

PART A

ACCESS TO JUSTICE AND INNOVATIVE LEGAL SOLUTIONS

Victims' Rights: Transforming a Meaningless Right into a
Meaningful Right

Justice in Canada's Northern Communities: Implementation
of Mobile Legal Clinics

VICTIMS’ RIGHTS: TRANSFORMING A MEANINGLESS RIGHT INTO A MEANINGFUL RIGHT

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ABSTRACT

Because of a lack of enforcement mechanisms, victims' rights in Canada remain a hollow promise. Although the *Canadian Victims Bill of Rights*¹ outlines fundamental protections, victims often face barriers, procedural delays, and legislative shortcomings that make these rights meaningless. This paper examines the structural deficiencies in Canada's victims' rights framework, highlighting how the absence of enforceable legal remedies perpetuates secondary victimization. Through analysis of institutional delays, ineffective victim programs, and comparative international models, this study identifies three transformational solutions: (1) constitutionalizing victims' rights to provide guaranteed legal protection, (2) implementing legislative enforcement mechanisms to ensure victims can seek remedies for rights violations, and (3) establishing a Victims' Rights Tribunal and provincial complaint processes to facilitate access to justice. By integrating meaningful enforcement mechanisms, we can move beyond hollow declarations to create a system where victims' rights are upheld. This paper argues that victims deserve the same legal recognition and procedural safeguards as offenders, transforming victims' rights from meaningless to meaningful.

I. INTRODUCTION

Do victims' rights matter? In the current legal landscape, victims' rights can be seen as meaningless. When victims are provided rights without the ability to enforce those rights, those rights become meaningless. The failure of the system to recognize and meaningfully support victims can lead to secondary victimization. Secondary victimization occurs when a victim suffers further harm, not from the crime itself but from the reactions of and treatment they receive from institutions and other individuals.² A system fraught with frustration and secondary victimization will ultimately collapse from the suppression and unenforceability of victims' rights. A right is only as good as its enforcement, for it remains a hollow promise without action. It is my opinion that victims have become an overlooked part of the criminal justice system.

1 SC 2015, c 13 [CVBR].

2 Canadian Resource Centre for Victims of Crime, *The Impact of Victimization* (Ottawa: Canadian Resource Centre for Victims of Crime, 2011) at 6, online (pdf): <https://crcvc.ca/wp-content/uploads/2021/09/The-Impact-of-Victimization_may2011.pdf>.

The Federal Ombudsman for Victims of Crime “acknowledges the Act [CVBR³] falls short of delivering the real rights it promised.”⁴ This paper examines how access to justice for victims is a forgotten component of the criminal justice system and how reform is required to support victims’ rights. Victims’ rights must be meaningfully recognized to ensure access to justice for crime victims. This transformation requires a multifaceted approach, including having the state take accountability for meaningfully supporting victims⁵ and implementing enforcement mechanisms to give effect to these rights. Paralegals can be pivotal in transforming victims’ rights from meaningless to meaningful.

A victim is “a person who has suffered physical or emotional harm, property damage, or economic loss as a result of a crime.”⁶ Access to justice for victims is a personal determination. Every victim is harmed in a specific manner, and a distinct approach is required to address their needs. Susan McDonald suggests that “access to justice may be defined differently depending on the context, [but] the definition should ensure that victims are able to report crimes, seek assistance, and fully participate in criminal proceedings.”⁷

The United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* stands for the principle that

[v]ictims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.⁸

Victims have perceived inadequacy in the system’s ability to support them.⁹ A system that provides rights but does not guarantee those rights cannot

3 Section 2.

4 Office of the Federal Ombudsman for Victims of Crime, *Progress Report: The Canadian Victims Bill of Rights* (Ottawa: Office of the Federal Ombudsman for Victims of Crime, last modified 9 July 2024) at 2, online: <<https://canada.ca/en/office-federal-ombudsperson-victims-crime/publications/specialreports-rapportsspeciaux/prcvbr-reccdv.html>>.

5 Alan N Young & Kanchan Dhanjal, *Victims’ Rights in Canada in the 21st Century* (Ottawa: Department of Justice Canada, 2021) at 11.

6 Department of Justice Canada, “Who Is a Victim of Crime” (last modified 7 July 2021) at para 1, online: <<https://justice.gc.ca/eng/cj-jp/victims-victimes/rights-droits/who-qui.html>>.

7 Susan McDonald, “Access to Justice for Victims of Crime,” *Victims of Crime Research Digest No 12* (Ottawa: Department of Justice Canada, last modified 13 December 2021) at para 8, online: <<https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd12-rr12/p4.html>>.

