do the Acts apply to different offences?

- ▶ VOCA applies to offences under all federal (e.g. Criminal Code) and provincial statutes (e.g. Motor Vehicle Act).
- ▶ The CVBR applies to offences under 5 Federal Statutes.
- ▶ VOCA responsibilities will continue to apply for all cases that involve victims of offences who are entitled to CVBR rights.

VOCA and the CVBR

How do the Acts apply to different individuals impacted by crime?

- ▶ In **VOCA** a victim is defined as an individual who suffers in relation to an offences
 - Physical or mental injury or economic loss
 - Significant emotional trauma as the result of being a direct victim of an offence or a spouse, sibling, child or parent of the direct victim
- ▶ The **CVBR** defines a victim as an individual who was suffered physical or emotional harm, property damage or economic loss as the result of a commission or alleged commission of an offence.
- ▶ The Act also amends the **Criminal Code** definition of victim to:
 - A person against whom an offence has been committed, or is alleged to have been committed, who has suffered, or is alleged to have suffered, physical or emotional harm, property damage or economic loss as a result of the commission of the offence.
 - And includes for the purposes of 3 Criminal Code sections (including VIS), a person who has suffered physical or emotional harm, property damage or economic loss as the result of the commission of an offence against any other person.
- ▶ The key distinction to be aware of between the Criminal Code and the VOCA and CVBR definitions of victim is that under the Criminal Code definition, a victim is a person against whom an offence is committed, except for the purposes of three Criminal Code sections, where the definition includes indirect victims who have suffered physical or emotional harm, property damage or economic loss from the offence/alleged offence.

VOCA and the CVBR

How do the Acts apply to different individuals impacted by crime? (cont.)

- ▶ Some persons (e.g. secondary victims such as siblings, parents, etc.) may be victims under the CVBR but not under the Criminal Code definition.
- ▶ In these cases, secondary victims are entitled to some of the rights under the CVBR (e.g. the right to information) but may not be entitled to exercise other rights during Criminal Code proceedings (e.g. requesting that their identify be protected) unless they fall within the Criminal Code definition of victim or are a witness.

CVBR Rights

The CVBR creates rights for victims in four key areas:

- ▶ Information Rights
- ▶ Participation Rights
- ▶ Protection Rights
- ▶ Restitution Rights

Information Rights

- ▶ **S. 6 – 8: Every Victim has the right to receive, on request, information about:**
 - The criminal justice system
 - Services and programs for victims, including RJ programs
 - How to file a complaint
 - Status and outcome of investigations
 - Case-specific information about court proceedings
 - Case-specific information about their offenders after sentencing
 - Case-specific information when the accused is unfit or not criminally responsible (NCRMD)

Information Rights: Related Criminal Code Amendments

- ▶ **Plea Agreements:** requires the court to ask prosecutor whether “reasonable steps were taken to inform” victim of plea agreements:
 - For serious personal injury offences & murder.
 - Other indictable offences (with maximum punishment of 5yrs imprisonment or more) where victim asks prosecutor to be informed of plea agreement.
- ▶ **Bail, Probation and CSO Orders:** requires the court to have copies of orders provided to victims upon their request.

Related CCRA Amendments

- ▶ Amendments to the *Corrections and Conditional Release Act (CCRA)* include:
 - Victims can request a recent photograph of the federal offender at time of release.
 - Victims can request to receive updates on an offender's correctional plan progress.

Information Rights: What's New for Victim Services

- ▶ The information rights build on existing victim service practices established in VOCA.
- ▶ The CVBR victim definition includes not only immediate victims but also others who have suffered “physical or emotional harm, property damage or economic loss” as a result of the offence.
- ▶ Victims now have the right to receive additional types of information about:
 - Restorative justice programs.
 - How to file a complaint if a victim feels their CVBR rights have been infringed or denied.

