

The Canadian Victims Bill of Rights – Information for Victim Services

Bill C-32: *An Act to Enact the Canadian Victims Bill of Rights and to Amend Certain Acts* came into force July 23, 2015 with the exception of some amendments to the Corrections and Conditional Release Act that will come into force at a later date. 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 applies to victims of offences under five 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*).

The CVBR introduces a new definition of “victim” and creates rights for victims in four areas: the right to Information; Protection; Participation and Restitution. These rights apply to victims as defined in the Act and the following individuals who may exercise rights on behalf of a victim if they are deceased or incapable of acting on their own behalf; including a spouse or someone who is in a conjugal relationship with the victim, a relative or dependant of the victim, a legal guardian/representative of a victim, or a legal guardian/representative of a dependant 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.

This document is intended to highlight information about the CVBR for victim services, and is not intended to provide legal advice. In particular, it provides key information to victim services on the new or enhanced rights for victims and *Criminal Code* changes resulting from the Act. It is not intended to be a detailed clause-by-clause analysis of the new legislation. Victim service workers can review the entire CVBR at: <http://laws-lois.justice.gc.ca/eng/acts/C-23.7/FullText.html>

Most provincial jurisdictions in Canada have existing legislation which provides rights to victims of crime. The CVBR will help to standardize rights for victims of crime in Canada and in some cases will enhance or supplement those existing provincial victim’s rights.

In BC, 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. VOCA provides victims of crime with rights to receive both general information about the justice system and resources available as well as case-specific information at all stages of the criminal justice process (investigation, court proceedings, corrections/parole), and an opportunity to

provide victim impact information. Victims can also request, and if eligibility criteria are met receive, independent legal representation where an application for disclosure of third party records containing personal information relating to a victim is made. The full text of the BC VOCA legislation is found at: http://www.bclaws.ca/Recon/document/ID/freeside/00_96478_01

Criminal justice agencies in BC have continuing obligations under VOCA, and now have additional responsibilities under the new Canadian Victims Bill of Rights. The CVBR increases awareness of the rights and services available to victims of crime and their families. It is an opportunity to connect with your local criminal justice partners to talk about the introduction of the Canadian Victims Bill of Rights and the ways you can continue to work together to support victims throughout the criminal justice system.

Implementation and Monitoring

Each agency in the criminal justice system has undertaken a review of policies and practices to ensure compliance with the CVBR. As with any new legislation, this Act may be subject to interpretation by the Courts. A Ministry of Justice Working Group will monitor implementation of the CVBR on an ongoing basis and identify and address issues as they arise. Victim service workers are encouraged to contact their Branch Program Manager or contact: victimservices@gov.bc.ca if you have any questions or if further information is needed.

The following table discusses key elements of the CVBR, as well as relevant amendments to the *Criminal Code* and how these changes relate to victim services.

DEFINITION OF VICTIM			
Definition of Victim in CVBR	Definition of Victim in VOCA	What's new/different	Key Information for Victim Services
<ul style="list-style-type: none"> • S. 2: “victim” means 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 • S. 4: Exception An individual is not a victim in relation to an offence, or entitled to exercise a victim’s rights under this Act, if the individual is charged with the offence, found guilty of the offence or found not criminally responsible on account of mental disorder or unfit to stand trial in respect of the offence. 	<ul style="list-style-type: none"> • S. 1: “victim” means an individual who suffers, in relation to an offence, <ul style="list-style-type: none"> (a) Physical or mental injury or economic loss as a result of an act or omission that forms the basis of the offence, (b) Significant emotional trauma and is an individual against whom the offence was perpetrated or, with respect to an individual against whom the offence was perpetrated, is a spouse, sibling, child or parent of the individual <p>but does not include a person listed within the definition of “justice system personnel” in relation to an offence to which the person responds in the line of duty.</p>	<ul style="list-style-type: none"> • The Bill also amends the <i>Criminal Code</i> definition: “victim” means a person <i>against whom an offence has been committed, or is alleged to have been committed</i>, who has suffered, or is alleged to have suffered, physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of the offence and includes, for the purposes of sections 672.5, 722 and 745.63, 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. • Unlike VOCA, the CVBR includes <ul style="list-style-type: none"> ○ Victim of “property damage” ○ Individuals who suffer “emotional” harm, not limited to “significant 	<p>The CVBR, VOCA and the <i>Criminal Code</i> all have slightly different definitions of “victim”.</p> <p>VOCA applies to offences under federal and provincial acts, while the CVBR applies to five federal acts (<i>Criminal Code</i>, the <i>YCJA</i>, the <i>Crimes Against Humanity and War Crimes Act</i>, and to some offences under the <i>Controlled Drugs and Substances Act</i> and the <i>Immigration and Refugee Protection Act</i>).</p> <p>The <i>Criminal Code</i> definition of victim generally includes immediate victims of an offence but in certain circumstances (such as Victim Impact Statements) also includes a person who has suffered “physical or emotional harm and property damage or economic loss” as a result of the offence (i.e. secondary victims). The definition applies to proceedings under the <i>Criminal Code</i> & <i>YCJA</i>.</p> <p>The CVBR definition is the broadest and 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. – For example a close family member of</p>

