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CANADIAN FEDERAL-PROVINCIAL TASK FORCE ON

JUSTICE FOR VICTIMS OF CRIME

REPORT

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LETTER OF TRANSMITTAL

Ontario

Provincial
Secretariat for
Justice

Whitney
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Toronto
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June 2, 1983

Mr. Roger Tasse
Deputy Minister of Justice
Department of Justice
3rd Floor, Justice Building
Kent and Wellington Streets
Ottawa, Ontario
K1A 0H8.

Dear Roger:

At their meeting on December 7, 1981, the Federal/Provincial Ministers responsible for Criminal Justice established a Task Force of officials to examine the current needs of victims, their experiences with the criminal justice system, the funding implications of different courses of action, and ways and means of developing, sharing, and disseminating information on those issues both with the public and with criminal justice agencies.

I have the pleasure of attaching the Report of that Task Force.

In developing the Report we have had the benefit of examining the Reports of similar Task Forces from other jurisdictions, and some of our members have consulted with officials from those jurisdictions; we have reviewed the extensive literature on the issue; we have received written briefs from voluntary agencies and we have studied the results of the Canadian Urban Victimization Survey conducted in 1982 and other related research. We met on several occasions to discuss the wealth of material available and to share our knowledge and experience. Each meeting served to confirm our original suspicion that the topic is much more complex than some would believe.

There is an infinite variety of victims: the victims of corporate and white collar crime, racially motivated crime, private justice, false arrest and prosecution, police abuse and so on may all be

affected in different ways. In view of the time at our disposal we have not commented, or only made passing comment, upon them and have confined our examination to the study of the victims of 'traditional crimes'.

It is our belief that if the recommendations we have made in regard to the victims of 'traditional crimes' are implemented there will be benefits to all victims.

We have attempted to indicate ways in which victims of crime can be treated justly and humanely, while at the same time protecting the rights of the offender and the needs of the state. It is our belief that our criminal justice system can and should express more concern for, show greater consideration to, and ensure better care of those who are victims.

There is no panacea because in the end lasting improvements will depend upon changes in attitudes. These can be fostered through strengthening certain services to victims and through enhancing the victim's role in the criminal justice process. It will take time, however, before these measures rebuild the confidence in and respect for the system which we believe latterly to have been eroded.

In response to your request we have written this document in a manner that we believe can be easily understood by the layperson.

In submitting the Report I wish to thank you for your advice, support and encouragement. May I also express my most sincere appreciation of the members of the Task Force who worked tirelessly and with dedication while carrying their normal workload and my gratitude to the jurisdictions they represented for allowing and supporting their participation. I am especially grateful to Ruth Pitman, Catherine Kane and Yvon Dandurand for their considerable assistance in the final drafting and editing of the Report.

Sincerely,

D. Sinclair
Chairman
Federal/Provincial Task Force on
Justice for Victims of Crime.

MANDATE OF THE TASK FORCE

ORIGINS, MANDATE AND PARTICIPANTS

Concern for victims of crime has recently been an important focus of attention for criminal justice agencies, as well as for private sector groups in Canada. The theme of improved assistance for victims of crime was stressed by a number of Ministers at the October 1979 Conference of Ministers responsible for criminal justice. In June, 1981, Deputy Ministers responsible for criminal justice requested the preparation of a report on Justice for Victims of Crime for the consideration of the Ministers. The report was prepared by an ad hoc federal/provincial working group chaired by the Deputy Provincial Secretary for Justice, Ontario.

The recommendations of the federal/provincial report were adopted at the meeting of Ministers responsible for justice, December 1981. This included establishing a federal/provincial task force to prepare a report for Ministers which would:

- examine in depth the current needs of victims and their experiences with the criminal justice system;
- explore such issues as long-term funding implications, appropriate legislative options, co-ordinating mechanisms, imaginative funding alternatives such as fine surtax options, community involvement and other topics which may be considered important to the development of effective services to victims, and make appropriate recommendations to Ministers;
- recommend to Ministers how best to communicate and sensitize the public and criminal justice agencies as to the needs and concerns of victims;
- recommend ways by which the two levels of government can ensure the efficient sharing of information and expertise in this area.

COMPOSITION OF THE TASK FORCE

THE TASK FORCE WAS COMPOSED OF THE FOLLOWING MEMBERS:

Don Sinclair Chairman	Visiting Professor, University of Toronto, Ontario
Robert Adamson	Ministry of the Attorney General, British Columbia
James Blacklock	Ministry of the Attorney General, Ontario
Richard Chaloner	Ministry of the Attorney General, Ontario
Yvon Dandurand	Department of Justice, Canada (from December, 1982)
Arthur Daniels	Ministry of Community and Social Services, Ontario
Bonnie Foster	Ministry of Correctional Services, Ontario
Gil Goodman	Department of the Attorney General, Manitoba
Serge Kujawa	Department of the Attorney General, Saskatchewan
Shaun MacGrath	Ontario Police Commission
Christopher Nuttall	Ministry of the Solicitor General, Canada
Padraig O'Donoghue	Yukon Department of Justice
Gerard Phillips	Department of Justice and Public Services, Northwest Territories
Daniel Prefontaine	Department of Justice, Canada
Yaroslaw Roslak	Department of the Attorney General, Alberta
Michel Vallee	Ministry of the Solicitor General, Canada
Robert Wilson	Department of Justice, Canada (until December, 1982)
Ruth Pitman (Secretary)	Provincial Secretariat for Justice, Ontario

: wish to thank each of the following who acted as a resource
.e Committee and attended certain meetings of the Task Force:

ian Booth	Department of Justice, Yukon
uline Dodds	Canadian Centre for Justice Statistics Canada
nner Elton	Ministry of the Solicitor General, Canada
vid Farrell	Department of Justice, Canada
ex Himelfarb	Ministry of the Solicitor General, Canada
itherine Kane	Department of Justice, Canada
n Irwin	Department of the Solicitor General, Alberta
san Lee	Ministry of the Solicitor General, Canada
nda Light	Ministry of the Attorney General, British Columbia
nda McLeod	Ministry of the Solicitor General, Canada
en Rivard	Department of Justice, Canada (until December, 1982)
A. Thorvaldson	Ministry of the Attorney General, British Columbia

PART I

THE ISSUES: AN OVERVIEW

ISSUES - OVERVIEW

The victim and the victim's place in the criminal justice system have been the focus of increasing attention in several countries over the past twenty years. In some jurisdictions this interest has resulted in significant changes or additions being made to legislation. Starting with New Zealand in 1964, many countries have established various forms of state compensation to victims of crime. Some jurisdictions have delineated certain rights for victims of crime and encompassed these in legislation; some have enacted statutes which ensure that wherever possible restitution shall be made to the victim; others have passed legislation which legitimizes the victim's interest as an active participant in the criminal justice process.

Sometimes changes in administrative methods or in operational programmes have accompanied changes in legislation, or have occurred where the latter were seen to be unnecessary or untimely. Services have been developed to meet what are considered to be the legitimate needs of victims, particularly in the case of those perceived to be the most vulnerable such as women and young children.

France, South Australia and the U.S.A. are examples of jurisdictions which have passed legislation to establish services and procedures aimed at enhancing the role of the victim in the process. It is not surprising that Canadian citizens are more aware of the various thrusts made at the federal and state level in the U.S.A. than they are of developments elsewhere. In a sense this is unfortunate because the difference between the Canadian situation and that of the U.S.A. is more marked than the difference between Canada and the other examples chosen.

There is a vital and growing victims' movement in the U.S.A., whereas in Canada such a development is in an embryonic stage. It should be understood, however, that the victim in the United States faces problems of a different magnitude. The difference is not so much due to the difference in the two systems of justice, but rather to a different philosophy on state intervention. To take only three examples, albeit very important ones, in the U.S.A. there is only a limited degree of control of firearms and much more violent crime; there is no health service comparable to that in Canada and, therefore, the cost to the victim for crimes of violence can be much greater; finally, while most States have victim compensation funds, many have unstable funding or the

legislation is not supported by an appropriation of funds to ensure its implementation.

The Task Force found the 1982 Omnibus Victim Protection legislation in the United States and the 1983 Report of the President's Task Force on Victims of Crime to be informative; however, the approach of, and the concepts outlined in, the reports of South Australia and France were of greater relevance. While the nature of the judicial systems, the extent of criminality, the form of criminal behaviour, and the measures proposed to alleviate the problems differ in each country, the commonality of concern expressed, i.e., that more attention should be given to the victim of crime, is of far greater significance.

Increasing concern for the victim has arisen partly from humanitarian reasons such as having regard for the victim's loss or suffering, partly because it would seem to be only just or equitable that the state owes an obligation to the victim beyond that owed to citizens in general, and partly because the success of any criminal justice system is dependent upon the co-operation of victims and witnesses of crime. It should be a matter of grave concern that research and victimization surveys indicate that some victims are reluctant to report certain crimes and witnesses are often reluctant to co-operate with the agents of the system in their attempts to apprehend and prosecute the offender.

One of the reasons for this is that the victims themselves felt that the incident was too minor to report. In addition, however, research reveals an undercurrent of disillusionment. Indeed, many victims appear to feel that the system would only fail them or ignore them if they invoked it. These feelings may have resulted from a previous unsatisfactory experience with the system or from lack of information as to what it can and cannot be expected to accomplish.

The sense of disillusion takes many forms. If people no longer feel confident in the ability of society's institutions to protect them, then they look to their own protection. It is not by chance that private security forces have expanded remarkably in the past ten years, that the burglar alarm business is a growth industry or that self-defence classes flourish. Nor is it by chance that we have witnessed an emergence of groups who believe either that the law is not functioning or is not functioning as they want it to, and who attempt to provide their own response

to what they perceive to be an absence of law and order; a growth in the number of commercial enterprises which deal privately with the fraudulent activities of their employees rather than report them; a number of witnesses who do not come forward because they know they will not be compensated adequately for the loss of wages incurred by adjournments and delays.

When society fails to protect its members from criminal activity, they may suffer physically, emotionally, or financially. These are the costs of victimization - but are not the only costs. Others are incurred by the manner in which our system of justice operates, and arise from the discomfort, the inconvenience, and sometimes - it must be said - the discourtesy and humiliation the victim faces as the process unfolds. Even though the very survival of the system rests upon the willing co-operation of victims to report crimes and of witnesses to testify, the manner in which they are dealt with often does little to inspire or encourage that co-operation. The victim is often given little assistance to overcome the effects of his victimization and provided with little, if any, information about the progress of the case; he may receive little or no compensation for his losses and it is unlikely that he will be consulted with regard to any decisions which are made. It is often the case that the victim is twice victimized: once by the offence and once more by the process.

It is understandable that victims contrast their neglect with the attention given to offenders. Their rights are made known to them, different agencies are prepared to assist them to obtain bail; the case against them must be disclosed to their legal representatives but the latter are under no similar obligation to make any disclosure to the prosecutor; probation officers, correctional workers and parole officers are prepared to give offenders all the assistance they can; alternatives to incarceration such as community resource centres, and measures such as temporary absence, day passes, etc., which are designed to reduce the negative effects of incarceration all work to the offenders' benefit.

While some generally view the sentences currently imposed by courts as being inadequate to properly protect society and the victims, others view any form of incarceration as being counter-productive. The Task Force believes that in appropriate cases there are many alternatives which are now available to the court to increase the offenders' chances of

rehabilitation and decrease the damaging effects of prison life. In focussing more concern on the plight of the victim one must not lose sight of the need to safeguard the accused. The interests of the criminal justice system can only be served in securing criminal justice, not in seeking revenge. Consequently, it is with misgiving that we view legislation enacted or proposed in foreign jurisdictions which would appear to have that intention.

Focussing concern solely upon offenders can be a disservice to victims in many ways. For example, restitution as a sentence has been justified on the basis that it contributes to the rehabilitation of the offender. Rarely is it considered in light of its benefit to the victim. Bearing in mind that wherever possible victims should be restored to the position they enjoyed prior to the victimization, then restitution becomes a very important component of a sentence. The Report indicates that we believe restitution should be considered in all appropriate cases. Although this will present some difficulties, we believe that these will be outweighed by the benefits.

It is commonplace today to hear that the victim is the 'forgotten' actor in the criminal justice system. The Task Force does not believe that victims are forgotten - or even, as some would have it, ignored - but we do believe that victims have been neglected. We do not find it difficult to understand how easily this can occur within a system where it is the responsibility of the state, not the victim, to identify, prosecute and punish the offender; where the principal parties involved are the offender and the state - each being represented by others who speak for them - and where the victim's involvement is almost entirely limited to that of giving testimony. Ours is an adversarial system where the victim is not one of the adversaries.

This report does not take issue with the fact that the criminal justice system, which is designed to deal with public wrongs, must primarily focus on the public interest. It does express the view, however, that in doing so the criminal justice system has relegated the victim to a very minor role and left victims with the conviction that they are being used only as a means by which to punish the offender. It is not surprising that victims believe that their losses and needs or any change in their lifestyle resulting from the offence count for little, in light of the Crown's focus on the public interest and the

focus of the offenders' representatives on the interests of their clients.

In their first experience with the process of criminal justice many victims are bewildered and confused. They find it difficult to understand why their stolen property cannot be returned to them promptly when it has been recovered; why they are not informed of the existence of a Criminal Injuries Compensation Board; why they are not informed well in advance of court hearings; why a case was delayed, then adjourned and again adjourned - and again; why a charge was reduced; why the true impact of the crime upon them and their family was not brought to light during the hearing; why the case was remanded for sentence and they were not informed of the date; why the offender was not ordered to make restitution. In many instances it is, unfortunately, the case that very few services are provided to victims and they receive little information about the process.

This somewhat depressing description of the bewilderment of the victim is far from uncommon. There are, however, encouraging signs provided by pilot projects. Some who work within the justice field recognize the extent to which the system itself can add to the victim's problems and are taking action to change it. Police, prosecutors, judges, and administrators in certain areas have encouraged the development of victim support services, often with the co-operation of voluntary agencies, and have vastly improved the flow of information from the system to the victim.