Protection Rights

- ▶ *S. 9: Every victim has the right to have their security considered by the appropriate authorities in the criminal justice system.*
- ▶ *S. 10: Every victim has the right to have reasonable and necessary measures taken by the appropriate authorities in the criminal justice system to protect the victim from intimidation and retaliation.*
- ▶ *S. 11: Every victim has the right to have their privacy considered by the appropriate authorities in the criminal justice system.*
- ▶ *S. 12: Every victim has the right to request that their identity be protected if they are a complainant/witness in justice proceedings.*
- ▶ *S. 13: Every victim has the right to request testimonial aids when appearing as a witness in proceedings relating to the offence.*

Protection Rights: Related Criminal Code Amendments

- ▶ **Testimonial Accommodations:** The Bill amends a number of the *Criminal Code* provisions dealing with testimonial accommodations to make them more accessible to victims and vulnerable witnesses (e.g. testifying by CCTV). Amendments include:
 - For some testimonial accommodations, factors the court to consider includes whether a testimonial accommodation is needed for a victim's security or required to protect a victim/witness against intimidation.
 - Amendments to some testimonial accommodations also include as a factor the court to consider whether an accommodation is needed to protect the witness' identity.
 - Clarifies victims/witnesses can apply for accommodations themselves.

Protection Rights: Related Criminal Code Amendments (cont.)

▶ Testimonial Accommodations Cont.

- Self-represented accused not to x-exam witness
 - Presumptive order expanded to a witness who is a victim for sexual assault & criminal harassment cases. (previously limited to criminal harassment)
- New Order – Non-Disclosure of Witness Identity.

▶ Publication Bans (on information that could identify victim or witness)

- New mandatory ban for victims under 18 for non-sex offences.
- Amendments to increase the availability of publication bans for adult victims.

Protection Rights: Related Criminal Code Amendments (cont.)

- ▶ **Sexual Offences – 3rd Party Record Applications**
 - Expands 3rd Party record regime to include historical offences
 - Judge to “as soon as feasible” inform complainant who participates *in camera* hearing of right to be represented by counsel
 - Judge to consider victim’s personal security in deciding whether to order production of the record to the accused.
- ▶ **Bail Orders – Judge to include in the record of proceedings a statement that they have considered the safety and security of every victim of the offence.**

Protection Rights: What's New for Victim Services

- ▶ **Testimonial Accommodations**—have been made more accessible for both victims and vulnerable witnesses.
 - Victims/witnesses should continue to be directed to Crown Counsel to discuss testimonial aids.
 - Victims have the right to independently request that the Court consider granting a testimonial accommodation; however, victim service workers should encourage and assist victims in discussing their concerns and request for testimonial aids with Crown Counsel.
 - It should be noted that this section provides victims with the right to request accommodations; it is the court who determines whether to grant the request. Like all CVBR rights, it is to be exercised through mechanism provided by law (must meet the criteria in the Criminal Code).

Participation Rights

- ▶ *S. 14: Every Victim has the right to convey their views about decisions to be made by appropriate authorities in the criminal justice system that affect the victim's rights under this Act and to have those views considered*
- ▶ *S. 15: Every victim has the right to present a victim impact statement to the appropriate authorities in the criminal justice system and to have it considered*

Participation Rights: Related Criminal Code Amendments

▶ New Victim Impact Statement Form

- Court must now ask Crown Counsel if reasonable steps were taken to provide the victim with opportunity to prepare a VIS.
- Poem, letter, drawing can be included.
- Victim may present VIS using some testimonial accommodations.
- Victim may have photograph with them taken before offence, when presenting VIS, if in court's opinion it won't disrupt court proceedings.

Participation Rights: Related Criminal Code Amendments (cont.)

- ▶ **New Community Impact Statement Form:** The Bill creates provisions for individual community members to file a Community Impact Statement (CIS) with the court for all types of criminal offences (previously these statements were limited to fraud offences).
- ▶ The new provisions provide that a CIS must be prepared using a mandatory form in accordance with the procedures established by a program designated for that purpose by the provincial government.
- ▶ As the CIS provisions are new, BC, along with other provinces, are exploring options to implement.

