

Backgrounder

Overview of Canadian Victims Bill of Rights

On April 3, 2014, Prime Minister Stephen Harper announced legislation to give victims of crime a more effective voice in the criminal justice system.

The *Victims Bill of Rights Act* is a significant piece of legislation that seeks to create clear statutory rights at the federal level for victims of crime for the first time in Canada's history. The legislation would establish statutory rights to information, protection, participation and restitution, and ensure a complaint process is in place for breaches of these rights.

Definitions

The *Victims Bill of Rights Act* proposes to define a victim of crime as any individual who has suffered physical or emotional harm, property damage, or economic loss as a result of an offence committed under the *Criminal Code*, the *Youth Criminal Justice Act*, the *Crimes Against Humanity and War Crimes Act*, and also applies to some offences under the *Controlled Drugs and Substances Act* and the *Immigration and Refugee Protection Act*.

The proposed rights would be available to a victim who is in Canada, or who is a Canadian citizen or a permanent resident.

The legislation also proposes that the following individuals may exercise a victim's rights when a victim is dead or incapable of acting on his or her behalf:

- The victim's spouse or an individual cohabiting with the victim in a conjugal relationship for at least one year prior to the victim's death;
- A relative or dependant of the victim; and,
- Anyone who has custody of the victim or of the victim's dependant.

The above would not apply in cases where the person has been charged, convicted, or found not criminally responsible due to a mental disorder for the offence that resulted in the victimization. For example, if a parent has been charged with abuse of a child, that parent would not be allowed to exercise the child victim's rights.

Remedies for breaches of rights

Under the proposed *Canadian Victims Bill of Rights*, when a victim believes that his or her rights have been breached, the victim would first file a complaint with the appropriate federal department or agency. The legislation includes a requirement for all federal departments and agencies that have responsibilities under the *Canadian Victims Bill of Rights* to have internal complaint mechanisms accessible to victims that would review complaints, make recommendations to correct any infringement, and notify victims about the results of the review.

Complaints regarding a provincial or territorial agency, including police, Crown, or victim services, would be addressed in accordance with the applicable provincial or territorial legislation. In order to improve the remedies available to victims, the federal Government would

provide funding through the Victims Fund to provinces and territories to enhance or establish complaint bodies for victims of crime. This funding would encourage a level of consistency in the complaints mechanisms available to victims of crime across the country without drawing funds from successful existing programs for victims of crime.

Exercising rights

A victim would be able to exercise the rights proposed in the *Canadian Victims Bill of Rights* while an offence is being investigated or prosecuted, or while the offender is subject to the corrections or conditional release process. For cases in which an accused has been found unfit to stand trial or not criminally responsible on account of mental disorder, the victim would be able to exercise the rights while the accused is under the jurisdiction of a court or Review Board.

If there is an inconsistency between the *Canadian Victims Bill of Rights* and any other federal Act enacted on or after the day that the *Canadian Victims Bill of Rights* comes into force, the *Canadian Victims Bill of Rights* would prevail. In cases where the inconsistency is with the *Canadian Bill of Rights*, the *Canadian Human Rights Act*, the *Official Languages Act*, the *Access to Information Act*, or the *Privacy Act*, the rights under the *Canadian Victims Bill of Rights* will be balanced with these other quasi-constitutional rights.

Limitations to exercising rights

The proposed *Canadian Victims Bill of Rights* includes a limitation clause to specify that the proposed rights are to be applied in a reasonable manner so they do not interfere with police or prosecutorial discretion, cause excessive delay, compromise an investigation or prosecution, or cause a stay of proceedings. As well, the rights are not to endanger the life or safety of any individual, interfere with ministerial discretion, interfere with the discretion that may be exercised by any person or body authorized to release an offender into the community, or cause injury to international relations or national defence or security. This limitation clause is intended to ensure that the rights are interpreted and applied in a way that addresses victims' concerns while not over-burdening the criminal justice system.

Nothing in this proposed legislation would permit an individual to enter Canada or to remain in Canada longer than a previously authorized period, nor would it delay or prevent the removal of an individual or delay extradition proceedings.

The *Canadian Victims Bill of Rights* would not grant a victim, or anyone acting on the victim's behalf, the status of a party, intervener, or observer in any criminal proceedings. An infringement of any of the rights included in the legislation would not create a cause of action, a right to damages, or a right of appeal from any decision or order.

Consultations

Between April and October, 2013, in-person consultations were held across the country with victims of crime, front-line workers, justice advocates and provincial and territorial governments to help inform the development of a *Canadian Victims Bill of Rights*. As well, an on-line consultation open to all Canadians was hosted on the Department of Justice Canada website from May to September, 2013.

During these consultations, many participants expressed the need for greater information for victims and for a clear role for victims at every stage of the justice process. Others called for an increased understanding of the needs of specific victims, including Aboriginal people, young victims of crime, or those who live in remote and rural communities. Throughout the consultations, there was strong support for the idea of formally recognizing the rights of victims of crime.

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