8 UNGAOR, 40th Sess, Supp No 53, UN Doc A/RES/40/34 (1985) GA Res 40/34 at para 4, online: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>>.

9 Melissa Lindsay, *A Survey of Survivors of Sexual Violence in the Northwest Territories* (Ottawa: Department of Justice Canada, 2014) at 17, online (pdf): <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr13_04/rr13_04.pdf>.

truly provide access to justice for victims of crime. Without enforcement and accountability, victims' rights are meaningless, as victims have no forum to contest the denial of their guaranteed rights.

II. LEGISLATIVE FRAMEWORK

Victims are an essential component of the criminal justice system; accordingly, Canada has provided victims with rights through the enactment of the CVBR. The CVBR delineates four overarching rights granted to victims of crime: (1) the right to information,¹⁰ (2) the right to protection,¹¹ (3) the right to participation,¹² and (4) the right to restitution.¹³ These rights are theoretically conferred on victims to provide recognition of their role in the system.

A. THE RIGHT TO INFORMATION

The right to information allows a victim to request information about the justice system, its processes, the investigation, the proceedings, and the offender. This right includes the ability to access support programs. As Quigley J held in *R v Roberts-Stevens*, “[i]nforming victims of crime of their rights in a trial is in the interest of the proper administration of justice.”¹⁴ Without knowledge, a person cannot properly exercise their rights. A victim's right to access information is foundational to their ability to exercise their rights under the CVBR.

B. THE RIGHT TO PROTECTION

Authorities must consider the security and privacy of victims in their protective function. A victim has a right to be safe and maintain privacy. The state must take all reasonable and necessary steps to ensure victim safety, protect the victims' identity, and provide safety measures against intimidation and retaliation. Additionally, victims are provided an opportunity to request testimonial aids to testify.¹⁵ Security and privacy are essential components of the protection granted to victims under the CVBR. Justice Punnnett, in *Capital City News Group Ltd v Her Majesty the Queen in the Right of the Province of British Columbia*,

10 CVBR, ss 6-8.

11 CVBR, ss 9-13.

12 CVBR, ss 14-15.

13 CVBR, ss 16-17.

14 2018 ONSC 6184 at para 50.

15 CVBR, ss 6-8.

held that “security and privacy rights of victims of crime are recognized in the *Canadian Victims Bill of Rights*,”¹⁶ but they also engage “privacy interests of witnesses and third parties which implicate s. 7 liberty and security rights.”¹⁷

C. THE RIGHT TO PARTICIPATION

Victims are empowered to express their perspectives before decisions affect their lives. The right to convey their perspectives supports their role within the system. The ability to participate allows the victim to provide the court with insight through a victim impact statement.¹⁸ The CVBR supports the right to participation, but it is also a legislative requirement under the *Criminal Code*.¹⁹ The right to provide a victim impact statement is ingrained in section 722(1) of the *Criminal Code*:

722(1) When determining the sentence to be imposed on an offender or determining whether the offender should be discharged under section 730 in respect of any offence, the court shall consider any statement of a victim prepared in accordance with this section and filed with the court describing the physical or emotional harm, property damage or economic loss suffered by the victim as the result of the commission of the offence and the impact of the offence on the victim.

D. THE RIGHT TO RESTITUTION

“Every victim has the right to have the court consider making a restitution order against an offender,”²⁰ and if restitution is ordered, “to have the order entered as a civil judgment that is enforceable against the offender.”²¹ Pursuant to section 737.1(1) of the *Criminal Code*,

737.1(1) If an offender is convicted or is discharged under section 730 of an offence, the court that sentences or discharges the offender, in addition to any other measure imposed on the offender, shall consider making a restitution order under section 738 or 739.

The CVBR was enacted to provide victims’ rights, which coincide with their role within the criminal justice system. Once a victim is aware of their

16 2021 BCSC 479 at para 61.

17 *Ibid*, citing *R v Blackmore*, 2018 BCSC 1225 at paras 92-94.

18 CVBR, ss 9-13.

19 RSC 1985, c C-46.

20 CVBR, s 16.

21 CVBR, s 17.

rights, they must turn to section 19(1) of the CVBR if they want to exercise those rights:

19(1) The rights of victims under this Act are to be exercised through the mechanisms provided by law.

Victims' rights rely on the existing mechanisms prescribed by law. The lack of an ingrained enforcement mechanism reinforces the "meaninglessness" of the rights under the CVBR. Under the current legislative framework, victims have no direct enforcement path. Victims must rely on provincial or territorial mechanisms to exercise their rights.