Examples are given in the Report of initiatives designed to provide support and information services which in our opinion will encourage the victims to believe that in fact the system can work for them, and can greatly minimize the effects of their double victimization. There are many other worthwhile projects in Canada which exemplify how much more can be done.

If adequate support services were provided and if every effort were made to keep the victim informed of the various steps taken or decisions made, one could take the view that the system had fulfilled its obligation to the victim; but services of this kind do not affect the extent to which the victim is involved in the process. If victims feel that they are ignored then their claims to participate more fully in the process should be examined.

Although it may appear to be sensible, appropriate and just to encourage the participation of the victim

in the process, to achieve this in the context of our present system poses some problems. It has been argued that to do so would cause further delay in the courts, would increase the cost burden on the system, would result in more severe punishments for the offenders, would compromise the procedural safeguards which have been established to ensure civil rights of the offender, and so on.

It is the contention of this Report that the arguments advanced against any change in this regard are by no means convincing. Nor, can it be said, have other jurisdictions been persuaded by them. In France, in the U.S.A., and in Australia, we find examples of recent legislation which give the victim an expanded role in the criminal justice system. In our opinion the question to be addressed is no longer whether the victim should participate in the process or not. The question is rather the extent of this participation.

Few would quarrel with the decision, which has been reached in countries which have addressed the issue, that victims be provided the opportunity to inform the court of the impact of the crime upon them. Nor would many disagree that the Court should be required to give thought to the victim's concerns in the determination of a sentence since, in fact, attorneys and judges often take into consideration the effect upon the victim before arriving at a sentencing decision.

More disagreement is apparent, however, when the method of the victim's participation is considered at the time of sentencing and when victim participation is considered at other stages of the criminal process, e.g., at the determination of the charge, at bail hearings and at the time of parole decisions. We believe that the victim should most certainly be informed of these various decisions. We do not believe that the victim should be, or need be, involved at each of the critical points in the process. To take one example, it may seem appropriate that the victim should have some input into a decision regarding parole. However, if one takes the case of an offender who is sentenced to 10 years imprisonment and whose parole hearing occurs some four years after the offence was committed, certain questions must be addressed. Would the offender feel that he has paid his debt and that any input from the victim would be irrelevant? How long does one remain a victim?

Closely related to the issue of participation is the question of victims' rights. A number of foreign jurisdictions have delineated certain rights and enshrined them in legislation; however, some of these rights are very general in nature such as the right to be treated with dignity and sensitivity. Moreover, no effective remedies are available when these rights are abused. We believe that wherever possible specific rights which could properly be prescribed by the criminal law should be legislated. Guidelines should be issued for more general 'rights' by the Ministers responsible for law enforcement and court administration in order to establish policies and procedures ensuring that victims are treated with consideration.

The Report outlines the social, economic, legal and constitutional background to issues relating to victims and the present relationship between the state, the offender and the victim. It explores both the varied and the common needs of victims and indicates the range of services which could be established to meet those needs. It addresses the question of the role of victims, their rights, and the extent to which the offender should make restitution to the victim and/or the extent to which compensation to the victim should be provided by the state. It addresses, too, the issue of costs and funding.

The cost of providing additional services to victims is of particular concern in a time when the various jurisdictions within Canada are beset by financial constraints. The Task Force, while accepting that this issue must be addressed, recognized that any attempt to forecast the costs and benefits of its recommendations would be imprecise. We have, however, drawn upon the experience of others in this area and found that costs need not be excessive, and that the benefits could justify the costs entailed.

The search for sources of funding has led some jurisdictions to develop creative and imaginative ways of providing the essential resources to fund both services and compensation. Increasing use in particular is being made in U.S. jurisdictions of what has come to be known as a 'fine surtax'. This and other forms of funding have been examined.

The Report is divided into four Parts of which this Overview is Part I.

Part II deals with how the Task Force defines victims for the purposes of this Report,describes their needs, the legislation directly pertaining to them,

and outlines the programmes which presently exist to serve them. In the course of this description it will be evident that there are gaps in services and improvements that can be made.

Part III focuses on recommendations for improving the situation of victims, and includes a discussion of some of the problems involved in funding and implementing those initiatives.

Part IV presents our Conclusion and Recommendations.

PART II

THE SITUATION OF THE VICTIM OF CRIME

CHAPTER 1:

WHO IS THE VICTIM ?

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WHO IS THE VICTIM ?

HO IS THE VICTIM

he first part of this report focuses primarily on the current ituation of victims of crime, and attempts to specify what is eing done for victims in Canada and what remains to be accomlished. A logical first step in this process is the formuation of a more precise and limited definition of the concept f 'victims of crime'.

OCUS OF THE TASK FORCE

he notion of victims of crime is a broad one, and no report an hope to encompass all the knowledge and information on all he victims of every different type of criminal activity. As a esult, the Task Force has concentrated on a study and analysis f victims of 'traditional crimes'. This concept has three dvantages:

- It limits the discussion to crimes where there is a direct and identifiable victim. This includes such crimes as sexual assault, robbery, break-and-enter or theft, and covers most of the types of activity which threaten the most vulnerable groups of victims of crime (e.g., children, women and the elderly). However, it excludes many forms of corporate or white-collar crime, largely because it is difficult to isolate a specific victim or to establish the exact loss in such cases.

- It limits the discussion to crimes where there is a direct and potentially identifiable perpetrator. This includes all forms of interpersonal victimization, but leaves aside those criminal activities where the moral and legal issues of assessing responsibility and guilt are difficult to resolve, e.g., crimes against the environment.

- It limits the discussion to only those forms of criminal victimization for which some information is available. While this information is limited, it helps to establish what happens to victims of crime both as a result of the activity itself, and as a result of their experience with the criminal justice system. This is not to imply that other forms of crime are less harmful, or are less worthy of concern. It merely recognizes that not enough knowledge is at hand to identify the precise actual victims of corporate pollution, illegal mergers or payoffs, or of the sale of dangerous goods, or to establish the exact nature and amount of the loss they suffer.

ıe focus on traditional crimes includes most of what the ıblic considers to be serious crime, and encompasses most of ıe situations where a victim of crime would have some contact

with representatives of the criminal justice system. However, it does result in an exclusion from consideration of a number of serious issues. Reference has already been made to the fact that most corporate and white-collar crimes will be left aside for the present, largely because not enough is known about the victims of such crimes to allow us to deal with this issue appropriately. In addition, little attention will be paid to the emerging trends towards an emphasis on crime reduction and on increase in the use of different forms of private justice and security measures.

Private justice includes the actions and institutions that victims themselves set up outside of the publicly controlled criminal justice system to deal with their problems. Thus, for example, large corporations often have systems set up (with the co-operation of the unions) to minimize their losses as victims. In other words, rather than turning to the criminal justice system for help, there appears to be a tendency for organizations to handle the problems 'in house'. For example, there appear to be instances where banks which are victimized do not involve the public criminal justice system until other private means of resolution (usually involving restitution) fail. Such private systems of compensating victims have come under scrutiny only when they interact in some way with the public system and this tends to occur, it seems, only when such strategies fail in some way to fulfill their objectives. Unfortunately, we do not know enough about such systems to determine what relevance they might have for individual victims.

Individual victims themselves, however, do not rely completely on the publicly controlled agencies to deal with their problems. Recent concern in some cities in Canada about vigilante-style groups have raised our awareness of another area where hard data are lacking. These important gaps in our knowledge about self-help strategies indicate the necessity for further investigation of these issues if a full understanding of the situation and needs of victims in our society is to be obtained. The Task Force has not had sufficient time or resources to address these issues in detail. It is recommended that they be regarded as priorities for further enquiry.

DESCRIBING THE VICTIMS OF CRIME

A great deal more is known about the perpetrators of crime than about the victims of their activity. Official crime statistics give virtually no information on the victims of crime nor on the incidence of crimes not reported to the police. Thus, at least until recently, little could be said about which Canadians were more likely to be victimized by crime, or even about how many people were actually victimized.

ver the past year, a Canadian Urban Victimization Survey was onducted in seven major centres: Greater Vancouver, Edmonton, innipeg, Toronto, Montreal, Halifax-Dartmouth, and St. John's. his survey, based on a random sample of over 60 000 Canadians, rovides us with extensive information concerning the extent of eported and non-reported crime in Canada during 1981, the mpact of criminal victimization, public perceptions of crime nd the criminal justice system, and victims' perceptions of heir experiences.

or the year 1981, the survey estimates that for the seven ities there were more than 700 000 personal victimizations sexual assault, robbery, assault, and theft of personal roperty), and almost 900 000 household victimizations (break- nd-enter, motor vehicle theft, household theft and vandalism). ince fewer than 42% of these incidents were reported to the olice, clearly many more Canadians were victimized than fficial crime statistics would indicate.

he Risk of Victimization

hen crimes are divided into two general categories of personal offences and household offences it is possible to calculate ates per thousand adult population or per thousand households. he survey found that about 70 incidents of personal theft per housand population occurred in the seven cities studied, and hat the more serious the type of crime, the less likely it is o occur. Sex differences are considerable for each category. ot surprisingly, women are seven times more likely than men to e victims of sexual assault, but they are also more likely han men to be victims of personal theft. Men are almost twice s likely as women to be victims of robbery or assault.

Risk of victimization is closely tied to age. Contrary to opular belief, however, elderly people are relatively unlikely to be victimized by crime. Those under 25 had the highest rate f victimization in all categories of personal offences, and these high rates declined rapidly with increasing age after this point.

The relationship between income and victimization is more omplex. The survey found that the higher the family income of rban residents, the more likely they will experience some form f household victimization or personal theft.

Although professionals working in this field have long held the belief that break-and-enter offences occur more frequently among low-income households, this is not so clearly the case in the seven urban centres studied. From these findings, families with incomes under $9 000 per year or between $20 000 and 29 000 had lower break-and-entry rates than households with incomes between $10 000 and $19 000. The highest break-and-entry rates were for households with incomes over $40 000.

These complex relationships between income and risk may reflect changing demographic trends within our cities. The residential redevelopment of inner city areas may bring those with high and low incomes into closer proximity than has been the case since the first development of dormitory suburbs and communities, and this mix of income groups may well mean a wider distribution of risk across income groups.

Lifestyle is also an important component of overall risk of victimization. One measure of lifestyle which is strongly related to risk is the number of evenings spent outside the home each month. For example, there is a strong positive relationship between the number of nights out and rates of assault, robbery, personal theft, household theft and vandalism, and a less dramatic, but still positive relationship shown for rates of sexual assault, break-and-enter and motor vehicle theft.

When the categories of people most likely to be victimized are examined many popular myths are dispelled. The victimization data provide a profile of the victim of crime against the person: he is typically a young unmarried male, living alone, probably a student or unemployed and with an active social life - interestingly, this is not very different from the profile that might be drawn of the offender. Significantly, the young male victim expresses little concern about or fear of crime even after he has been victimized.

Fear of Crime

Although only 5% of the residents in the seven urban centres feel unsafe walking alone in their neighbourhood during the day, and 40% feel unsafe after dark, women and the elderly are far more likely to express fears about their safety. Fifty-six percent of all women said they feel unsafe walking alone in their own neighbourhoods after dark (compared to 18% of the men), and even more significantly, 89% of the elderly (males and females combined) feel unsafe after dark. Fear of sexual assault no doubt feeds much of the more general fear women express. A full 65% of those who had been victims of such assault in the past year feel unsafe walking alone after dark, and 11% even feel unsafe during the day, even though the rates of sexual assault were relatively low when compared to other offences (about 6 per 1 000 females).

Reported and Unreported Crimes

As mentioned previously, more than half (about 58%) of the crimes described to interviewers were never brought to the attention of the police. Combining results from the seven cities, the crime most likely to be reported is theft or attempted theft of a motor vehicle (70% reported), although 11% of completed (actual) motor vehicle thefts remain unreported. The crime least likely to be reported is theft of personal property (29% reported). The seven-city averages mask considerable differences between the cities. There is little apparent consistency in the rank ordering of cities by tendency to report crimes. The survey data indicate that females have a higher reporting rate than males for sexual assault, robbery and assault, and that those 65 and over are more likely to report incidents than younger victims.

Clearly, a great many victims never come into contact with the criminal justice system. The most common reasons given for failure to report an offence are that the crime was 'too minor' (mentioned in two-thirds of the crimes in which no report was made); that 'police could do nothing about it anyway' (61%); and that 'it was too inconvenient' to make a report or victims 'did not want to take the time' (24%). For some, it would appear, the criminal justice system seems ineffective or confusing, and the prospect of becoming part of the process seems potentially costly and inconvenient. But the problems go beyond financial cost and inconvenience.

When reasons for non-reporting are analysed by offence category it becomes clear that the pattern of reasons given by sexual assault victims varied from the norm in some important respects. The most common reason given by sexual assault victims for not reporting is that police could not do anything about it (52%), but this was closely followed by 43% who cite concern about the attitude of police or courts towards this type of crime. Overall, this reason for not reporting a crime is given by only 8% of victims of crime. Fear of revenge by the offender, though rarely an issue for most victims, is common among victims of sexual assault (33%) or female victims of assault (21%).

Predictably the majority of unreported crimes can be classified as less serious - involving no injury and little material loss. Indeed most victims cited the minor nature of the incident as their reason for not reporting. Nevertheless, a significant amount of serious crime - even incidents which resulted in physical injury - is also unreported. For example, two-thirds of the women who had been sexually assaulted did not report the assault to the police. Here, concern about the attitudes of those within the criminal justice system is a major inhibiting factor. Similarly, women assaulted -

particularly by intimates - are likely to report fear of revenge as a reason for failure to report.

Finally, the data reveal that victims are most likely to report crimes which result in significant financial loss - rather than those which result in pain, injury and fear. For many, reporting crimes is less an act of justice (or even revenge) than a utilitarian act seeking redress, recompense or recovery. Perhaps if more were aware of the availability of criminal injuries compensation, more would report violent offences. Fewer than 5% of victims who suffer injury inquire as to their eligibility for such compensation. Similarly, if the criminal justice system was seen as offering practical assistance and information and assuring the dignity of the victim, more victims might see utility in reporting crimes.