Participation Rights: What's New for Victim Services

- ▶ The participation rights articulate many current practices in the criminal justice system which allow victims to convey their views to criminal justice personnel.
- ▶ Key information about VIS and communication with Crown Counsel regarding VIS:
 - The new VIS forms will be used for offences from July 23, 2015 onwards. Victims do not need to redo their VIS if it has been completed prior to July 23, 2015. The role of victim service workers in explaining the forms and assisting the victim to complete the VIS remains the same.
 - Where a victim requests a testimonial accommodation to present their VIS, victim service workers should advise the Crown of this as early as possible.
 - When a victim or family member of a deceased victim wishes to have a photograph of the victim with them when presenting their VIS, it is important to advise Crown Counsel ahead of time.

Restitution Rights

- ▶ *S. 16 : Every Victim has the right to have a court consider making a restitution order against the offender*
- ▶ *S. 17: Every Victim in whose favour a restitution order is made has the right, if they are not paid, to have the order entered as a civil court judgement that is enforceable against the offender*

Restitution Rights: Related Criminal Code Amendments

- ▶ New provisions for restitution orders include:
 - Requires court to consider making restitution order for all offences.
 - New Statement on Restitution Form – to be completed by victims if they are seeking restitution.
 - Judge to ask Crown whether victims have had an opportunity to indicate if they are seeking restitution.
 - Judge may order payment schedule for periodic payments.
 - Judge may order payment to multiple victims and designate priority in payment.
 - Orders may be enforced in civil proceedings if offender fails to pay all of amount ordered by date or fails to make periodic payments.

Restitution Rights: What's New for Victim Services

- ▶ In addition to assisting victims with the VIS, workers may also assist with the Statement on Restitution form.
 - The new Statement on Restitution form will be sent out in the Crown Counsel VIS package.
 - Completed forms must be returned to Crown Counsel prior to sentencing in order to be considered.
 - It is important to be aware that Restitution Order losses/damages must be *readily ascertainable* in order to be considered by the court.
- ▶ If victims have a stand-alone Restitution Order and have questions about enforcing the order, victim service workers can refer victims to the Restitution Program (Restitution@gov.bc.ca).

Important Limitations and Qualifiers for the CVBR

- ▶ While the Canadian Victim Bill of Rights recognizes important rights of victims during the criminal justice process, these rights must be exercised in a manner that is not likely to interfere in the proper administration of justice (e.g. interfere with police or prosecutorial discretion, cause excessive delay, compromise or hinder an investigation or prosecution).
- ▶ The rights of victims under this Act are to be exercised through the *mechanisms provided by law*.
- ▶ A victim is entitled to exercise their rights under this Act only if they are present in Canada or they are a Canadian citizen or a permanent resident.

Summary of Key Changes

- ▶ New definitions of “victim” in the CVBR and the Criminal Code
- ▶ Increased availability of Testimonial Accommodations
- ▶ New Victim Impact Statement, Restitution Forms and an Information Guide (available in 10 languages)
- ▶ New fact sheets for victims:
 - Know Your Rights
 - Fact sheet summarizing victim complaints processes

Resources

- ▶ The CVBR can be found at:
<http://laws-lois.justice.gc.ca/eng/acts/C-23.7/FullText.html>
- ▶ VOCA can be found at:
http://www.bclaws.ca/Recon/document/ID/freeside/00_96478_01
- ▶ More Information on the CVBR can be found at:
 - B.C. Government
<http://www.pssg.gov.bc.ca/victimservices/training/index.htm>
 - JusticeBC:
<http://www.justicebc.ca/en/index.html>
 - Government of Canada:
<http://www.canada.ca/en/department-justice/index.html>
- ▶ VIS and Restitution Forms
http://www.ag.gov.bc.ca/prosecution-service/info-sheets/victim_impact_statements.htm

Contact Information

- ▶ The Ministry CVBR working group will be tracking implementation issues or concerns.
- ▶ If you have a question or would like to report an issue regarding the CVBR please contact your Branch Program Manager or victimservices@gov.bc.ca

Questions