E. ONTARIO'S ROLE IN VICTIMS' RIGHTS

Ontario provides a supplemental legislative framework to acknowledge the rights of victims in the province. The *Victims' Bill of Rights, 1995*²² provides a "guideline" for victims to use in proceeding with their rights. The OVBR's framework provides direction on how victims should be treated, and victims should be provided with information about the process.²³

However, this framework prescribes a loophole that allows the government to escape legislative obligations to victims. Section 2 of the OVBR states:

Limitations

2(2) The principles set out in subsection (1) are subject to the availability of resources and information, what is reasonable in the circumstances of the case, what is consistent with the law and the public interest and what is necessary to ensure that the resolution of criminal proceedings is not delayed. ...

No new cause of action

2(5) No new cause of action, right of appeal, claim or other remedy exists in law because of this section or anything done or omitted to be done under this section.

The CVBR provides that victims' rights can be exercised only through lawful mechanisms. Ontario has prescribed limitations if the government fails to meet its obligations. If victims' rights are not upheld, there is no recourse pursuant to section 2(5) of the OVBR. In *Vanscoy v Ontario*,²⁴ Ms Vanscoy brought a claim against the state for the denial of her rights. Justice Day analyzed the OVBR and "concluded that the statute did not confer rights but outlined principles,"²⁵ further noting that the "legislature has chosen to

22 SO 1995, c 6 [OVBR].

23 OVBR, s 2(1)(2).

24 1999 CarswellOnt 1427.

25 *Ibid* at para 18.

use the term 'should,' rather than 'must' or 'shall.'"²⁶ In the analysis, even if a right was denied, "s. 2(5) specifically provides that no new cause of action or appeal would arise from any breach of a principle provided by the *Victims Bill of Rights*."²⁷ Justice Day considered the principles of fundamental justice and the decision of *Ashby v White*, in which the principle of "no right without remedy" was established.²⁸ This principle supported Day J's finding that the OVBR is a set of principles, rather than rights, because with no remedy, there can be no right. It is important to note that the decisions in *Ashby* and *Vanscoy* were made before the enactment of the CVBR.

The Supreme Court of Canada (SCC) in *Nelles v Ontario* held that "[t]o create a right without a remedy is antithetical to one of the purposes of the *Charter* which surely is to allow courts to fashion remedies when constitutional infringements occur."²⁹ This proposition supports the principle of no right without remedy. If the courts have provided that the OVBR does not confer rights but principles to guide the system, then the legislation has no meaning and should be called the *Victims' Bill of Principles*. These principles extend to the CVBR; without remedy, there is no right, and the purpose of the CVBR is meaningless.

III. THE VICTIM AND THE OFFENDER

The victim's role in criminal proceedings has been identified not as a party to the proceeding but as a supporting mechanism.³⁰ The question that arises is, why only as a supporting mechanism? They are the people who have suffered the harm or loss. The Court in *R v Berner*³¹ affirmed the conclusion

that a criminal trial, including the sentencing phase, is not a tripartite proceeding. A convicted offender has committed a crime—an act against society as a whole. It is the public interest, not a private interest, which is to be served in sentencing.³²

The criminal justice system takes the view that a crime is an offence against the state, but this perspective fails to address the direct harm experienced by victims. A balance must be struck between "the interests of the victim, the

26 *Ibid* at para 20.

27 *Ibid* at para 21.

28 (1703), 2 Ld Ray 938 at para 50, 92 ER 126 (QB).

29 [1989] 2 SCR 170 at 196, 1989 CanLII 77.

30 Office of the Federal Ombudsman for Victims of Crime, *supra* note 4.

31 2013 BCCA 188.

32 *Ibid* at para 16, citing *R v Gabriel*, 1999 CanLII 15050 at para 22 (ONSC).

interests of the accused, the interests of the community and the interests of the state.”³³ While criminal law serves broader societal objectives, its application inevitably affects individuals’ rights and private interests. Clarifying this intersection ensures that the conversation does not misapprehend the presumptive legal principles but aims to acknowledge how the justice system can integrate victims’ rights.

Paralegals can act as advocates to develop balance within the system so that the rights of both the offender and the victim are upheld. A victim is provided with rights, but those rights remain a secondary component to a system that provides constitutional protection to the rights of an accused. The system fails to support the victim, which can lead to further victimization.

The accused has constitutional protections under section 11 of the *Canadian Charter of Rights and Freedoms*.³⁴ The Charter’s constitutional guarantee requires the state to protect the rights of the accused. This constitutional protection of an accused’s rights inevitably leads to the suppression of victims’ rights. If the state fails to support a victim in exercising their rights, the victim cannot bring a claim against the state and has no options to address the failure before the courts.