The Victimization Survey has confirmed that property crimes occur much more frequently than crimes of violence, and that most of these offences result in low financial loss. Most incidents are never reported to police, mainly because victims themselves define these incidents as being too trivial to warrant police intervention. Crimes of violence are less frequent and do not necessarily result in serious injuries.

The data may provide some reassurance about the general level of safety and security in our society (particularly as compared with popular media representations of everyday life). However, this should not blind us to the distress which crime inflicts on some, either directly as the result of their primary victimization, or indirectly because of the loss of dignity, social status or emotional well-being. It is now evident that many very serious crimes never come to official attention. This is either because victims fear the consequences of making a report, or in certain situations such as domestic violence, victims are unsure about whether the incident is in fact a crime.

It would seem that victims have three major concerns: the concern not to be victimized again; to receive reparation for their loss or suffering; and to maintain their sense of personal dignity and integrity.

A NEW AWARENESS OF THE VICTIM

The question of why the situation of victims of crime has become the focus of attention by both the public and the state in recent times is indeed interesting. However, as in the case of the emergence of any social problem, the search for clues should focus on an analysis of the interests, concerns and contributions of specific groups.

The growing concern for victims of crime in Canada probably reflects the impact of at least four recognizable thrusts (Hastings, Ross: A Theoretical Assessment of Criminal Injuries Compensation in Canada: Policy Programmes and Evaluation, Department of Justice Canada, 1982). The first is that of victim-based groups who have organized in an attempt to change public attitudes and to obtain services or resources from different levels of government. The best known examples of such groups are probably those which emerged out of the women's liberation movement in the 1960's and 70's, and which established services and support networks for victims of sexual assault and wife battering. Their major concern is to reduce the consequences of victimization by providing services and information to victims of crime, and by working towards the prevention of future victimization (either through education of the public or pressure on the state to establish or modify victim-oriented programmes). These groups all tend to have a fairly specific sense of what their needs are, and of how these needs can be satisfied. Unfortunately, this very specificity also tends to limit their impact. Unlike the National Organization for Victim Assistance (NOVA) in the United States, there is no central focus or umbrella group for all Canadian victim advocacy groups. There are national associations which represent groups whose focus is on a specific area, e.g., the provision of service to victims of sexual assault or those established to meet the needs of traffic victims. But no one voice speaks for all victims. This approach can result in the provision of quality services to a specific target population. It can also mean, however, a lessened ability to exert concerted political pressure or to draw the benefits of the economies-of-scale or cost-effectiveness which might be available to more centralized and integrated organizations.

Secondly, the general public's fear of crime and of the personal probability of being victimized has resulted in a generalized pressure on the criminal justice system to 'do something'. The public perception seems to be that crime and violence are increasing, that the benefits of criminal activity to the offender are high, and that the certainty and severity of punishment of these offenders are low (Meiners, Roger: Victim Compensation: Economic, Legal and Political Aspects. D.C. Heath, 1978). Not surprisingly, the public is likely to translate this perception into frustration with the criminal justice system. In this context, victim and witness assistance programmes of all types are popular with the public, even though they do not attack the deeper roots of the problems of crime and victimization.

The issue, then, for the public is to find an acceptable balance between the fear of crime and the willingness and ability to pay the cost of protection from crime or its consequences. A concern for the victim is a logical extension of

this, either in terms of reducing the costs to the victim or of a viable and cost-effective strategy for the state.

The third momentum has been sparked by those who promote victim/witness assistance programmes and services. People who are dedicated to the delivery of victim-witness services will obviously have a financial and emotional stake in seeing that their work is continued. The issue of survival of these groups in a period of fiscal crisis is indeed a reality, particularly as now it is accompanied by demands from certain sectors that governments spend less, not more.

The fourth thrust comes from within the criminal justice system itself. The argument of some criminal justice officials is that some consideration for the needs and concerns of victims will result in a more humane, effective and cost-efficient system.

From these four areas have come the primary pressures to develop and expand initiatives which recognize and deal with the needs of victims and witnesses of crime. The specific concern for the plight of victims and witnesses, the public's desire that something be done about crime, the interest of the members of public and private agencies in maintaining and enlarging their territory, and the criminal justice system's interest in victims all compete for attention. What is clear is that a great deal of energy is being expended in the direction of victims of crime. The problem is the very real possibility that victims and witnesses will get lost in the shuffle. This would seem to be ample justification for a much closer analysis of the actual situation of victims of crime in Canada. This topic will be the focus of the remaining chapters in Part II of this report.

CHAPTER 2:

VICTIMS AND THE JUSTICE SYSTEM

VICTIMS AND THE JUSTICE SYSTEM

The justice system is complex and its subsystems sometimes face competing or even contradictory tasks and pressures. Thus the concern in this chapter is twofold: firstly, to focus on the general question of how policy and law are made in Canada, and to identify the levels of government which are responsible for making decisions about victims; and secondly, to describe the specific place of the victim within the current framework of the Canadian justice system.

THE CONSTITUTIONAL CONTEXT

The fundamental distribution of powers to make law and policy in Canada is established in the Constitution Act which gives Parliament the power to enact criminal law and procedure and gives provinces the responsibility for the administration of justice. In addition, the provinces have jurisdiction over matters dealing with property and civil rights.

The basic criminal law is contained in the federally enacted Criminal Code of Canada, and the enforcement of that law is generally carried out by the provinces. Policing of the criminal law is primarily a provincial responsibility, and is carried out by municipal or provincial police or by the R.C.M.P on a contract basis with the provinces.

The prosecution of offences is also, mainly, a provincial responsibility. The general rule is that the provinces, through their Attorneys General, prosecute breaches of provincial statutes while the federal Attorney General prosecutes individuals charged under federal statutes. A major exception exists for prosecutions under the Criminal Code, which are carried out by provincial Attorneys General. The provinces also prosecute offences based on other federal statutes, such as the Juvenile Delinquents Act, due to the criminal nature of the offence and for other practical reasons.

The sentencing of offenders is a matter within the trial Judge's discretion subject to certain maximum and minimum provisions contained in the Criminal Code or other applicable statutes.

The Criminal Code provides that in certain cases a court that convicts an offender can order the offender to repay the victim for loss or damage to

properties as part of the sentence. In 1978 the Supreme Court of Canada held in the Zelensky case that the order could validly be made as part of the sentence, but that the court could award such repayment only for ascertainable losses or damage to property. Awards for damages for pain and suffering or other losses, the amounts of which are in dispute, would appear to be the responsibility of the civil courts as falling within the provincial jurisdiction over property and civil rights.

The provinces provide for the award of Criminal Injuries Compensation to victims although the federal government cost shares these programmes. Criminal Injuries Compensation programmes exist in all provinces and territories with the exception of Prince Edward Island.

As part of their responsibility for the administration of justice, the provinces provide legal aid. The federal government cost shares the provision of legal aid to offenders in criminal matters.

Probation is based on the federal criminal law and procedure power and although authorized in the Criminal Code, it is administered entirely by the provinces.

Jurisdiction over corrections is divided between the federal government and the provinces. The Criminal Code codifies the 2-year rule, which has been observed since Confederation. Sentences of 2 years or more are served in federal penitentiaries while those of less than 2 years are served in provincial institutions. Parole is a federal responsibility and under the Parole Act the National Parole Board administers conditions of release in federal penitentiaries and the prisons of many provinces. Under the Act the provinces are also given the power to establish parole boards for inmates in provincial institutions.

It is in this general constitutional framework that recommendations directed to the federal and provincial governments respecting victims of crime must be viewed. The federal government would be the appropriate body to address recommendations concerning amendments to the Criminal Code: for example, the Criminal Code could set out procedures to ensure the prompt return of property. The provincial Attorneys General would be the appropriate forum to direct recommendations regarding the administration of justice including police practice, prosecutorial practices and the delivery of services for victims.

The key point, for our purposes, is that this division of authority makes it difficult to co-ordinate efforts and articulate a single and integrated policy for victims (Government of Canada: The Criminal Law in Canadian Society, 1982).

CIVIL JUSTICE AND CRIMINAL JUSTICE

The Canadian justice system specifies two approaches through which victims of crime may obtain satisfaction for their losses: the victim may seek civil redress for the damages or costs that are borne as a result of the behaviour of another, or the state may become involved through the criminal law. The distinction between civil and criminal law is not absolute. The two are not mutually exclusive and it is possible to seek reparation for the results of a crime through either or both processes. However, the rights and responsibilities of the victim differ from one type of law to another. For this reason, and because it is necessary to specify possible points of intervention and change, this section will comment upon the difference between civil law and criminal law.

Essentially, the division of responsibility is that the criminal law regulates public order and the response of society to offenders against that order, whereas the civil law provides private redress for the wrong done to the individual victim. As we saw earlier, the Constitution Act allocates responsibility for the former to the federal government, and for the latter to the provinces.

The origin of this development is of some interest, for in the early days of the English law, there was little distinction drawn between a civil wrong and a criminal wrong. If a person or his property were injured, either that person or his family would seek revenge: in this sense, all wrongs were considered to be civil wrongs. Consequently, blood feuds between families were not infrequent although the community might attempt to encourage the victim to accept compensation in the form of money.

The concept of the 'King's Peace' can be traced back to feudal times. The King began to put certain favoured subjects or property under his 'peace'. If the favoured subject or property was injured, the wrongdoer would be accountable to the King rather than the victim and would be liable to pay a fine to the King, or for more serious damage would be subject to physical punishment. As time passed, the King expanded the area of his 'peace' to cover all the

subjects and lands in his kingdom. Breaches of the 'King's Peace' came to be prosecuted in the name of the King by his agents.

As a consequence the state's interest in controlling crime and in punishing the offender became supreme, and the importance of the victim's interest in retribution and reparation for the harm done was downplayed. Crime became a public relationship between an offender and the state, whereas damages were formerly a private relationship between an offender and a victim. Crime and criminal law came to be viewed as public concerns based on the belief that society is impossible without trust, and that crime is a menace to that trust. The maintenance of collective peace and security, especially in highly differentiated and stratified societies, is seen as justifying the formal response of the state against behaviour which is culpable, seriously harmful and deserving of punishment (Government of Canada: 1982).

CIVIL REDRESS FOR VICTIMS OF CRIME

The civil law deals with torts, which are a type of civil injury or wrong. A tort can be defined as some act or omission without just cause, which results in some form of harm to the victim. Torts may also be criminal offences, as in the cases of assault, theft, libel, or damage to property. In our legal system, civil and criminal remedies are independent of each other. The wrongdoer may be punished criminally and also be compelled to make restitution to the victim as a result of a civil action.

Presuming the victim can identify and locate the wrongdoer, the process is initiated by issuing a claim for damages designed to repair the losses suffered by the victim. The remedies obtainable by a plaintiff in a tort action are generally of three kinds: injunctive relief, restoration of property and damages. Where the plaintiff's aim is to put an end to certain conduct of the defendant, an injunction is the appropriate remedy. Where the defendant is in possession of specific property, restoration of that property is the appropriate remedy. Where a plaintiff seeks monetary restitution, the appropriate remedy is monetary damages.

Monetary damages are either general damages or special damages. General damage is that kind of damage which the law presumes to follow from the event complained of: an express amount need not be set out in the plaintiff's claim. Damages sought for

pain and suffering are general damages. Special damages are damages which the law does not presume to follow from the event and therefore must be set out with particularity in the pleadings. These are pecuniary losses actually suffered such as lost wages, out-of-pocket expenses, medical and dental expense and costs to repair damaged property.

A plaintiff who suffers as a result of the defendant's act may not be entitled to civil damages in all cases. In order to recover, the defendant's act must be wrongful and the defendant must have owed a duty to the plaintiff (the plaintiff's rights must be violated). A second basic principle concerns remoteness of damage. A defendant is not necessarily responsible in law for all the harm the wrongful act may cause. Generally, the accused is only responsible for damage that is reasonably foreseeable. However, it is only the type of damage that must be reasonably foreseen, not the amount of damage.

A final principle in the law of torts is known as the 'thin skull rule'. Wrongdoers generally take their victims as they find them. Therefore, if the consequences of a minor assault are aggravated by the victim's state of health the wrongdoers may be liable to the full extent even though they had no knowledge of the victim's condition.

When damages are proven the court will make an 'appropriate award' but this is a very complex and difficult decision to be made by the civil court. The problem is that there is an absence of a coherent framework of theory and principles for assessing damages (McLachlin, Beverley: What Price Disability? A Perspective on the Law of Damages for Personal Injury, Canadian Bar Review, Vol. 59, 1981). The general principle of damages is to return victims as nearly as possible to the position they were in prior to the tort. This principle works well in cases where the victim seeks injunctive relief or the restoration of property. It does not, however, provide a clear guideline for establishing the amount of monetary restitution necessary to restore the victim.

There would seem to be three strategies for attempting to resolve this problem (McLachlin, Beverley: 1981). Traditionally, the courts have awarded for similar cases in the past rather than on the needs or injuries of a specific victim. In recent years this arbitrary approach has been replaced by two more recent strategies.

The first is the principle of 'full compensation' for actual monetary loss arising from the injury and this has been the dominant principle for the assessment of damages in Canada in recent years. The problem with this approach is that it is applicable only to pecuniary losses, and does not provide a rationale or guideline for measuring the monetary value of non-pecuniary losses such as pain or suffering. Moreover, there is no consideration in this approach of the potential detriment to the accused of awards based on this principle.

A second strategy is beginning to emerge in response to these criticisms: that is the principle of 'functional compensation'. This approach assesses damages on the basis of how an award can alleviate the consequences of the injury to a reasonable extent. The goal is to meet the needs and requirements of the victim rather than provide full compensation. The test in assessing damages is the demonstration of a reasonable function which the money claimed will service.

In any case, even if there were a consensus regarding funding principles there would still be a number of thorny questions facing the courts in any attempt to assess damages. For example, consideration would still have to be given as to whether payments should be periodic or lump sum, whether awards should be adjusted for inflation, taxation or the value of lost earning capacity and so on.