		<p>emotional trauma” suffered by direct victim or their spouse, sibling, child or parent. CVBR doesn’t reference “mental injury”</p> <ul style="list-style-type: none"> ○ “Justice system personnel” – which are specifically excluded as victims in VOCA ● CVBR excludes person who is charged with the offence, found guilty, NCRMD or unfit, from being a “victim”. This is to ensure offenders (particularly in cases where the offender is a parent or family member of the victim) can’t exercise the rights on behalf of the victim. 	<p>the immediate victim who has suffered emotional harm or economic loss as a result of the offence.</p> <p>The key distinction to be aware of between the <i>Criminal Code</i> and the VOCA and CVBR definitions of victim is that under the <i>Criminal Code</i> definition, a victim is a person against whom an offence is committed, except for the purposes of three <i>Criminal Code</i> sections where the definition includes indirect victims who have suffered physical or emotional harm, property damage or economic loss from the offence/alleged offence.</p> <p>Some persons (e.g. secondary victims such as siblings, parents, etc.) may be victims under the CVBR but not under the <i>Criminal Code</i> 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 <i>Criminal Code</i> proceedings (e.g. requesting that their identify be protected) unless they fall within the <i>Criminal Code</i> definition of victim or are a witness.</p> <p>All three definitions should be taken into account when considering if the person you are assisting has rights as a victim under one of these Acts, and if so which rights apply to them.</p>
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INFORMATION RIGHTS			
Rights Under CVBR	Rights Under VOCA	What's new/different	Key Information for Victim Services
<p><i>S. 6 – 8: Every Victim has the right to receive, <u>on request</u>, information about:</i></p> <ul style="list-style-type: none"> • The criminal justice system • Services and programs for victims, including Restorative Justice 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) 	<p><i>S. 5 – 7: Victims <u>must be provided with the following information:</u></i></p> <ul style="list-style-type: none"> • The criminal justice system • Victim services • Relevant legislation (the Freedom of Information and Protection of Privacy Act; the Crime Victim Assistance Act; and VOCA) <p><i>Upon request, victims must be given case-specific information about:</i></p> <ul style="list-style-type: none"> • Investigations, court process and outcomes • Reporting a breach • Contacting parole/corrections about offender releases and how to participate in hearings <p><i>In appropriate circumstances, victims must be given case-</i></p>	<p>Victims now have the right to receive information about:</p> <ul style="list-style-type: none"> • Restorative justice programs • How to file a complaint if a victim feels their CVBR rights have been violated. <p><i>Criminal Code</i> changes that relate to this right include:</p> <ul style="list-style-type: none"> • Requires judges to ask Crown Counsel whether “reasonable steps were taken to inform victims” of plea agreements for serious personal injury offences and murder (and, if a victim has requested to be informed, for other offences where the maximum punishment is 5 years imprisonment or more). 	<p>Both the CVBR and VOCA contain similar rights to information, it is important to ensure the continued provision of existing VOCA rights with the addition of the new CVBR rights.</p> <p>The definition of victim above will assist you in determining whether VOCA and/or CVBR definition applies when providing information to victims.</p> <p><i>New resources</i> are available online for victims:</p> <ol style="list-style-type: none"> 1. Restorative Justice resources 2. Complaints process Factsheet <p><i>Updated resource: Know Your Rights</i></p> <p><i>NOTE:</i></p> <ul style="list-style-type: none"> • Victims must register to receive information from the Correctional Service of Canada and the Parole Board of Canada. • Victims must also make a request to Crown Counsel be notified of plea agreements for offences where the maximum sentence is a jail sentence of 5 years or more. • While the CVBR does not specify which justice authority is responsible for