A. INSTITUTIONAL DELAYS AFFECT JUSTICE

Since the SCC decision in *R v Jordan*,³⁵ victims’ rights have significantly diminished. *Jordan* considered the accused’s right to be tried within a reasonable time guaranteed by section 11(b) of the Charter. The SCC has established an analytical framework for calculating delay in proceedings.³⁶ A matter must be completed within a reasonable time. In the provincial court, it must be completed within 18 months, and in the superior court, it must be completed within 30 months.³⁷ If a matter exceeds the ceiling, a stay shall follow.³⁸

A proceeding’s stay has a critical impact on a victim’s rights.³⁹ It denies the victim the ability to exercise their rights under the CVBR. If a proceeding is stayed, there is no opportunity for a victim to participate or seek restitution. This

33 Young & Dhanjal, *supra* note 5 at 10.

34 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter].

35 2016 SCC 27.

36 Department of Justice Canada, “Section 11b—Trial Within a Reasonable Time” (last modified 14 July 2025), online: <<http://justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd1/check/art11b.html>>.

37 *Vanscoy*, *supra* note 24 at para 46.

38 *Ibid* at para 47.

39 Devon Medeiros & Michelle I Bertrand, “A Rush to Justice: The Institution of Presumptive Ceilings in *R v Jordan* and the Potential Implications for Wrongful Convictions” (2024) 46:4 *Man LJ* 80 at 106.

denial of rights is being exacerbated by an overwhelmed legal system. Between 2022 and 2023, Statistics Canada recorded that in Ontario, out of 95,865 decisions rendered, 53,659 resulted in a stay or withdrawal.⁴⁰ This is 56 percent of all decisions made within that timeframe. This signifies that 56 percent of victims in Ontario were deprived of their rights by institutional delay.

This delay rests solely upon the state, and its failure to support victims causes revictimization. This sends a clear message that affirms the notion that victims are only a secondary part of the process; they are not a priority. The current framework does not provide access to justice for victims of crime. The process focuses on ensuring the rights of the accused while demolishing the rights of victims.

B. VICTIM PROGRAMS IN ONTARIO

1. Victim/Witness Assistance Program

Ontario has established programs to meet its obligations under the CVBR and OVBR. The Victim/Witness Assistance Program (VWAP) is a court-based program that provides information and support to victims throughout the criminal process.⁴¹ The provision of services includes, but is not limited to, informing victims of court procedures, connecting victims with police to secure their safety, referring victims to community services, and assisting in providing a victim impact statement.⁴² However, the program is limited to specific offences.⁴³ The offences that the VWAP provides assistance for include homicide, human trafficking, intimate partner violence, child abuse, sexual assault, elder abuse, hate crimes, motor vehicle fatality, and other violent crimes.⁴⁴ By limiting the offences that the program supports, it fails to consider how crime impacts all victims. Offences such as theft, fraud, and mischief have a direct impact on victims, but the VWAP does not provide services to victims of property crimes. This leaves many victims to navigate the system by themselves.

A program is only as good as the people it reaches. If victims are unaware of the services made available, how can they actively exercise their right? For the VWAP to be accessible, it needs to be more visible and accessible to all

40 Statistics Canada, "Table 35-10-0027-01 Adult Criminal Courts, Number of Cases and Charges by Type of Decision" (last modified 13 August 2025), online: <<https://doi.org/10.25318/3510002701-eng>>.

41 Ministry of the Attorney General of Ontario, "Victim/Witness Assistance Program" (last modified 19 March 2024), online: <<https://www.ontario.ca/page/victimwitness-assistance-program>>.

42 *Ibid.*

43 *Ibid.*

44 *Ibid.*

victims of crime. The VWAP program was implemented to provide victims with support through the court process, but without an enforcement mechanism, victims cannot meaningfully act if a guaranteed right is denied. If a victim does not connect with the VWAP program or falls through the cracks of the justice system, they have no right to claim against the state for failing to follow through on providing access to justice for victims of crime. A support program works only up to the point at which victims are aware of their rights and can meaningfully participate in the process. Paralegals can act as this connective point between the VWAP and the victim. A paralegal can assist in supporting a victim through the process and ensuring that they are aware of their rights and can exercise them in a timely fashion.