Once an adjudication is made that the defendant is liable for the plaintiff's damages in a particular amount, the victim may feel that justice has been done. However, it may be more difficult for the plaintiff to collect the money from the defendant than it was to prove entitlement, especially if the defendant is in jail. There are legal mechanisms for the plaintiff to execute upon the judgement but they are time-consuming and costly. A lien may be placed on the defendant's land, the sheriff may be directed to seize a bank account and personal property, wages can be garnisheed and the defendant can be summoned to court regularly to be examined with respect to any assets and income. Ultimately, though, an impecunious defendant is 'judgement proof' and the plaintiff can not recover. Where the plaintiff does recover damages, they may be whittled away by the legal costs involved in bringing the action and any costs incurred in executing upon the judgement.

Limitation periods may also be an impediment to launching a civil action for damages. The rationale

for a limitation period proceeds from the fact that the plaintiff has the onus to prove the case on a balance of probabilities and that the ability to do so will recede with the passage of time.

While the limitation period for a tort action is generally six years, the period may be much shorter, as for example with actions brought against police and public officials. These must be commenced within three months and notice of the plaintiff's intention to bring the action must be given within seven days.

All things considered, even a successful civil suit is likely to be a costly, frustrating and time-consuming adventure for most victims of crime. Even so, that might be an acceptable cost if the majority of victims could actually use the process to meet their needs. Unfortunately, this is far from being the case. Most victims have little or no real probability of obtaining full redress. Given that few tortfeasors are found, and that only a proportion of these are willing and able to make adequate restitution, one can argue that the victim is seldom realistically in a position to pursue civil action. The tendency of most victims to be reluctant to pursue civil action seems to be based upon a realistic assessment of their chances of success. Moreover, the physical and emotional injuries which the victims may have suffered, and their involvement in a complex, expensive and sometimes intimidating process simply cannot be satisfied by civil action.

THE CRIMINAL LAW AND VICTIMS OF CRIME

Concern for the plight of the victim is beginning to be an accepted part of the policy of the criminal justice system. For example, the federal government in its recent policy statement in The Criminal Law in Canadian Society (1982) has included such a focus in its general statement of the purpose and principles of the criminal law. It argues that "whenever possible and appropriate, the criminal law and the criminal justice system should promote and provide for opportunities for the reconciliation of the victim, the community, and the offender, and redress or recompense for the harm done to the victim of the offence".

This is exemplary, and as we shall see, it promises a modification of the current neglect of the specific interests of the victim in reparation for the harm done. However, policy and promises are not law. The simple fact of the matter is that victims of crime

have very few legal rights, though they can benefit from certain provisions of the Canada Evidence Act, the Young Offenders Act and the Criminal Code.

The Canada Evidence Act specifies that:

(a) A person who is assaulted by his/her spouse is a competent and compellable witness for the prosecution in proceedings brought against the spouse. The Canada Evidence Act, subsection 4(4) preserves the common law exception which allows a spouse to testify in cases involving his/her life, health or liberty. Amendments to the Canada Evidence Act made by Bill C-127 have expanded the situations where a spouse is a compellable witness. Subsection 4(2) provides that where a husband or wife is charged with certain offences including contributing to juvenile delinquency, sexual assault, child abduction and bigamy, a spouse is a competent and compellable witness. In addition, subsection 4(3.1) provides that where a husband or wife is charged with certain offences against a young person under 14, including murder, manslaughter, criminal negligence causing death, and assault, the spouse is both competent and compellable. These amendments will assist in the prosecution of child abuse cases.

(b) Witnesses reluctant to testify because of fear of self incrimination may invoke the protection of the Canada Evidence Act and answer incriminating questions with the assurance that the evidence given will not be used in subsequent proceedings against them (s. 5). In addition, the Charter of Rights and Freedoms provides in s.13 that a witness who testifies in any proceedings has the right not to have any incriminating evidence used against him or her.

The Young Offenders Act which was passed by the House of Commons in May 1982 but has not yet been proclaimed in force also recognizes the concerns of crime victims. The Act provides a wider range of dispositions to provide compensation or restitution to the victim in money or in services.

In addition, where a pre-sentence report is prepared it shall contain the results of an interview with the victim where it is reasonably possible.

A perusal of the Criminal Code indicates a number of references to victims or to witnesses.

1. Section 10 stipulates a victim's right to sue for civil damages.

2. Sections 34-37 provide that a victim may use self-defence to repel an assault. A victim of an unprovoked assault may use self-defence provided, generally, that the force used to repel the assailant is not disproportionate to the force used by the assailant.

3. Sections 40 and 41 allow for the defence of property against trespass or theft. A victim is justified in preventing a trespasser from removing moveable property from his possession but cannot strike at or cause bodily harm to the trespasser or thief. Where the trespasser persists in removing the property, victims are justified in using reasonable force to defend their property. Victims are also justified in using as much force as is necessary to prevent a person from forcibly entering their homes without lawful authority and a victim may use reasonable force to repel the trespasser.

4. Section 381 provides that certain intimidating behaviour is a summary conviction offence. Where violence or threats are used to compel another person to do something or refrain from doing something they have a lawful right to do, a criminal offence is committed.

5. Sub-section 442(1) provides that the public may be excluded from the courtroom in certain circumstances. In many instances, victims dread their appearance in court because they anticipate a room filled with curious spectators. Thus where the presiding judge is of the opinion that it is in the interests of public morals, the maintenance of order or the proper administration of justice to exclude any or all members of the public from the courtroom he may do so. It should be kept in mind, however, that in general, criminal proceedings take place in open court.

6. Sub-sections 442(2), (3), and (3.1) apply with respect to sexual offences. Where an application is made to exclude members of the public, pursuant to section 442(1), from the trial of a sexual assault offence, where the judge does not make the order, reasons must be given with reference to the circumstances of the case. In addition, the victim, on application, is entitled to an order directing that his or her identity and any information that could disclose his or her identity shall not be published in any newspaper or broadcast. The presiding judge is obliged to inform the victim of the right to make this application at the first reasonable opportunity.

7. Sections 637 to 643 provide a complete code of procedure for taking evidence by commission. Where a witness or victim is unable to attend the trial and give oral evidence due to illness, absence from Canada or some other good and sufficient cause, the court may order that the necessary evidence be taken by commission upon the application of the concerned party. Usually the evidence is taken by a special examiner and where necessary at the witness's bedside. The witness is examined and cross-examined following the same procedure as if he or she were in court. In order for the evidence to be read in at trial, it must be proved that the witness is still unable to attend and give oral evidence.

8. Bill C-127, which became law January 4, 1983, made amendments to the Criminal Code regarding sexual assault. Many of the amendments have implications for sexual assault victims:

   (a) The concept of rape is abolished and replaced by a three-tiered structure of sexual assault offences focusing on the violent nature of the assault rather than the sexual nature. A sexual assault can be committed against a male or female by a male or female and a husband or wife may be charged with the offence in respect of his or her spouse. (Sections 246.1, 246.2, 246.3);

   (b) Corroboration of the victim's testimony

is no longer required for a conviction on a sexual assault charge. (Section 246.4);

(c) The rule regarding recent complaint is abolished. The court cannot comment on a victim's failure to complain or the lapse of time between the complaint and the attack (s.s. 246.5);

(d) The admission of evidence of the victim's sexual conduct with someone other than the accused may only be allowed in three narrow circumstances: where the prosecution has already raised such evidence, where the accused contends that he or she did not have sexual contact with the victim at all and wishes to prove from some physical evidence that some other person was responsible, or where the victim is alleged to have had sexual contact with more than one person on the same occasion and the accused wishes to allege belief in consent from that conduct. To determine if the evidence will be admitted the defence must provide notice of their intention to adduce such evidence and particulars of the evidence sought. An in camera hearing, at which the victim is not a compellable witness, is held to determine if the requirements of the section have been met. Publication of the evidence or information given is prohibited (s.246.6);

(e) The admission of evidence of a victim's sexual reputation to challenge or support his or her credibility is expressly forbidden by section 246.7.

9. Section 653 provides that a victim of an indictable offence may apply for an order of compensation from the accused at the time the accused is sentenced.

10. Section 663 (2)(e) provides that where an accused is convicted of an offence and is placed on probation, the probation order may contain a condition that the accused make restitution or reparation to any person aggrieved or injured by the commission of

the offence for the actual loss or damage suffered.

11. Section 388 provides that compensation can be ordered for an amount up to $50.00: as part of the sentence of an accused found guilty of the summary conviction offence of causing wilful damage or destruction of property not exceeding $50.00.

The terms restitution and compensation require clarification. This is an awkward task since these words are used in a different and inconsistent manner both by policy makers and in the Criminal Code. The distinction proposed by the Law Reform Commission of Canada provides a useful definition:

> "Restitution is a sanction permitting a payment of money or anything done by the offender for the purpose of making good the damage to the victim... Restitution refers to the contribution made by the offender towards the satisfaction of his victim. It moves from the offender to the victim and is personal. 'Compensation' on the other hand, is impersonal and refers to a contribution or payment by the state to the victim." (Law Reform Commission of Canada, 1974: 8: emphasis added.)

Restitution and compensation therefore represent two different, but complementary, strategies for repairing or restoring the losses of victims of crime. Restitution is the strategy of adapting the sentencing process to require the offender to recognize the losses of the victim, and to attempt to restore these losses. Compensation is a strategy based on the recognition of the limits of restitution as a solution to the costs of crime. It generally involves the establishing of government-based Criminal Injuries Compensation Boards to which a victim can apply for restoration of certain forms of loss.

It is necessary to make this distinction because many academic and legal authorities have tended to blend together the concepts of restitution and compensation. This tendency reflects a lack of consistency in the use of these terms within the Criminal Code. Generally the Criminal Code uses the term restitution to refer to the return of property (including money) to a victim; and the term compensation to describe a sentence where an offender is required to pay money to a victim for the harm or damage which has been

done. This report will reserve the word restitution to cover the gamut of reparative sentences which runs from the simple return of property to a victim, to the requirement that the accused make some form of payment (either monetary or service) to repay the victim for loss or damage to the property involved in the crime. Unless otherwise noted, compensation will refer only to provincial or territorial criminal injuries compensation programmes.

CRIMINAL INJURIES COMPENSATION SCHEMES

Criminal Injuries Compensation programmes exist in all the provinces and territories in Canada, with the exception of Prince Edward Island. While no two of these programmes are identical, they do share a number of common features.

All the Canadian compensation schemes are designed to aid the victims of violent crime. This includes surviving dependants of victims of homicide, and usually persons responsible for the maintenance of the victim. All programmes also compensate 'Good Samaritans' who are injured in the course of attempting to enforce or assist in the enforcement of the law. Finally, all jurisdictions consider the possible contributory behaviour of the victim in assessing eligibility and the size of an award.

The compensation schemes are all designed to alleviate the pecuniary loss of the victim. Compensation may be obtained for losses incurred as a result of the injury, death or disability of the victim. In addition, compensation can also cover the losses to dependants as a result of a victim's death, to pay for the maintenance of a child born as a result of rape, or for other expenses deemed reasonable by the jurisdiction in question. Some programmes also compensate for pain and suffering.

Crime compensation programmes are funded on a cost-sharing basis. The federal government contributes to the provinces the larger of 10 cents per capita or $50.000, but not in excess of 50% of the compensation paid. The federal government compensates the Territories for 75% of the compensation awarded, subject to certain maximum amounts for individual awards (Statistics Canada: Criminal Injuries Compensation, 1980).

Obviously, so cursory a discussion does some injustice to the differences in rationale and design between the various compensation programmes. The interested reader can, however, obtain detailed

information on this subject (see Hastings, Ross: 1982; Statistics Canada: 1980; Burns, Peter: Criminal Injuries Compensation, Butterworth, 1980; and Law Reform Commission of Canada: Working Paper No. 5: Restitution and Compensation, 1974). In addition, the Federal Department of Justice is currently sponsoring evaluations in a few selected jurisdictions, so it should soon be possible to assess more fully and realistically the benefits of various methods employed.

For the present,however, there seems little reason to believe that compensation is making a great contribution to a large number of victims. For instance, a total of $14 522 356.61 was paid during the 1981-82 fiscal year on the basis of 3 041 completed decisions - this resulted in an average award of $2 859.96. No doubt these awards contributed to alleviating the losses of these victims. The problem is that the 3 041 beneficiaries represent only an extremely small proportion of all the victims of crime during the period in question. For that matter, a 1983 Department of Justice survey has found that few victims are even aware of the existence of such programmes. It would seem that in the present circumstances Canadian criminal injuries compensation schemes can only make a very limited contribution to alleviating the financial losses of victims of crime.

CHAPTER 3:

THE IMPACT OF CRIMINAL JUSTICE PRACTICES ON VICTIMS

THE IMPACT OF CRIMINAL JUSTICE PRACTICES ON VICTIMS

Introduction

It is not possible to understand the impact of the criminal justice system on the victim without first understanding the process of events from the commission of an offence to the sentencing of an offender. In this chapter a basic description is given of each step in that process indicating the extent to which victims are, or are not, involved and the possible effects upon them of the decisions made.

The important role played by the victim in mobilizing the Criminal Justice System is evidenced by the fact that only a small proportion of offences are visible to the police in the normal course of their duties. Most criminal offences are brought to the attention of the police because a citizen, usually a victim, has reported the offence to them.

The extent to which citizens report offences, either against themselves or against others, is probably a good indicator of the trust and confidence people have in the system and in its ability to assist them. It is difficult, of course, to determine how much crime is not reported and several countries including the U.K., the U.S.A. and Canada have attempted, mainly over the past few years, to measure this through the medium of victimization surveys.

The Victimization Survey conducted in 1982 has been described briefly in the previous chapter. From the data collected, which revealed the large proportion of unreported crime, it would seem that for many victims the criminal justice system may appear too complex, confusing and demanding and the prospect of becoming involved seems intimidating, costly in time and generally inconvenient.