	<p><i>specific information about an offenders:</i></p> <ul style="list-style-type: none">• Custodial status and location• Release date, location, supervision terms, and proximity to victim		<p>providing victims with information, it is important to continue to follow existing protocols and procedures (e.g. refer victim requests about the status of the police investigation to the police).</p>
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PROTECTION RIGHTS			
Rights Under CVBR	Rights Under VOCA	What's new/different	Key Information for Victim Services
<p><i>S. 9: Every victim has the right to have their security considered by the appropriate authorities in the criminal justice system.</i></p>	<p>VOCA does not have a similar provision.</p>	<p>The court must now consider the security and, in the case of bail, the safety of a victim when making an order regarding:</p> <ul style="list-style-type: none"> • Bail • Testimonial accommodations • Disclosure of third party records in sexual assault cases <p>The Parole Board of Canada will be able to impose reasonable and necessary conditions on offenders under long-term supervision orders (e.g. no contact orders, geographic restrictions) and advise victims of changes or removal of conditions.</p> <p>Currently victims may request a photo for safety planning purposes prior to release when the offender is in provincial custody, however, this has not been possible previously for offenders in federal custody. Under CVBR victim may now also access a current photograph of a federal offender prior to release.</p>	<p>This right articulates many existing practices in the justice system that address victim's safety and security concerns.</p> <p>The CVBR does not define "appropriate authorities", however this would appear to refer to police, Crown Counsel, Corrections, victim services, or Judges depending on the circumstances and stage of the justice process.</p> <p>The CVBR has not defined the terms "safety" or "security".</p> <p>If you or a victim have questions or concerns about safety and security, you should communicate (or assist the victim in communicating) with the appropriate authorities (i.e. police, sheriffs and/or Crown Counsel) as per your current practice.</p>

<p>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</p>	<p>S. 8: When practicable, the government must promote the goals of:</p> <ul style="list-style-type: none"> • Providing victims' protection against intimidation and retaliation • To accommodate victim waiting areas in courthouses which are separate from offenders 	<p>The CVBR expands the offence, <i>intimidation of justice system participants</i>, to include actions intended to provoke fear in witnesses.</p> <p>Consideration shall be given to whether a testimonial accommodation is required to protect a victim/witness against intimidation.</p>	<p>This right articulates many existing practices in the justice system that protect victims from intimidation and retaliation.</p> <p>Consistent with current practices, if a victim has questions/concerns about intimidation and retaliation or you identify concerns regarding a victim being subject to intimidation or retaliation, you should communicate (or assist the victim them in communicating) with the appropriate authorities (i.e. police, sheriffs, Crown Counsel).</p> <p>The bill does not define the term "reasonable and necessary measures" used in this section. Case law may define the right more clearly as applications are received and determined by the Courts.</p>
<p>S. 11: Victims have the right to have their privacy considered by the appropriate authorities in the criminal justice system.</p> <p>S. 12: Victims have the right to request that their identity be protected if they are a complainant/witness in justice proceedings.</p>	<p>VOCA does not have a similar provision.</p>	<p><i>Criminal Code</i> changes that relate to this right include:</p> <ul style="list-style-type: none"> • Historical sex offences (prior to 1970) now included in Third Party Records Process • Mandatory publication bans to protect the identity of victims under the age of 18 for non-sex offences • Amendments to increase the availability of publication bans for adult victims • Amendments to some testimonial accommodations to include as a factor whether an accommodation is needed to protect the witness' identity 	<p>Section 12 of the CVBR does not identify to whom these requests are to be made. Requests could be made to police or prosecutors before a case reaches the courts, a judge during court proceedings, or to post-sentence decision-makers such as review boards or parole boards.</p> <p>Section 12 also does not specify what forms of identity protection are to be considered.</p> <p>If a victim has questions/concerns about their privacy, you should assist them in communicating with the appropriate authorities.</p>