2. Criminal Injuries Compensation Board

Ontario previously attempted to provide access to compensation for injury stemming from crime by establishing the Criminal Injuries Compensation Board (CICB) under the *Compensation for Victims of Crime Act*.⁴⁵ This endeavour, intended to provide victims with access to compensation through an administrative process, could have been of assistance, but compensation may not be what victims seek to feel whole. Participation in the process may be more impactful if the victim is provided services, rather than a mere attempt to provide compensation. The administrative process was riddled with bureaucratic and fiscal limitations, leading to the deprivation of a resolution.⁴⁶ The Ontario Ombudsman found that it took, “on average, three years for an application to be processed.”⁴⁷ Three years is too significant a delay in victims receiving financial support to recover from their injuries. Further, the Government of Ontario “developed a culture that is unsupportive of the Criminal Injuries Compensation Board.”⁴⁸ The CICB was established to assist victims and provide financial relief but was so dysfunctional that it caused frustration and revictimized victims.⁴⁹ A divided loyalty developed between the CICB’s need to survive and its mandate to compensate crime victims.⁵⁰ Since the government held the purse strings, it controlled how the CICB operated, which inevitably led to its downfall. The Ombudsman concluded that it was “unreasonable, oppressive, unjust and wrong for the Government of Ontario

45 RSO 1990, c C.24 [repealed].

46 Ontario Ombudsman, *Adding Insult to Injury: Investigation into the Treatment of Victims by the Criminal Injuries Compensation Board of Ontario* (Toronto: Ontario Ombudsman, 2007) at paras 4-5.

47 *Ibid* at para 6.

48 *Ibid* at para 33.

49 *Ibid* at para 31.

50 *Ibid* at para 32.

to make a promise to crime victims that it will not keep.”⁵¹ The implementation of the CICB was a first step, but a step that had no follow-through. If a program cannot support the function it was developed to address, the program requires re-evaluation. The program was meant to assist victims but was more harmful than helpful.

The CICB was eventually dismantled through the enactment of the *Protecting What Matters Most Act (Budget Measures)*, 2019.⁵² “A spokesperson for Attorney General Caroline Mulroney said the move is being made because crime victims are waiting too long for compensation from the board.”⁵³ The government’s decision to dissolve the CICB was driven by its inefficiency in delivering compensation, yet this very inefficiency stemmed from the government’s failure to provide adequate funding. The Ombudsman’s report highlighted the board’s sluggish pace, but the irony is undeniable: the system was set up to fail, and victims paid the price. This chain of neglect reinforces the troubling reality that victims are treated as an afterthought rather than a priority.

3. Victim Quick Response Program

After the dissolution of the CICB, the Ontario government implemented the Victim Quick Response Program (VQRP). The program was a proposed solution to allow victims of violent crimes to access financial assistance quickly. The program supports victims and families affected by intimate partner violence, human trafficking, homicide, and hate crimes.⁵⁴ The VQRP is not an entity like the CICB but directs the provision of financial resources to victim service providers across the province, such as Victim Services of Kawartha/Haliburton, to support victims.⁵⁵

C. COMPLAINTS PROCESS

If a victim chooses to participate in the criminal justice process, they can exercise their rights under the CVBR and feel they are a part of the process. If a victim is directly denied their rights, they can file a complaint. The federal government has established the Office of the Federal Ombudsman for

51 *Ibid* at para 36.

52 SO 2019, c 7, Schedule 11.

53 Mike Crawley, “Doug Ford Government Scrapping Law That Compensates Victims,” *CBC News* (12 April 2019) at para 5, online: <<https://www.cbc.ca/news/canada/toronto/doug-ford-ontario-crime-victim-compensation-1.5095827>>.

54 Ministry of the Attorney General of Ontario, News Release, “Ontario Providing New Supports to Victims of Crime” (6 September 2019), online: <<https://news.ontario.ca/en/release/53618/ontario-providing-new-supports-to-victims-of-crime>>.

55 Victim Services of Kawartha/Haliburton, “Victim Quick Response Program+” (last visited 18 April 2025), online: <<https://victim-services.org/vqrp/>>.

Victims of Crime.⁵⁶ If a victim is not “satisfied with the outcome of [the] process” within a federal department, they can file a complaint with the Federal Ombudsman.⁵⁷ The Ombudsman’s office has affirmed that

[t]he CVBR does not grant victims:

- the right of standing in a criminal court ... ;
- a cause of action ... ;
- a right to damages ... ;
- a right of appeal from any decision or order.⁵⁸

It is notable that Ontario has not implemented a complaint process for victims to bring forward claims of rights denial: “No obligation was imposed on provincial agencies, who are responsible for the administration of criminal justice,” to do so.⁵⁹ Ontario has established the Office for Victims of Crime under section 5.1(4) of the OVBR. The Office for Victims of Crime serves an advisory role. Its role is not to support the victim but to advise Ontario on how to respect the principles set out in section 2(1) of the OVBR. The Office for Victims of Crime provides “research and education on laws and policies on the treatment of victims and ways to prevent further victimization.”⁶⁰ Without a process to address denials, a person can become a victim of secondary victimization at the hands of the state.