Some indicators as to why many victims do not report offences may be gathered from an examination of the criminal justice process, looking particularly at what the system expects or demands of the victim and the victim's expectations of the system.

THE COMPLAINT

Victims will find that many demands are placed upon them by the criminal justice system once they report that a crime has been committed. They are expected to co-operate with the police and provide them with information during their investigation. They may be

deprived of property for extended periods of time if deemed necessary for the investigation. They may have to attend at the police station to attempt to identify the offender in a line-up or from photographs and they are expected to attend court as witnesses in any resulting criminal proceedings which could include a preliminary hearing and a trial and may involve numerous adjournments and delays. However, for all the inconvenience caused and the demands placed upon their time and co-operation, victims receive little consideration in return. Even though they have suffered the loss or injury which has set the whole process in motion, they are relegated, by the very nature of the system, to the rank of any other witness.

After victims have made the decision to report a crime they will call the police or another person will call on their behalf. This in essence means calling a complaint desk or dispatcher and may result in the filtering out of incidents not deemed essential for police intervention. A neighbour who reports a domestic quarrel may be told to wait half an hour and call back if the matter has not resolved itself. A teenager who has had a bicycle stolen may be asked to provide necessary information over the phone and be told that the matter will be 'looked into'. Such a response may be unsatisfactory and frustrating for the victim. In most cases police will be dispatched to the scene of the crime to gather the necessary information.

The experience of assaulted wives is particularly significant. Where a neighbour calls and reports a domestic problem, the woman's life may be in danger and a response by the police that the situation is a private matter is inappropriate. Intervention is essential to ensure the woman's safety and to acknowledge that wife assault is a crime. Where the victim herself calls the police she is acknowledging, perhaps for the first time, that she is a victim of a crime. The victim expects and requires the police to attend the scene and probably to arrest and remove her assailant.

The police officers who respond may attempt to diffuse the situation rather than treat it as a crime. They may perceive an unwillingness on the part of the victim to follow through with charges. Their past experience may indicate that where a charge is laid the victim and her assailant later reconcile and the victim will no longer co-operate. They may also believe that laying a charge will aggravate the situation. Although their reasons may

be understandable such a response does not acknowledge that the incident is in fact a crime.

The decision to report the crime may be the only decision the victim will make. Once the police attend at the scene of the crime they assume the responsibility for the investigation, the apprehension of the suspect and any charge that is laid.

The police may require the victim to provide necessary information in order for them to investigate the incident but once this is accomplished it is understandable that the police officer's concern is more likely to be directed at apprehending the offender than at reassuring the victim. A single woman may return home to find her front door broken down and her home vandalized. She may have no one to turn to for companionship, or assistance in repairing the damage; she may not know what is expected of her vis-a-vis the investigation; she may have not thought to ask the police officers their names and have no idea how to contact them for information.

The needs of other victims may be greater. Victims of sexual assault require emotional support, medical help and advice about the consequences of reporting the incident. Sexual assault crisis centres can provide essential information to these victims if they are contacted at the appropriate time.

Several Canadian police forces have established a policy of providing victims with a card referring them to a number of agencies available to provide essential services; for example, sexual assault crisis centres, transition houses and local victim/witness service agencies. Some police forces have established victim service units which will contact the victim and provide necessary information.

In addition to the victims' need for services to assist them in dealing with the immediate consequences, they will want to know what happens next. The promise by the investigating officers that 'we will be in touch' will be taken very seriously by the victim who expects to be advised that a suspect has been apprehended and charged or that the investigation has been concluded without success.

If these comments on the experience of victims in lodging a complaint are interpreted as being critical in nature, that criticism is directed at the system itself and not at police officers whose task is often difficult and sometimes complicated. Indeed, according to the Victimization Survey, those victims who

did report incidents to the police were typically positive in their appraisals of police promptness, courtesy and overall case handling. Young victims were far less likely than older victims to make such positive evaluations. Least likely to be satisfied were the victims of sexual assault and robbery.

THE INVESTIGATION

In the ordinary course of events police will respond to the victim's call for assistance by attending at the scene of the crime. As mentioned earlier the police may find the victim in need of medical treatment, emotional support or to be angry or outraged. Despite the victim's state of mind, the police must begin to compile a general occurrence report including information about the victim, the offence, any leads to identify the perpetrators and the extent of the damage suffered or property lost.

While the reaction of victims will vary, it is probable that a victim of personal violence will be most concerned with obtaining medical treatment and may not be receptive to police questioning. A victim of break-and-enter or theft, however, will be more concerned with recovering the stolen property or with compensation from an insurance company. It will be necessary to provide a description of the missing goods and estimate their value. This may be a difficult process for the victim who will be upset and probably not thinking clearly.

In addition, victims may feel embarrassed or at a loss if they cannot quickly provide an inventory of their possessions or if they have not recorded serial numbers. It may also be difficult for a victim to place an accurate value on goods owned for a long period of time.

Victims who report a crime to the police consider the case to be 'their' own. Following the compilation of the occurrence report by the police, victims expect further contact. They want to know if the investigation is being actively pursued and if a suspect has been apprehended. They may also expect to have some input into the investigation of 'their' case. Victims will also want to know who is investigating 'their' case as it may not be the officers who attended at the time of the incident. Obviously the police department will have certain priorities, and a murder investigation will demand more attention and personnel than a break-and-enter. From the victims' point of view the police are working for them and 'their' case is important.

In many cases the police will have leads to follow and may have information from similar offences that would point to a particular person being responsible. The victim may be called to attend the police station to make an identification. For many victims this will be inconvenient; transportation may be a problem or a parent may have no one to mind his or her children. The victim may feel obliged to attend immediately, may not ask if a more convenient time could be arranged or may not be aware of any victim service agencies which can provide assistance. A sexual assault victim may not be emotionally prepared to view a line-up of suspects which could include her attacker but may feel intimidated by the system which requires and demands her co-operation.

Where suspects have not been identified and where the police have no further leads to follow, their contact with victims may be minimal. The victims' attempts to ascertain whether 'their' case is being actively pursued may be time consuming and frustrating.

A victim who calls the police station for information may only be able to provide the date of the incident and its nature. The officers who made the report may be on patrol or off duty; they may not receive messages for a few days and when they do they may not be able to help because the case has been assigned to another officer. The victim must then await another call to inquire about the status of the investigation. Such a procedure is frustrating and inconvenient for the victim, but it is no less frustrating for the police who no doubt would welcome a procedure which provides the victim with basic information.

A victim who has lost property may be required to attend the police station from time to time to view stolen property seized by the police in the hope of identifying the victim's own property. Although this may be inconvenient, most people will be glad to oblige in the hope of recovering their property. However, where property has been recovered a number of factors may have arisen in the interval to effect the return of that property. Stolen property may have been sold to innocent third party purchasers; insurance companies may have acquired subrogated ownership rights in the property after satisfying the claims of the victim; the property may be altered or may have deteriorated.

Research has indicated that recovery rates for stolen property are generally low although recovery rates for stolen automobiles are exceptionally high due to

their visibility and licensing. Police report that recovery rates are better than the research indicates and emphasize that the victims can assist in the recovery process by providing accurate descriptions and serial numbers where possible. Much stolen property is discovered in pawnshops and in large quantities where a fencing operation exists.

Where property is recovered which is not required for the investigation, the police will generally return it to the victim upon presentation of proof that the victim is entitled to it.

Where property is recovered, or seized under warrant as part of an investigation, preliminary inquiry, trial or appeal, the Criminal Code governs its detention and disposition. The Code provisions are all directed at insuring the integrity of the things seized so that they will not be tampered with as evidence. In addition, all evidence must be physically accessible to the accused due to the right of the accused to inspect all evidence and exhibits involved in the trial proceedings.

Although the Code provides that property may be held for three months or until it is required for the trial, this may be misleading, since in many cases there are significant delays between an accused's first appearance in court and the subsequent trial.

Victims are often required to bear a financial or emotional burden while their property is being withheld from them by the police or court. For example, one can understand the burden placed on an elderly victim robbed of a T.V. set without resources to replace it. The victim will expect its prompt return where it has been recovered and will be disappointed and frustrated with the delay.

Given the provisions of the Code, the police have little or no authority to attempt innovative forms of property disposition in the absence of the co-operation of defence counsel, Crown Counsel and judges. As a result, the process of returning property is often time-consuming, expensive and frustrating both for victims and police.

In other words what the victim may interpret to be a lack of co-operation by the police is often simply due to the fact that the law requires the police to abide by certain procedures. Either the law must be changed or its effect must be explained thoroughly to the victim.

THE CHARGING PROCESS

Where the police have been successful in their investigation of the reported crime and believe they have identified the perpetrator, the next step is for the appropriate charge to be laid. In Canada, an offence is generally brought within the jurisdiction of the criminal courts by the 'laying of an information' before a justice of the peace.

Most informations are sworn by the police who at this stage will lay the most serious charge or charges justified by the circumstances of the case. This is usually done without any advice from Crown Counsel in all but very serious cases.

After the charge has been laid the police investigation may continue, further evidence may become available or expected evidence may fail to materialize. In addition, communication between the defence counsel and prosecutor may indicate the defence's evidence. Thus, it may appear to Crown Counsel that other charges are more appropriate. The result is that the charge or charges laid by the police may be either increased or reduced in their number or severity.

Indeed, it may be decided that there should be no prosecution and all charges will be withdrawn. An example of the latter is a case where there must be corroboration of a witness's evidence and there is none. It should also be noted the Crown Counsel will on rare occasions decide that the public interest requires that a prosecution be withdrawn although sufficient evidence to proceed does exist. An example might be where an accused is of advanced age or in poor health or where a trial would have a seriously detrimental effect upon a Crown witness.

This is a proper and a necessary fine-tuning procedure which must come into play if the police are not to be the final arbiters of what charges proceed to court. Charges should not be reduced unless there are valid reasons based on the evidence available and keeping in mind the probable outcome. In this procedure the defence counsel will attempt to convince Crown Counsel that the circumstances justify only less serious or fewer charges. This is a proper exercise of an accused's right so long as Crown Counsel bases the final decision only upon the evidence realistically anticipated to be available at trial.

At this stage in the proceedings, it is considered the proper practice for Crown Counsel to take into account the position of the victim as it has been conveyed to them either by the police or by the victim. The extent of personal injury or loss suffered by the victim may be a major factor in determining Crown Counsel's final position on which charges proceed to Court. It is accepted that Crown Counsel are under a duty, if requested, to explain to any victim the reasons for any reduction or withdrawal of charges. Indeed, in many cases the nature of the modifications would require that the Crown Counsel offer an explanation to the victim whether or not a request for one is made.

There also exists a process commonly referred to as 'plea bargaining' which lacks official recognition in Canada. In this process, charges may be reduced or withdrawn, sentence or a range of sentence may be agreed upon by the Crown Counsel and defence counsel. However, there are many instances where charges are reduced or withdrawn or an inadequate sentence agreed to without proper consideration of the evidence available. We must ensure that counsel are sensitive to the needs and wishes of victims and that counsel consider these needs in any 'plea bargaining'. We must ensure that victims do not feel cheated or become confused over a result which they do not understand.

It should also be borne in mind that any citizen can lay an information if there are 'reasonable and probable grounds' to believe that an offence has been committed. In order to do so a victim must attend before a Justice of the Peace and swear under oath the facts that gave rise to the charge. The victim will then have the burden of prosecuting the case, i.e., proving the charge beyond a reasonable doubt. However, the Crown Counsel may intervene and prosecute the charge or alternatively may intervene and withdraw the charges. Such discretion is likely to be confusing to the victim who has independently initiated the proceedings.

In many parts of the country private prosecutions have been encouraged in cases of domestic violence. This places an added burden on the victim who is required to lay an information and prosecute the case. This only serves to aggravate the serious problems already faced by the victim.

PRE-TRIAL RELEASE PRACTICES

In many instances a victim is unaware that a suspect has been identified, that a particular charge has been laid or that the accused has been released pending the conclusion of the case in court. A victim will be frustrated, confused and perhaps fearful to meet the perpetrator on the street following his apprehension. This reaction stems from the victim's general lack of information concerning pre-trial release procedures and the particular circumstances of the specific case.

A victim expects the perpetrator to be 'arrested', that is, locked up until the trial. Most victims are unaware of alternative measures to secure the accused's attendance at trial.

A police officer may issue an appearance notice to the suspect at the scene of the crime or later, or the suspect may be arrested for certain offences and brought to the police station where the officer in charge may decide to release the suspect on a promise to appear or on a recognizance.

Generally police may only detain the accused where it is necessary in the public interest; for example, to establish identity, preserve evidence, prevent the repetition or commission of an offence or where it is the only way of securing the accused's attendance at trial.

An accused who has been detained at the police station by the officer in charge must be brought before a Justice of the Peace without unreasonable delay and within 24 hours. In the majority of cases, the Justice of the Peace has jurisdiction to release the accused prior to the trial. The general rule is that the accused will be released unless Crown Counsel 'shows cause' why continued detention is required. The burden of establishing why the accused should be detained rests with Crown Counsel in the majority of cases. Generally, detention is only justified if necessary to ensure the accused's attendance in court or if necessary in the public interest or for the protection and safety of the public having regard to the circumstances of the case.

The accused who is released will normally return to the community upon a written promise to appear. Crown Counsel may, however, establish that a more restrictive form of release order should be made and

the Justice may direct that certain conditions be imposed upon the accused; for example, that the accused refrain from the consumption of alcohol or report regularly to the police.

The Crown Counsel may request particular conditions especially in serious cases where a victim may fear intimidation or revenge. A condition that the accused stay away from the victim is not uncommon. However, in many instances the victim is unaware that the issue of the accused's pre-trial release has been considered and has had no opportunity to express his views or voice his concern. Most victims would undoubtedly request that a condition be imposed on the accused to stay away from the victim. Information that any breach of such a condition would result in the immediate arrest of the accused would also alleviate the victim's fear of revenge or intimidation.

At this point an accused has been identified, a charge has been laid and a decision has been made whether the accused will be detained in custody or released pending the conclusion of the criminal process. The victim has played little part in any of these decisions and may not have even been informed by the police that this has occurred.