<p><i>S. 13: Every victim has the right to request testimonial aids when appearing as a witness in proceedings relating to the offence.</i></p>	<p>VOCA does not have a similar provision.</p>	<p>Several amendments have been made to the testimonial accommodations sections of the <i>Criminal Code</i> to expand availability.</p> <p>Testimonial Accommodations: The Bill amends a number of the <i>Criminal Code</i> provisions dealing with testimonial accommodations to make them more accessible to victims and vulnerable witnesses (e.g. testifying by CCTV).</p> <p>Amendments include:</p> <ul style="list-style-type: none"> • 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. 	<p>Testimonial accommodations are now more accessible for both victims and vulnerable witnesses. Victims and witnesses should continue to be directed to Crown Counsel to discuss testimonial aids.</p> <p>Victims continue to 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.</p> <p>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 <i>Criminal Code</i>).</p>
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PARTICIPATION RIGHTS			
Rights Under CVBR	Rights Under VOCA	What's new/different	Key Information for Victim Services
<i>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</i>	VOCA does not have a similar provision.	Key changes that relate to this right include: <ul style="list-style-type: none"> • <i>Criminal Code:</i> Sentencing Principles amended to include denunciation of harm to victims and society as a sentencing objective and are to be considered in non-custodial orders. • <i>CEA:</i> Removes limitations on spouses being competent and compellable to testify against an accused spouse. • <i>CCRA:</i> Now sets out who can receive information on behalf of victims and withdraw request for information. 	This right articulates many current practices in the justice system which allow victims to convey their views to: <ul style="list-style-type: none"> • Police officers • Crown Counsel • Court (through their VIS) • Corrections and parole (PSRs, Parole Board Hearings, etc.) <p>It should be noted that this section of the CVBR gives victims the right to convey their views and have their views considered. It does not compel the appropriate authority to act on the victim's request.</p>
<i>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</i>	<i>S. 4: Crown Counsel must ensure that a victim is given a reasonable opportunity to have admissible evidence concerning the impact of the offence, as perceived by the victim, presented to the court</i>	<i>Criminal Code amendments:</i> <ul style="list-style-type: none"> • <i>Victim Impact Statement (VIS) and Community Impact Statement (CIS)</i> – new standardized forms for VIS & CIS; CIS permitted 	The VIS procedures established by VOCA will continue. Crown Counsel will mail a VIS package (including a new Statement on Restitution form – see below) to the victim. The completed VIS must be returned to the Crown office. Crown Counsel will continue to review these statements regarding admissibility at sentencing.

	<p><i>before sentence is imposed for the offence.</i></p>	<p>for all offences</p> <ul style="list-style-type: none"> • New forms include a space for victim to include letter, drawing or poem. • Allows victim to request testimonial aids while presenting their VIS. • Allows victim or victim’s representative, on request, to have a photograph with them of the victim taken before the offence. 	<p>The role of victim services in explaining the forms and assisting the victim to complete the VIS remains the same.</p> <p>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. For offences after July 23rd, the new VIS forms can be found here. Other languages of the form and the VIS guide can be found here.</p> <p>Where a victim requests a testimonial aid to present their VIS, victim service workers should advise the Crown of this as early as possible.</p> <p>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.</p> <p>The expectation is that the CIS will be completed by the community member and submitted directly to the Court Registry. Victim service workers may receive requests for information and assistance with Community Impact Statements. There is no obligation for VS workers to facilitate a CIS; you can direct community members to access the forms on the federal government website.</p> <p>The new provisions provide that a Community Impact Statement (CIS) must be prepared using a</p>
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			<p>mandatory form in accordance with the procedures established by a program designated for that purpose by the provincial government. A designated program has not been established in BC, as the CIS provisions are new, BC, along with other provinces, are exploring options to implement.</p>
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RESTITUTION RIGHTS			
Rights Under CVBR	Rights Under VOCA	What's new/different	Key Information for Victim Services
<p><i>S. 16: Every Victim has the right to have a court consider making a restitution order against the offender.</i></p> <p><i>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.</i></p>	<p>VOCA does not have a similar provision.</p>	<p><i>Criminal Code amendments:</i></p> <ul style="list-style-type: none"> • Court required to: <ul style="list-style-type: none"> ○ Consider making a restitution order for all offences ○ Ask Crown Counsel whether victims have had an opportunity to indicate if they are seeking restitution ○ Provide reasons when restitution is not ordered • New Form – Statement on Restitution (Form 34.1) to be completed by victims if they are seeking restitution • Offender's ability to pay does not prevent the court making an order • Court can: <ul style="list-style-type: none"> ○ Order a payment schedule ○ Make an order payable to multiple victims & designate priority of payment • Orders may be enforced in civil proceedings if offender fails to pay the full amount ordered or fails to make periodic payments 	<p>The new Statement on Restitution form will be sent out in the Crown Counsel VIS package but it can also be found here.</p> <p>Completed forms must be returned to Crown Counsel prior to sentencing in order to be considered.</p> <p>It is important to be aware that Restitution Order losses/damages must be readily ascertainable in order to be considered by the court.</p> <p>In addition to assisting victims with completing the VIS, workers may also assist with completing the Statement on Restitution form.</p> <p>If victims have a stand-alone Restitution Order and have questions about enforcing the order, victim service workers can refer victims to the Provincial Restitution Program at Restitution@gov.bc.ca.</p>

Questions & Answers

Q: When Does the Canadian Victims Bill of Rights (CVBR) Apply?