IV. TRANSFORMATIONAL SOLUTIONS

A. MEASURING SUCCESS

What is success to a victim? Is success the outcome or the ability to participate in the process? Alan Young and Kanchan Dhanjal, in their 2021 report, outlined five questions to gauge the effectiveness of victim rights reform:

1. To what extent are rights or services known to the victim?
2. If known, is the right or service underutilized?
3. Has a legislative initiative (including its implementation) or service led to greater victim satisfaction or a decrease in secondary victimization?

56 Department of Justice Canada, “Making a Complaint About Infringement or Denial of a Victim’s Right” (last modified 25 January 2024) at para 1, online: <<https://justice.gc.ca/eng/cj-jp/victims-victimes/rights-droits/complaint-plainte.html>>.

57 *Ibid.*

58 *Ibid.*

59 Young & Dhanjal, *supra* note 5 at 20.

60 Ministry of the Attorney General of Ontario, “Office for Victims of Crime” (last modified 10 July 2025), online: <<https://ontario.ca/page/office-victims-crime>>.

4. If an initiative or service has not led to greater satisfaction, can this shortcoming be attributed to "professional neutralization"?
5. Is there any evidence to confirm earlier studies which indicated and argued that victim crime satisfaction is more related to process than outcome?⁶¹

This article considers the measurement of reform in the transformational solutions offered to turn a meaningless right into a meaningful right. Each victim will determine for themselves whether they feel they have been provided access to justice. Implementing the offered solutions attempts to provide mechanisms and processes for victims to enforce their rights under the CVBR. Measuring success relies on the premise that when victims are aware of their rights, they can and will meaningfully exercise their rights. A meaningful right is one that is accessible, not necessarily implemented. Victims may choose to take part in the process or decline to participate. However, this should be the choice of the victim, not the state.

B. CONSTITUTIONAL PROTECTION

The accused is protected; why not the victim? Victims are an integral component of the justice system; they are the harmed party, the people who have suffered. They deserve constitutional protection that recognizes the key role they play in society.

The first solution proposed is the constitutionalization of victims' rights. The integration of victims' rights into the Charter would provide a guaranteed right. If victims' rights were to be ingrained as a right, they would be constitutionally protected by the Charter. The elevation of victims' rights to constitutional status would recognize the victim as a primary party to a proceeding, not a secondary afterthought. A victim's rights would no longer be hollow rights but actionable ones. The solution proposed requires the government to go beyond mere recognition and to implement a new provision within the Charter that ingrain the victim as an integral part of the criminal proceeding. The enactment of new constitutional protections is not a solution to be taken lightly. There may be an uncertainty of judicial interpretation and public response to the elevation of the victim to equal status with an accused. However, it is evident that traditional avenues have been ineffective in addressing victims and their rights.⁶²

There may be a concern that this elevation would interfere with an accused's protected right under section 11 of the Charter. However, a breach of the Charter is not held against the accused but against the state. Failure to

61 Young & Dhanjal, *supra* note 5 at 15.

62 Vanscoy, *supra* note 24 at 433.

comply with a victim's constitutionally protected right would open the door to Charter remedies from the state. The provision of damages falls under the scope of section 24(1) of the Charter:

24(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

A remedy is a personal outcome, and as McLachlin CJ in *Vancouver (City) v Ward* held, “the nature of the remedy is to require the state (or society writ large) to compensate an individual for breaches of the individual’s constitutional rights.”⁶³

A constitutional amendment is not easy, but it is not impossible. Paralegals can play a role in advocating for legislative reform to safeguard the rights of victims and support a three-party system. As Alan Young wrote in his 2005 paper, three foundational elements are required to garner support for an amendment.⁶⁴ First, an impact is only successful if other channels of political change have been unresponsive. Second, it should be attempted only if a supermajority supports the change. Third, it will be effective only if it is difficult to avoid.⁶⁵ The Canadian justice system is not an easy foundation to change; it takes time and strong advocacy. However, a single voice can initiate change. Paralegals have the tools to have tough conversations and become involved in transforming a system that is failing victims.