DIVERSION AND CONCILIATION PROCEDURES

As indicated earlier, most criminal incidents do not result in a court hearing. Decisions by the victim not to call the police or the exercise of police discretion not to lay charges but to deal with the incident in another way are common. In addition, instead of proceeding with criminal charges the Crown may have the option of referring the case out at the pre-trial level to be dealt with by settlement or mediation procedures. In the past the prosecutor's choice was thought to be to do nothing or to prosecute fully. In some jurisdictions pre-trial diversion has now been recognized as an alternative; the alternative is not a legal one but is discretionary and practical.

Diversion can occur at any point after the offender has been arrested or charged and prior to the commencement of a trial. It operates on an undertaking by Crown Counsel that criminal proceedings will be terminated if the offender fulfills the terms of the pre-trial settlement reached through diversion.

Diversion involves interaction between the victim, offender and community, but must protect the rights and liberties of victims and offenders to the same extent as traditional procedures.

Diversion programmes operate in some communities as private systems on a pilot project basis and are usually oriented toward some form of community service. In some provinces diversion programs are operated by those involved in corrections, including probation officers.

One advantage of diversion is the scope it offers for participation by the victim in the resolution of the incident. A reconciliation between the victim and offender with the assistance of a mediator resulting in a mutually satisfactory settlement may result in greater satisfaction for the victim, and the benefits to the offender are obvious. Diversion programmes are a vehicle which allows for victim input. Where the traditional criminal justice process is followed the victim has no status as a party and has little opportunity to make his views known to the court. In addition, the sentence imposed on the offender will not usually benefit the victim unless the court has ordered compensation or restitution as part of the sentence.

Some prosecutors are of the opinion that where there has been a previous relationship between the victim and offender and the relationship, is likely to continue, pre-trial settlement or diversion is appropriate. Such a rationale has been used in wife assault cases. Although the victim and offender may continue their relationship, other factors must be considered before the offender is diverted, such as the violent nature of the offence, the likelihood of repetition, the safety of the victim and generally the lack of treatment facilities available for men who batter.

There are, unfortunately, few services across the country which offer specific treatment or counselling to assaulted wives. Where these are available, diversion may be the appropriate way to deal with wife assault. Often, this will coincide with the wishes of the assaulted wife and at the same time give recognition to the fact that the offender's conduct should not be tolerated. The threat of the resumption of criminal proceedings would encourage the participation of the assailant and would express society's intolerance for such criminal behaviour.

THE TRIAL

A criminal trial is an adversarial process between the state, represented by the Crown, and the accused, who may be legally represented by defence counsel whose task it is to present the best defence possible for the accused within ethical limits. The goal of the defence is to raise a reasonable doubt about the accused's guilt, although it is not necessary for the defence to disprove guilt or prove innocence. The burden of proof lies on the Crown.

The victim of the crime is in reality unrepresented although the victim's interests are considered by the Crown. Crown Counsel have a special duty to the court; their function is not simply to present enough evidence to result in a conviction against the accused. Crown Counsel must ensure that all relevant evidence is placed before the court, even if that evidence might point to the innocence of the accused. They must ensure that 'justice' is done and is seen to be done, and they must balance the interests of the victim, the offender and of society. While the victims' interests are considered by the Crown Counsel, the latter cannot advocate those interests exclusively, since they do not represent the victims.

The majority of criminal cases are disposed of in the Provincial Court. Only a small proportion of accused proceed to trial in a higher court and most are likely to appear before a judge alone rather than a judge and jury.

The Criminal Code, Charter of Rights and Freedoms, Evidence Acts and common law provide many safeguards for the accused but very little is said about the role of the victim. As we have pointed out, the victim has no status in the criminal proceedings. The only official recognition stems from the victim's role as witness. The opportunity to give oral testimony with respect to the crime may have a positive effect on the victim. However, many victims never have the opportunity to give such testimony when one considers the number of cases that are disposed of by a guilty plea, or are diverted or where the victim's testimony is not required. The testimony given by the victim at trial will be limited to answering questions put by the Crown and defence counsel and will generally be restricted to

who or what was seen or heard and to the actual damage or injury which resulted. Victims can not use this as an opportunity to state their views about the character of the accused, the sentence that should be imposed or the full impact of the crime upon them and their families.

The accused's first appearance before the court is in 'remand court', that is the Provincial Court. In the majority of cases the accused enters a plea of guilty in which case sentence may be passed immediately or a date for sentencing may be set. If the accused indicates a plea of not guilty a trial date will be set. The date is usually the next available date for the court when Crown Counsel and defence counsel are also available. Crown Counsel seldom consider the convenience of witnesses when setting the date unless they have been specifically advised that a particular witness is unavailable during a certain period. The trial date set may be many weeks from the date of the accused's first appearance. The only notification the victim may receive is by way of a subpoena to appear in court on the appointed day.

For certain more serious offences a preliminary inquiry will be conducted before a provincial court judge to ascertain whether there is sufficient information to warrant the accused's committal for trial before a higher court. Where a preliminary inquiry is required the date will be set by the court in consultation with Crown Counsel and defence counsel. Again it may be weeks or even months away. Where the victim's evidence will be required at the preliminary inquiry Crown Counsel will most likely contact the victim prior to the hearing to review the evidence. However, the victim will be officially advised of the date by receipt of a subpoena. Where the accused is committed for trial at the conclusion of the preliminary inquiry a date for trial will be set, again in consultation with the Crown and defence counsel. The trial date may be several months away and may require the victim's further participation.

Notwithstanding the delays involved in scheduling dates, further delay may result from adjournments. The defence or Crown Counsel can request an adjournment either before or during a trial or preliminary inquiry. The court may in its discretion grant any number of adjournments but will be guided by principles of fairness. A trial cannot be adjourned for more than eight days without the consent of the Crown and defence counsel; however, it may be impossible to schedule another date within eight days.

Understandably, the victims who have re-arranged their own schedules to allow for their participation at trial will be frustrated and further inconvenienced by a request for an adjournment at the opening of the trial. Similarly where victims and/or witnesses appear for trial to discover that the accused has decided to change the plea to guilty, their time has been wasted. Defence counsel often fail to advise the Crown of their client's intention to change a plea and thus Crown Counsel cannot advise their witnesses that they will not be required.

Victims may be required to take time off work without pay, arrange babysitters for their children or travel long distances to attend the trial. The witness fees they receive cannot truly compensate for their out-of-pocket expenses. Furthermore, they may sit in a waiting room most of the day before their evidence is required or be told to return the next day if the trial will not be completed. Most would prefer a system whereby a court clerk would call them an hour before they would likely be required to testify. Such an on-call system would be especially beneficial to those who will lose time and wages from employment which will not be recovered from low witness fees.

The victim's experience as a witness may be further aggravated by confrontation with the accused and/or witnesses for the defence who share the waiting room prior to trial. In many cases victims are intimidated by this confrontation which may cause trauma especially in cases of violence or sexual assault. It is only common courtesy to ensure that a victim is afforded some privacy or waiting room away from the offender and those who may attend with the offender for moral support.

Many victims do not want to participate in the criminal justice process and their involvement as witnesses will be especially problematic. Their lack of co-operation may arise from offender intimidation, the general inconvenience of the process or simply fear of giving their evidence in a public courtroom. Some victims anticipate that the courtroom will be crowded with curious spectators and press although this is rarely the case. However, for victims of sexual assault or the families of murder victims this may be a real concern and an understanding Crown Counsel can be of great assistance to such victims. The Criminal Code provides for in-camera hearings in certain situations and for the prohibition of publication of a victim's identity in sexual assault cases. The knowledge that Crown Counsel will make an application for an in-camera hearing at the opening

of trial may alleviate many of the victim's apprehensions. Even victims of less serious crimes may desire anonymity. An elderly break-and-enter victim or a single woman would not want her name and address published in the paper. Although a public trial is the general rule, victims may be able to request that their names and addresses not be disclosed.

Victim and witness participation may be difficult for emotional or medical reasons also. The Code does provide a procedure whereby a witness can give evidence 'by commission' where attendance at trial is not possible due to illness, absence from Canada or 'some other good and sufficient cause'. In cases of physical illness where the witness cannot attend trial such a procedure allows the witnesses to give their evidence on commission at their bedside. The evidence is later read in at trial. However, in cases of emotional illness, or for example the inability of a sexual assault victim to confront her attacker without reliving the event, the use of commission evidence has not been determined.

Where children are required as witnesses such factors as intimidation and fear may assume even greater importance. A victim of child abuse will have enough difficulty simply admitting that a parent was responsible for his or her injuries without the added fear of facing strangers in a large courtroom. Alternative procedures for the taking of a child's evidence may reduce the potential trauma which such children may suffer.

A common complaint of many victims and witnesses is the time that elapses between the incident and the trial. Perhaps they cannot even remember what occurred and by this point in time they may not care. A victim, once enthusiastic to see the accused brought to justice and sentenced, may now be apathetic especially if the stolen property has been replaced and damage repaired.

SENTENCING AND THE VICTIM

Where an accused has been convicted of an offence the court may either pass sentence immediately or remand sentencing to a later date. In either case the court will, before passing sentence, hear submissions by the Crown and defence counsel as to what the sentence should be. The sentencing process is open ended in that the court may receive whatever evidence it thinks will be of assistance in determining the appropriate sentence. The Crown or defence counsel may call oral testimony. The judge may request that a pre-sentence report be prepared by a probation officer including such matters as the offender's employment status, home situation and any general observations as to personality or character. Ultimately the sentence imposed is within the discretion of the Judge.

Restitution and compensation are the only sentencing options that may financially benefit the victim. There are three major references in the Criminal Code with respect to compensation and restitution.

Under s. 388(2), a summary conviction court can order the accused to pay up to $50 for willful destruction or damage to property. This amount is in addition to any other punishment which may be imposed, and failure to pay can result in an additional prison sentence of up to two months. The obvious problem with this section is that it only covers cases where the alleged injury does not exceed $50, an amount which is totally inappropriate in terms of to-day's prices and values. Moreover, s. 388 does not apply to theft, but only to damage or destruction of property. Victims of theft, or of damage or destruction of an amount greater than $50 are not covered by this section.

Sections 653, 654 and 655 of the Criminal Code cover the use of restitution as a sentence for an indictable offence. Section 653 provides that where an accused is charged with an indictable offence, the person aggrieved (the victim) may apply at the time of sentencing for an order that the accused pay an amount as satisfaction for loss or damage to property caused as a result of the commission of the crime. If the accused does not pay forthwith, the victim may file the order as a civil judgement with the Superior Court of the province and execute upon it as if it were a civil judgement. The court may also take the amount awarded out of monies found in the possession

of the accused at the time of arrest, as long as there is no dispute over the right of ownership or possession of that money. Section 654 confers the same rights to innocent purchasers of stolen property.

Section 655 empowers the court to order that any property obtained by an indictable offence of theft be restored to the victim, so long as the property is before the court at the time of the trial and there is no dispute as to ownership. Exceptions to such orders exist if lawful title has passed to an innocent purchaser, if it is a valuable security which has been paid or discharged in good faith, if it is a negotiable instrument transferred in good faith, or if there is dispute as to the ownership of the property by persons other than the accused. Finally, under s. 616, a restitution order made under any of these sections is suspended until the appeal process has been exhausted, and the court of appeal may vary or annul any such order.

The last major reference to restitution in the Criminal Code relates to probation orders. Under s. 663(2)(e), a probation order may require the offender to:

> "Make restitution or reparation to any person aggrieved or injured by the commission of the offence for the actual loss or damage sustained by that person as a result thereof."

The constitutionality of s. 653 of the Code was determined by the Supreme Court of Canada in R. V. Zelensky. The court held that an order for compensation was within the power of the criminal court as part of the sentencing process but that the court could only make an award for readily ascertainable damages or loss to property. The criminal court is not the proper forum to award damages for pain and suffering or to determine complicated issues of the amount to be awarded.

Similarly, where restitution is ordered as a condition of probation it may only be for actual monetary loss and not for pain and suffering. In addition, before imposing such a condition, the court should be satisfied that the accused has the ability to make such a payment.

Orders for restitution as part of a probation order have been more common than orders made pursuant to s. 653. This is, no doubt, because where restitution is a condition of probation, the probation officer will

monitor the payments and default will result in breach of probation. An order made pursuant to s. 653 must be enforced by the victim as a civil judgement. Such enforcement will be inconvenient and time consuming and may be futile where the offender is without assets, or wages upon which to execute.

Although the particular offence may carry minimum or maximum punishments prescribed by the Criminal Code, generally in determining sentence the judge considers the protection of the public, retribution, rehabilitation of the offender and deterrence or prevention of criminal behaviour. The exclusive focus has traditionally been on the offender rather than on the welfare of the victim.

Restitution is theoretically intended to benefit society, the offender, and the victim. Society should benefit in that the purpose of restitution is to protect and affirm social values. In addition restitution may facilitate the prevention of crime and the rehabilitation of the offender, and result in cost savings from a reduction in the use of imprisonment. The offender should benefit by being treated as a responsible person who recognizes the harm caused to society and to the victim, and who is willing to make amends for the harm done. The obvious benefit to the victims is the recognition and satisfaction of their claims for restitution for the loss or damage suffered.

The Law Reform Commission of Canada has supported restitution programmes:

> "Restitution recognizes the damage done to the victim's rights and property and attempts to involve the offender in assuming responsibility for the damage. It encourages the offender to view his conduct in terms of damage done to an individual and not to society and to take constructive action to correct the damage." (Working Paper 5 & 6, 1974)

Restitution has two main purposes: to rehabilitate offenders and to provide compensation for victims. Redress for the victim is an important purpose of restitution and should not be considered only as a secondary benefit. Although the victim may sue the offender in civil court for all damages including property loss and pain and suffering, restitution as part of the offender's sentence may be sufficient to restore the actual loss suffered by the victim.