A: The CVBR will apply to certain people and offences

The CVBR grants rights to “victims” as defined in the act. It is limited to victims of offences under 5 federal statutes, including the *Criminal Code* and the YCJA. It does not apply to provincial offences such as offences under the Motor Vehicle Act. Victims are able to exercise their CVBR rights while the offence is being investigated or prosecuted and while the offender is subject to the corrections and conditional release processes. Cases where the accused has been found unfit to stand trial or NCRMD, the victim would be able to exercise the rights while the accused is under the jurisdiction of a court or Review Board. The rights are available to a victim who is in Canada, or who is a Canadian citizen or a permanent resident.

The Bill also applies to certain people who may act as representatives of deceased victims or victims who are otherwise incapable of acting on their own behalf (see above chart for further details).

Note: The CVBR excludes an individual from being a victim or exercising a victim’s rights if they have been charged, found guilty, or NCRMD for the offence that resulted in victimization.

Q: How Can a Victim Exercise Their CVBR Rights?

A: Victims can exercise their rights through the mechanisms provided by law

This means that a victim’s ability to exercise their rights is effected through existing statute and common law that relate to that right, such as the provisions of the *Criminal Code*. For purpose of exercising several of the rights (e.g. right to testimonial aids, right to present a victim impact statement, right to request restitution), the more limited *Criminal Code* definition of “victim”, and who may represent a victim and other relevant *Criminal Code* provisions will apply. For example the right to file a VIS only exists where the victim is included in the *Criminal Code* definition of victim. If a victim does not fall within the *Criminal Code of Canada* definition, they would not have the right to file a victim impact statement with the court.

The CVBR has a clause that sets out that the rights are to be applied and construed in a reasonable manner so that they do not interfere with police or prosecutorial discretion (or discretion exercised by other criminal justice personnel), cause excessive delay, compromise or hinder an investigation or prosecution. There is also a clause that states rights are also not

to be construed or applied in a manner that is likely to endanger an individual or injure international relations, national defence or national security.

Q: Where Can a Victim Find Information on CVBR?

A: More Information on the CVBR can be found at the following links:

- [B.C. Ministry of Justice Victim Services training page](#)
- [JusticeBC](#)
- [Government of Canada](#)

Q: How do I find out about the *Criminal Code* changes contained in Bill C-32?

A: In addition to creating the new Bill of Rights, the Act also contains key *Criminal Code* amendments which impact victims. For further details please see [here](#).

Q: How can victims file a complaint about a justice agency in BC?

A: If a victim believes that their rights in the *Victims of Crime Act* or the *Canadian Victims Bill of Rights* have been infringed or denied, victims have the right to file a complaint.

Processes already exist in BC to address complaints made by victims. Information about the complaint processes within British Columbia's criminal justice system agencies can be found at the following link: *(Insert link to Justice BC)*.

Victim service workers are well positioned to inform victims of complaint processes and assist them in navigating to the right agency to address their concerns. Victim service programs should ensure that all staff and volunteers are made aware of the central point for information about complaints processes and familiarize themselves with the details of the complaints processes applicable to the agencies you routinely interact with (e.g. Crown Counsel and Police).

Note: Victims can also file a complaint with federal authorities when their rights have been infringed or denied by a federal department, agency or body (e.g. Correctional Service Canada, Parole Board of Canada, etc.). The bill provides a specific process for complaints to federal agencies.

Q: How can I get more information/support if I have a question about the CVBR? How can I report a problem that I have? How will implementation of the bill be tracked?

A: A Ministry of Justice Working Group will monitor implementation of the CVBR on an ongoing basis and identify and address issues as they arise.

You can contact your Branch Program Manager or contact: victimservices@gov.bc.ca if you have any questions or if further information is needed with respect to a particular victim right.

Q: What about Restitution? There is a provision for a designated program, are we doing that in BC?

A: The Bill amends the *Criminal Code* to allow each Province the ability to designate a public authority responsible for enforcing restitution orders.

In BC there is no public authority responsible for enforcing restitution orders. Restitution orders may be enforced in civil proceedings. Victim Services and Crime Prevention Division has a restitution program that provides information and support to victims who have unpaid stand-alone restitution orders, and contacts offenders to encourage payment of restitution. The program is voluntary and does not have enforcement powers. If you would like more information or have questions, please contact the Restitution Program at 604-660-4898, or by email at restitution@gov.bc.ca.