The constitutional integration of victims’ rights is not a new concept. Various jurisdictions across the United States have accepted victims’ rights as a constitutional right, as addressed in Marsy’s Law. Marsy’s Law “ensures that victims of crime have equal, constitutional rights on the same level as those accused and convicted of crime.”⁶⁶ California has enacted provisions for victims’ rights within the *California Constitution*.⁶⁷ Section 28(b) states:

In order to preserve and protect a victim’s rights to justice and due process, a victim shall be entitled to the following rights.

The *California Constitution* provides numerous rights similar to those in the CVBR, but the distinct difference is that victims in California have the ability to enforce their rights when a right is neglected or denied. The constitutional

63 2010 SCC 27 at para 22.

64 Alan Young, “Crime Victims and Constitutional Rights” (2005) 49:4 Crim LQJ 432 at 454.

65 *Ibid* at 455.

66 Marsy’s Law, “Providing an Equal Voice for Victims of Crime” (last visited 18 April 2025), online: <<https://www.marsyslaw.us/>>.

67 Cal Const art I.

integration of victims' rights demonstrates that victims are an integral part of the process and deserve recognition. This approach is a path forward for Canada to uphold victims' rights meaningfully.

C. LEGISLATIVE ENFORCEMENT

A right without the ability to enforce that right cannot support a victim's access to justice. In Ontario, the ability to enforce a right provided by the CVBR is unavailable. A victim can attempt to exercise their rights, but there is no recourse if that right is procedurally denied. As previously indicated, no remedy means no right. The second proposed solution is the integration of an enforcement mechanism. The CVBR is the overarching legislative regime that provides national recognition of victim rights. The integration of an enforcement mechanism must flow from the top down. Only amending section 19(1) of the CVBR will properly give effect to victims' rights. Further, sections 2(2) and 2(5) of the OVBR must be struck down, as they are the gates holding a victim back from fully exercising their rights when they have been denied.

The United States has provided practical remedies for victims, which are available by law.⁶⁸ Alan Young and Kanchan Dhanjal, in their 2021 report, discussed three cases in which the victim was able to exercise their rights meaningfully. In *Kenna v US Dist Court for Cent Cal*,⁶⁹ the Court made a mandamus order and reopened the sentencing because the victim had not been allowed to read out their victim impact statement.⁷⁰ In *United States v Monzel*,⁷¹ the Court remitted the matter back to the judge for not correctly calculating restitution for the victim's losses.⁷² Finally, in *Antoine v State*,⁷³ the Court ordered the sentence vacated because the victim had not been given the opportunity to provide a victim impact statement.⁷⁴ These remedies were available by law because the United States has taken a proactive approach to ensuring that the rights of victims are meaningful and accessible.

It is acknowledged that no current constitutional right is provided to victims in Canada. However, if the CVBR and OVBR afforded remedial clauses, it would be a step forward. Victims want to feel like they are a part of the process and have their voices heard. The denial of a victim's ability to be heard

68 Young & Dhanjal, *supra* note 5 at 42.

69 435 F (3d) 1011 (9th Cir 2006).

70 Young & Dhanjal, *supra* note 5 at 42.

71 641 F (3d) 528 (DC Cir 2011).

72 Young & Dhanjal, *supra* note 5 at 42.

73 226 A (3d) 1170 (MD App Ct 2020).

74 Young & Dhanjal, *supra* note 5 at 42.

can lead to secondary victimization. Victims will not always participate, but they must be provided the opportunity to achieve proper access to justice.

Since the first enactment of victims' rights legislation, victims' rights have been subjugated. Numerous claims of rights denials or suppressions against the state would likely overburden the courts. Therefore, the establishment of a provincial victims' rights tribunal (VRT) is recommended to effectively provide victims with a remedy and maintain offenders' rights under section 11 of the Charter.

1. Victims' Rights Tribunal

The VRT would be implemented at the provincial and territorial level, as the provinces and territories are responsible for administering criminal justice. The exercise of rights under a legislative enforcement solution would operate on an administrative level. In Ontario, this solution would require the province to amend the OVBR to establish the tribunal. A victim who believes that their rights under the CVBR or OVBR were infringed or denied would be able to file an application with the tribunal for a determination on that. The tribunal would also be able to provide independent legal counsel to victims to intervene in proceedings on their behalf throughout the criminal process. Paralegals would act as victims' rights advocates before the tribunal. The tribunal would be empowered to provide remedies to victims of crime in the form of compensation for violations of their rights. The VRT would require specific legislative provisions to ensure that it would be an independent administrative body. To enable the VRT to support and address victims' rights effectively, it would have to be funded independently so as not to fall into the same dysfunctional cycle as the CICB.