The reluctance of the courts to use the Criminal Code sections authorizing restitution may be due to difficulty in determining the amount of the loss and caution in not exceeding their jurisdiction and stepping into the realm of civil remedies. Another consideration involves enforcement. Where restitution is part of a probation order the sentencing court must have regard to the accused's ability to pay. No such requirement exists for an order made under s. 653. The victim has the burden of enforcing the order by filing it as a civil judgement. The knowledge of problems associated with enforcement of civil orders may dissuade judges from using restitution as a sentencing option.

Clearly, there is little reparative potential for the victim within the present operation of the criminal justice system. Unfortunately, things may be even more discouraging because victims of crime do have a number of responsibilities. For instance, they are required to participate in investigations and trials often at considerable financial and emotional cost and sometimes at the risk of actual intimidation by the accused. This 'double jeopardy' accounts for a great deal of the concern of the victims' movement to reform the criminal justice process so as to assure the safety and welfare of the victim, and ideally, to include formally a concern for the victim within the present decision-making priorities of the courts.

The final frustration for victims who are advised of the sentence is the obvious disparity in sentencing practices. Six months' probation for theft of a stereo may be incomprehensible when a newspaper article reported six months in jail as the sentence in a similar case. Victims may not feel that justice has been done when in their opinion the offender has been dealt with lightly. The fact is, however, that many considerations play a part in the sentencing decision and if victims are not made aware of these considerations it is understandable why their confidence in the system is shaken. No two offences and no two offenders are exactly alike, but where the victims have not been involved in the trial procedure the subtle differences will not be apparent and they will have no idea of the appropriateness of the sentence. Basically, their lack of understanding stems from the fact that they are usually not advised at any stage of the process unless required to attend as witnesses.

The Criminal Law in Canadian Society (Government of Canada, 1982) addresses three concerns of the

sentencing process: that there are no policies or principles of sentencing in Canada; that there is disparity in the sentences awarded for similar crimes committed by similar offenders in similar circumstances; and that the effectiveness of current practices is unknown. With respect to policies and principles, statutorily-set maximum prison sentences for certain offences are typically much higher than the actual average sentence awarded. Sentence decisions by appeal courts reveal lack of uniformity and the Supreme Court of Canada does not hear sentencing appeals. In addition, the manner in which parole, remission, temporary absence and mandatory supervision affect sentence is not understood by the public. The third major concern is that little is known about the effects of a given sentence on a given offender or its effects on the level of commission of that crime generally.

Although disparity in sentencing may never be eliminated it should be noted that a number of approaches towards reducing unwarranted disparity are being considered.

CHAPTER 4:

VICTIMS' NEEDS AND EXISTING SERVICES

VICTIMS' NEEDS AND EXISTING SERVICES

Introduction

The Report has focussed on the ability of the criminal justice system to repair the damages caused by criminal victimization, and on the possibility that the treatment of victims by the system may compound the burden of victimization. It has attempted to demonstrate the difficulties faced by victims in their attempt to obtain reparation for the losses they have suffered and on the fact that victims often feel ignored or ill-served by the way the criminal justice system is organized to respond to crime and offenders. The objective, at this point, is to design a strategy for change.

A large number of attempts are already being made, both within the justice system and in the wider area of social services, to respond to the plight of victims. The immediate challenge is to co-ordinate and expand these efforts so as to draw the maximum benefit from the human and financial resources which are being invested in this area. A crucial step in this direction is in the specification of goals and means for the victims' initiative. This brings us to the question of the actual costs of crime, and of the needs and rights of victims.

Confusion results from the fact that needs and rights of victims and the consequences of crime to them are not defined and tend to be used interchangeably. This chapter will attempt to clarify the distinction between the consequences of crime and the needs of victims; it will present the available data on the costs of crime to victims in general and to certain selected special groups of victims; it will discuss and assess some of the services which are already in place for dealing with victims; and finally, it will try to identify the actual needs of victims of crime in Canada. This discussion will pave the way for the reform proposals to be made in Part III of this report.

CONSEQUENCES, NEEDS AND RIGHTS

The needs of victims of crime provide the essential justification for the existence of a victims' initiative, yet 'needs' will mean different things to different people. Fortunately, due to the data which is now available, we are now in a position to make a more practical determination of the actual needs of victims.

There seems to be a consensus that victims of crime have a general desire to be protected from further victimization, to obtain reparation for the losses or damages they have suffered, and to obtain fair and humane treatment from the criminal justice system. This represents an ideal of what constitutes justice for victims, and might best be thought of as the goal of the victims' initiative. In this context, the notion of needs can then be reserved to refer to actual changes in policy, practices or services which may aid in achieving this goal.

The consequences of victimization are always difficult to assess and any attempt at measurement is likely to be controversial. Even so, it would certainly seem that surveys of actual victims are the most effective technique for measuring what these individuals perceive as the physical, emotional and financial costs of criminal victimization or of participation in criminal justice system processes. Thus, the victims' survey, along with the local assessments which are currently being undertaken, should provide us with a useful picture of the costs and consequences of crime.

In this context, the needs of victims of crime can be considered to be the difference between the consequences of their victimization and the present services available to them.

Finally, there is the issue of the rights of victims of crime. A fuller analysis of this question will be presented in a later discussion of proposed legal reforms. For the present, a right is defined as an advantage which compels a related duty or responsibility. This restricts the debate over the rights of victims to those sections of the Criminal Code or of other statutes which discuss the rights and responsibilities of victims, or which impose a duty on accused persons or on representatives of the criminal justice system to deal with victims in a certain manner. It is felt that any other use of the term 'rights' leads to confusion in debate, and to a lack of clear direction for policy making.

THE IMPACT OF VICTIMIZATION

The Victimization Survey conducted by the Solicitor General and Statistics Canada attempted to measure both the direct financial, physical and emotional consequences of victimization, and the indirect or secondary consequences resulting from involvement with the criminal justice system. The present

section will discuss the data on the general costs of victimization to all victims of crime. The following section will deal with certain special groups of victims.

The gross financial costs to victims in the seven cities surveyed are rather imposing for a single year: $211 500 000 in unrecovered property and cash; $41 900 000 in damage to property and an additional $7 000 000 in associated medical expenses and lost wages. The victims reported that an additional $170 000 000 was paid out to them through private insurance. Taken together, then these, figures give a total real cost of crime in excess of $431 000 000 in the seven cities for a single year.

Clearly the financial costs of crime are significant. The gross figures, however, may be somewhat misleading. The mean net loss per incident (exclusive of medical expenses and lost wages) came to slightly more than $167. The actual dollar figures should not, however, blind us to the suffering that financial loss can entail. The impact of similar financial loss will be experienced differently depending on the income of victims or their ability to recover through private insurance. Obviously, the financial impact of victimization falls most heavily on those with lower fixed incomes. Lower-income families are less likely to be able to recover their losses and, even if they do make some recovery, the waiting period is likely to produce significant hardship.

The data on the physical consequences of victimization indicate that fewer than 350 000 of the 1 600 000 crimes (22%) involved personal contact with the offender. Nevertheless, these resulted in 50 500 nights in hospital and 405 700 days lost due to some form of incapacitation. About 10% of those who were victims of assault, robbery or sexual assault had to seek some form of medical or dental attention. While serious injury was relatively rare, the costs of victimization again fall more heavily on some than on others. Those who have only basic medical coverage and those who are physically frail and vulnerable will suffer proportionally more. We know also that the victims of some offences are more likely than others to be seriously injured. Victims of sexual assault, in particular, were more likely to be injured and when injured were more likely to require medical attention.

Researchers have only recently begun to collect information on the emotional consequences of victimization. We do know that the fear produced by

some forms of victimization can become crippling and can turn victims inward, closing them off from social support when they need it most. We are being made increasingly aware of the insidious and emotionally crippling effects of certain kinds of offences on the victims and their families, both in the short term and long after the offender has been dealt with by the criminal justice system. In addition the victims' emotional suffering may be made more acute by their experiences with the criminal justice system. In the Victimization Survey, about one-quarter of the victims said the victims of their type of crime should have emotional or psychological counselling available to them. This includes victims of property crimes and other offences we generally consider less serious.

Various surveys have also focussed on the consequences of secondary victimization, i.e., the material and emotional costs which result from the victims' contact with the criminal justice system. Victims may feel that the system is insensitive to their suffering and their needs. The victim's experience of powerlessness once a case has passed into the hands of criminal justice system officials has found expression through vocal victim groups. Police and prosecutors appear to make decisions which are not often enough communicated or explained to victims. Few victims understand their role in court, and some may feel intimidated by the setting and the procedures or inconvenienced by the requirements imposed upon them. They may feel affronted that their complaint or accusation has not been taken at face value, or that there are no court officials assigned the task of alleviating their fears or explaining court procedures. Victims often feel not only that they have been denied a service, but that they have been challenged when they are most vulnerable. Finally, few victims know the final disposition of their case, and only in very rare cases do they benefit directly from the disposition made.

SPECIAL VICTIMS

The Victimization Survey and other research provide some information on those groups which are the most vulnerable to the impact of victimization and the least able to find remedies for their problems with the criminal justice system. This section will focus on the situation of these groups of victims of crime.

Elderly Victims

While the elderly are more likely than others to fear crime they are relatively infrequently victimized. While we can only speculate, these apparently contradictory findings may simply reflect the reduced exposure of those elderly people who become 'disengaged' from the normal round of activities of work and family. In this context, we can understand the finding that retired elderly people are the least likely to have been victimized. Solitary, retired, elderly persons seem more able to minimize activities which would expose them to the risk of criminal victimization. The fact that many elderly people do live alone in multiple-dwelling residences and are retired may help account for their low rate of victimization. At the same time, this disengagement may accentuate the suffering and complicate the search for remedies.

The survey results show that elderly people have a comparatively low occurrence of injury. Slightly fewer than 17% of elderly victims of crimes of violence suffered some injury as compared to an injury rate of 29% of younger victims. However, when victims reported suffering some degree of injury, those 65 and over were more likely to require medical or dental treatment than any other age group. The average reported material loss for elderly people was also higher than the mean loss. Thus, although elderly people were victimized less often than younger people, the impact of their victimization was greater. Economic loss is proportionally more serious for elderly people in that they generally have reduced incomes. Indeed many, because of their frailty or low incomes, are dependant on others for support. Obviously when they are victimized at the hands of these others, they will often be unable to seek help or even make their victimization known.

Children as Victims

The particular vulnerability of children reflects their lack of physical strength, and their social and physical dependance. In the past decade the public has become increasingly aware of the special vulnerability of children to neglect, to physical, sexual and emotional abuse, and of the exploitation of children in the production of pornography. This awareness and concern has been addressed to some extent by legislative and administrative initiatives in almost every jurisdiction in Canada to encourage

or require citizens and professionals to report suspected cases of abuse to child protection authorities, and to require such authorities to provide central registries to identify, evaluate and monitor victims of abuse and suspected offenders in the community. Whether an actual increase in incidence is occurring is problematic, but there has been an increase in the number of cases reported.

Because child abuse most often occurs within the family setting, identification of cases is difficult, and the consequences of intervention are sometimes as traumatic and damaging as is the original abuse. In the case of physical assault, the victim is usually a male child, and the offender is usually the victim's mother. Child victims of sexual assault are predominantly pre-adolescent girls, and the offender is most likely to be the victim's father or stepfather. Abuse of both kinds tends to be ongoing rather than limited to a particular occasion, and frequently more than one child in the family has been victimized. What this may mean is that children who are abused less frequently, or only episodically, are far less likely to come to the attention of welfare officials than are chronic victims of sexual or physical abuse.

Although it is probably true that increased societal intervention in cases of abuse has been beneficial to the best interests of children in general, it is not always the case that the best interests of individual children are assured in the process. Abused children may be in a special double-jeopardy situation, suffering from primary victimization when neglected, and from a kind of 'secondary' victimization as a result of societal intervention in the lives of their families. Special mechanisms are needed to enable children to invoke intervention on their own behalf, to place their evidence and their needs before the courts in an effective way, and to protect them from manipulation and from trauma or humiliation if they must appear as complainants and witnesses. Urgent consideration must be given to alternative processes and procedures which will guarantee the dignity and integrity of child victims and witnesses.

Assaulted Wives

One can only guess at the numbers of wives who have been assaulted by spouses or ex-spouses. Just as these victims have often been 'invisible' to the criminal justice system, they have been 'invisible' to social researchers. It has been estimated that about one in ten wives are likely to experience assault at the hands of their spouses. Some put their

estimates even higher. Whatever the frequency of the offence may prove to be, the fact is that wife assault is intolerable in any society which calls itself civilized.

The Victimization Survey is likely to underestimate the incidence to the extent that the interviewed women themselves do not define the assault as criminal. According to the survey data, the rate of assault for women is approximately half that of men (39 per 1 000 as compared to 79 per 1 000), but in 10% of the incidents experienced by women the offender was a spouse or ex-spouse, and in a further 10% the offender was another relative or friend. Whatever the 'true' annual or lifetime rate of domestic violence in our communities there can be no doubt that these victims merit our very serious concern - particularly in view of the fact that for many victims, such assaults are chronic, rather than occasional occurrences. Almost one-quarter of the violent incidents between spouses or ex-spouses (sexual assaults, assaults and robbery) were so-called 'series' crimes. Interestingly, no one reported two, three or four spousal incidents - it was either one incident during the previous calendar year, or a series.

Victims of wife assault are afraid of reprisals and embarrassed about their plight, so many choose to remain invisible. The cyclical nature of the violence also leads many of its victims to believe that it will not recur. This hope, often combined with economic dependence, means that victims often seek to solve or cope with their problems without outside help.

The problem also presents difficulties for those who work in the criminal justice system. Many police officers and prosecutors have been cautious in pressing forward with such cases, in part because of the reluctance of the police to enter a home when the parties appear to have calmed down, and in part because of their past experience that the victims are often reluctant to testify in court. Unfortunately, the awareness of the importance and consequences of wife assault has been slow to develop.