An effective victim advocate is an individual who is trauma informed. The advocate would support the victim in exercising their rights and understand the victim's perspective. Paralegals would be permitted to act as advocates to support victims both before the VRT and throughout the process before commencing an action.

The VRT would be of significant assistance in assisting victims, specifically when charges have been stayed by the state. It is proposed that when a charge is stayed pursuant to *Jordan*, an automatic referral process from the court to the VRT would occur. A victim would have the ability to shift the criminal process into a civil process. The OVBR provides a victim the ability to pursue civil action against an individual who has been convicted of a crime under section 3(1), but this is denied when an offence has been stayed because of institutional delay. The VRT would serve as the trier of fact to determine whether an offence was committed on a balance of probabilities. As the determination would no longer be within the criminal stream, the

rights of an accused protected by section 11 of the Charter would no longer be a consideration, and guilt would not be required to be proven beyond a reasonable doubt.

A victim can pursue civil action for an intentional tort, but the burden is on the victim to establish all the elements of the tort.⁷⁵ The state is responsible for prosecuting offenders, but when it fails to do so, the victim must pursue their own legal recourse. Implementing the VRT would provide a forum for victims to pursue their rights while maintaining an offender's Charter rights. If the criminal process cannot achieve access to justice for victims, a civil or administrative process may suffice.

D. PROVINCIAL COMPLAINT PROCESS

If the justice system continues to deny victims' rights and governments continue to provide no remedy, then victims' rights are nothing but a superficial legislative framework with no purpose. Those victims who are able to exercise their rights are fortunate; those who are unable are deprived. If the two proposed solutions are not realistic in today's society, the third solution recommended is to implement a provincial complaint process. The federal government has established a federal complaint process, and so should the provincial government. The Office for Victims of Crime should be reorganized and granted legislative authority to receive claims of denial of justice and the power to investigate. This would allow for the continual development of the ways in which victims are treated within the criminal process. One victim denied today can lead to the support of the next victim, if the process establishes a system of accountability to monitor and correct deficiencies. Paralegals can play a role as victim advocates to submit complaints to both the provincial and federal complaints mechanisms.

The United Kingdom (UK) has established a similar process for complaints. The UK has developed a statutory guide to victims' rights. The *Code of Practice for Victims of Crime in England and Wales (Victims' Code)*⁷⁶ provides victims with administrative recourse to file complaints under right 12. Right 12.1 holds that "if you believe that you have not received any of your Rights under this Code, you can make a complaint."

75 Lewis N Klar, "Torts in Canada" in *The Canadian Encyclopedia* (Toronto: Historica Canada, 2020), online: <<https://thecanadianencyclopedia.ca/en/article/torts>>.

76 UK Ministry of Justice, *Statutory Guidance: Code of Practice for Victims of Crime in England and Wales (Victims' Code)* (London, England: Government of the United Kingdom, 2025), online: <<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime/code-of-practice-for-victims-of-crime-in-england-and-wales-victims-code>>, under *Domestic Violence, Crime and Victims Act 2004* (UK), c 28, Part 3, c 1, s 32, "Code of Practice for Victims."

The development of a complaint process would support the transformation of victims' rights to be more accessible to victims.

V. CONCLUSION

Victims' rights in Canada are meaningless without the ability for victims to exercise them properly. The current provision of victims' rights in Canada is a mere proclamation of principles to guide the criminal justice system. There is a direct need to integrate enforcement mechanisms within the current system. The constitutionalizing of victims' rights in Canada would recognize the integral part they play in the justice system. It would support a victim in requesting remedies for the denial of rights granted under the CVBR. The claim is not against the offender but against the state, balancing the rights of the victims with those of the offender.

A right without a remedy is a hollow promise and cannot achieve access to justice for a victim. The proposed integration of enforcement mechanisms provides a forum for victims to pursue recourse. The VRT would establish an independent administrative system to address the denial of victim rights. The automatic referral process would ensure that institutional delays are addressed and that the automatic denial of victims' right to participate and seek restitution is addressed.

Finally, implementing a provincial complaints process is the first step to bridging the gap in victims' access to justice. A system that does not evaluate and change cannot support victims. An independent complaint forum that reviews and investigates denials of rights would allow for actual change to occur. These recommendations seek to transform victims' rights from a nominal legislative principle into a practical reality. Canada can protect victims through strong enforcement and accountability measures, which would enable victims to receive the necessary support and justice they deserve. Thus, they would transform a meaningless right into a meaningful right.

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