Even with only rudimentary empirical knowledge about this offence, one can conclude that wife assault produces, beyond the obvious physical damage (which can be quite severe), long-term emotional damage which seriously diminishes the lives of those victimized. More thorough law enforcement in itself may not be the whole answer, nor will harsher treatment

of the offender necessarily lead battered wives to report incidents to police or seek help elsewhere. Victims' services must not be restricted to dealing with the immediate physical and material needs and long-term emotional needs of the victims of family violence. They must also address the needs of the children exposed to such violence, and of the offenders in these situations.

Sexual Assault Victims

In the Victimization Survey, incidents were classified as sexual assaults only if a physical attack occurred which the victims described as including rape, attempted rape or sexual molestation. Verbal threats of rape or other forms of (non-physical) sexual harassment were not included in this category of incidents. Although sexual assaults, as defined, were reported to be relatively rare, they undoubtedly had the most serious consequences for victims, whether seriousness was measured in terms of physical injuries or long-term emotional effects.

Women are likely to fight back when attacked sexually and when they do so, they are likely to be injured by the attackers, sometimes seriously. Moreover, victims of rape and other serious sexual assaults may experience a range of intense psychological and emotional reactions including complete loss of control, intense fear, and psychological crisis reactions such as hysteria or paralysis. This is often followed by feelings of helplessness, guilt and shame, withdrawal from social contacts, and a decrease in self-esteem. Involvement with criminal justice system officials may accentuate those effects particularly if the officials are insensitive to these crisis reactions. Even long after the incident, victims may experience avoidance behaviour, anxiety, depression and suspicion toward others. Sexual assault victims are more likely than any others to agree that counselling services should be available for all victims of this type of crime.

Over 70% of the sexual assault victims felt unsafe walking alone at night, (compared to 54% of the women who had not been victimized in the past year). More sexual assault victims felt unsafe at night than any other victims. These victims face the same problems as assaulted wives in terms of self-denigration, emotional damage and disrupted relationships. The similarity of the cycle of perpetual abuse is most apparent for the significant minority of women who are sexually assaulted by intimates (spouses, ex-spouses, relatives or friends). But for all

victims of sexual assaults, traditional sources of support within the family may be unavailable to them, or inadequate to their needs.

Only about one in three female victims of sexual assault report their victimization to the police. Fear of revenge by offenders (35%), and concern about the attitude of the public and the courts to this type of crime (47%) figure significantly in their failure to invoke police action. When they did report incidents to the police, sexual assault victims were less satisfied with police performance on all measures used than any other groups of victims: 25% gave the police a 'poor' rating on promptness of response and on courtesy, 50% of the sexual assault victims who reported the incident said police did a poor job in keeping them informed on the progress of their case; and 37% gave them a poor rating in 'overall case handling'. The secondary consequences of sexual assault would thus seem to be very high.

Break-and-Enter-Victims

More than 227 000 break-and-entry incidents occurred in the cities surveyed. In fact this figure necessarily underestimates the incidence of break-and-enter because it only includes those incidents which did not lead to some more serious offence. For example, break-and-enters which result in assaults against the resident are recorded as assaults, and are therefore not included in the following discussion.

Of the very large number of households affected by break-and-enter (93.8 per thousand households) about 67% suffer some financial loss. In those incidents where some loss did occur, the average gross loss (through theft or damage) was about $1 142. After recovery through police and private insurance, the net loss for victims was $655 with most of the difference being accounted for by private insurance. When stolen goods are found they may be held by the police as evidence for pending trials, exacerbating the sense of loss and leading to further feelings of frustration. Victims of break-and-enter may experience crisis reactions which we generally assume to arise only with more violent crimes. Often these reactions will occur some time after the incident. The violation of the home seems often to produce feelings of anger, fear, and surprise. If vandalism occurs as well, the perceived irrationality of such behaviour aggravates such reaction. Again criminal

justice officials are sometimes unaware of, and therefore insensitive to, such reactions.

Rural Victims

There is an unfortunate but pervasive urban bias in our understanding of crime and the consequences of crime for victims, but there is no reason to suspect that the impact on rural victims is in any way less serious. (It should be noted that the Victimization Survey related only to urban victims.)

The trauma associated with being a victim of crime is clearly not restricted to any particular group, category or social class. Consequently, the 'rural' victim, not unlike the 'urban' victim, cites the need for: help in dealing with the feelings experienced immediately after the crime; someone to talk to after the investigating officer has departed; and someone to stay with after the incident to provide security and protection.

Research suggests that the primary source of assistance in dealing with the problems and needs arising out of the victimization experience was the individual victim's personal support system. Less than 3% of the victims reported contacting any community service or social agency, excluding the hospital and police (Stuching, 1983). However, it would be a serious error to assume that the network of informal relationships among rural neighbours, in themselves, can meet the complex needs of victims. One should in any case be uneasy about relying upon such sources of support and protection for victims of violent personal crimes, especially those which involve non-strangers. The plight of the rural victim of sexual assault, child abuse (either physical or sexual) or spousal violence is even more serious than that of similar victims in urban settings since the options for these victims are seriously limited. Financial dependence, physical isolation, lack of access to legal advice or social agencies, and an almost total absence of 'safe' (transition) houses may well conspire to keep rural victims of violent offences silent, and to make them vulnerable to recurrent victimization. A great deal of ingenuity and commitment will be required to develop service delivery models and techniques capable of providing effective and continuous services and programmes to victims in small, often scattered and isolated populations.

Native Victims

There is as yet little information available in Canada on native victims. Some American research studies indicate that: victimization rates are disproportionately high on reserves; natives are more likely than non-natives to suffer from assaults, homicides and all kinds of family violence; and, that these incidents are often alcohol-related. It may well be that these findings reflect the Canadian situation as well. Two studies prepared for the Department of Justice, Canada, (Green, Susan: Victims' Needs Assessment Study in the Northwest Territories, 1983; and McLaughlin, Audrey: An Analysis of Victim/Witness Needs in the Yukon, 1983) shed a little light on an otherwise dark area. These authors suggest that the greatest need for services for victims of crime in the Northwest Territories and the Yukon appears to be in the area of domestic violence, particularly with respect to battered women.

At present, statistics on the actual number of women who are physically abused by their partners is not available. However, officials from social service agencies in the Northwest Territories and the Yukon view the problem of spouse abuse as acute and stress the importance of establishing transition houses with satellite homes to assist women. It can be argued that for rural native women, the situation may be even more difficult than for 'urban' women. Making a decision to leave the abusive situation means not only leaving home, but leaving the community as well. Outside of Whitehorse and Yellowknife, there are no transition homes in the territories. Furthermore, there may be a great deal of pressure from the woman's extended family to accept the situation. To further compound the issue, there are very limited educational and employment opportunities which would assist her to opt for independence.

Spouse abuse victims are but one sub-group of native victims/witnesses that require an adequate level of service from the criminal justice system and from other community support networks. Research suggests that native victims generally see the court process as "intimidating, incomprehensible, and providing little support for Indian people" (McLaughlin, Audrey: 1983). This could possibly be explained by the fundamentally different definitions of crime and justice, cultural differences, and a history of 'white man's law'. Nevertheless, natives require

more information about the court process and criminal justice system in general.

Although there are no services which have a specific mandate to deal with native victim of crime, there are a number of agencies which offer assistance to victims of crime under their generalized mandate. Green (1983) identified seven agencies in the surrounding communities which have facilities which native victims could benefit from. Similarly, McLaughlin (1983), in a somewhat more comprehensive report, cited twenty-three agencies in the Yukon which could assist victims of crime. The fact is that very little is known about native victimization and further study in this area is required to be done.

Victims of Traffic Offences

The concern for traffic victims (whether the accident was caused by an offence or not) preceded the concern for victims of other crimes. In fact, the compensation received by traffic victims seems to be higher and certainly more widespread than that available to other victims. Most provinces had an Unsatisfied Judgement Fund for motor vehicle accidents long before they had a Criminal Injuries Compensation programme. In the past 10 years, most provinces have been plugging gaps in their coverage, and simplifying the process. To give an example, Manitoba has abolished the necessity of going to court, obtaining a judgement against an uninsured driver, and then making a claim to the Unsatisfied Judgement Fund. It is now sufficient to make a regular claim, and the government-legislated insurance programme will pay if the driver has been insured for $100 000 for personal injury. The complications of going to court and even the complications of identifying the driver are eliminated.

More recently, in part through the efforts of groups such as Mothers Against Drunken Driving (MADD), Parents to Reduce Impaired Driving Everywhere (PRIDE) and Citizens Against Impaired Driving (CAID), certain traffic offences are increasingly being viewed more seriously. Traditionally, the approach to driving while impaired has de-emphasized the punitive in favour of victim-centred response and prevention measures. Victims and families of victims have increasingly voiced their dissatisfaction with the traditional response.

Certainly the numbers of victims of traffic offences make them a significant category. In 1980 there were

5 132 traffic-related deaths in Canada, over 10 times the number of first- and second-degree murders committed in the same year. A further 233 299 people were injured as a result of traffic accidents. Again, this is significantly more than were injured through crimes of violence. In addition to the accidents which resulted in death or injury, a further 671 385 accidents resulted in property damage of at least $200 each.

Best estimates lead to the conclusion that about one-half of these accidents were the result of a traffic offence. Recent research has demonstrated that impaired drivers are 14 times as likely to be killed on the road as non-impaired drivers, indicating that much traffic victimization is preventable. No doubt the number and general distribution of traffic victimizations and compulsory insurance accounts for the relatively advanced state of financial services to victims in this area.

Families of Victims of Violence

The intense emotional and financial impact which follows on the violent death of family members who are victims of crime merits special attention by the criminal justice system. Families of such victims should be considered as victims in their own right - albeit secondary victims who are at one remove from the actual events.

Although victim deaths are relatively rare, general procedures and practices for dealing with close relatives should be developed and adopted by officials and volunteers throughout the country, and should include the provision of emergency financial and/or transportation assistance, direct information sharing concerning case progress, and the provision of general emotional support or therapeutic counselling when necessary.

THE NEEDS OF VICTIMS OF CRIME IN CANADA

As mentioned earlier the needs of victims of crime refer to those consequences of victimization which are not being dealt with through the practices of the justice or social services systems. The benefit of this approach is that it allows us to identify what remains to be done to satisfy the goals of the justice for victims of crime initiative. The purpose of this section is to attempt to present a more precise definition of the actual needs of victims of crime in Canada at this point in time.

Overall there would seem to be four broad types of needs. A discussion of these needs is summarized in the diagram below which attempts to specify the major responses to the consequences of victimization, and to identify the subsequent needs of victims. Obviously some of the responses can deal with more than one specific type of consequence or injury, but the diagram deals with each response in terms of its primary impact.

CONSEQUENCES OF VICTIMIZATION	CURRENT PRIMARY RESPONSES	GAPS OR BENEFICIARIES IN RESPONSES (NEEDS)
1. PHYSICAL INJURY	state medical insurance	-limits or exclusions may discriminate against victims -inconsistent service to rape victims
2. FINANCIAL INJURY OR PROPERTY DAMAGE	a) private insurance	coverage not universal
	b) civil justice system	little actual reparation is obtained
	c) criminal justice system	reparative sentencing does not result in a significant degree of reparation
	d) criminal injuries compensation	little impact due to low funding and public awareness
3. EMOTIONAL INJURY	services to victims of crime	lack of resources results in limited access to these services
4. SECONDARY INJURY	police and court services to victims and witnesses	such services are only beginning to emerge, and few are fully established

Needs Resulting from Physical Injury

The Canadian health care system adequately insures victims against most of the physical costs of victimization. Nevertheless, there are certain limits and exclusions built into every plan which may have the unintended consequence of discriminating against victims of crime. For example, some provinces are considering the adoption of user fees for hospital patients, or allowing doctors to engage in extra billing of patients for the services they provide. In either case, such practices can potentially affect many victims, and will obviously have their greatest impact on the most vulnerable economically.

Victims can attempt to recover these costs by civil suits, reparative criminal sentences, or criminal injuries compensation schemes. However, these options provide only limited remedies for the physical injury to the victim.

Certain medical practices can also be problematic. For instance, many victims of sexual assault find it difficult to receive the kinds of physical and legal treatment they require when they present themselves to hospital emergency wards. While there have been improvements in this area, there is reluctance on the part of some medical staff to become involved in the legal technicalities of the evidentiary requirements of sexual assault. Overall, then, it would seem that there are certain physical costs of crime which are not currently being remedied.

Needs Resulting from Financial Loss or Property Damage

The Canadian justice system is much less able to deal successfully with the financial losses to victims of crime. Those victims who do obtain satisfaction generally do so through participation in private insurance schemes. However, not everyone can afford such coverage. Moreover, there are many forms of property which have an emotional or sentimental significance and which cannot be replaced for any amount of money. Victims of crime can also make use of the civil law process to obtain reparation for their losses. However, this is of limited value for most victims because it is difficult to identify and bring to justice the offender in question. Even assuming this can be done, there is still no guarantee that the accused will be found legally

responsible, or will be willing and able to make reparation for the harm done.

Nor does the victim generally find satisfaction within the criminal law process. Little use is made of reparative sanctions; the focus of sentencing is on the needs of society, and the sanction chosen usually reflects the court's assessment of the fairest and most effective way to make the offender bend to those needs. The sentencing process is not designed to give priority to the wishes or desires of victims.

Finally, some financial reparation can be obtained through criminal injuries compensation schemes. However, these programmes are limited mostly to victims of violent crime. Moreover, they are underfunded by the jurisdictions which operate them, and almost unknown to the vast majority of the Canadian public. Overall, then, a number of changes are required in both the legal system and in government policy and practice before any significant improvements can be expected in this area.

Needs Arising From Emotional Injury

One of the more promising trends in recent years is the emergence of a network of social services designed to meet the emotional needs of victims. The prototype of such service groups was the sexual assault centre which emerged over the last two decades. These centres provide information, guidance and support to victims of sexual assault. Similarly service groups are available for assaulted women and for a few other types of victims. The long-term benefits to victims of crime of immediate crisis counselling and support have been well documented and the value of such service cannot be overstated. It is, of course, important to recognize that when services of this kind are provided they must be delivered in such a way that the integrity of the victim's evidence will not be adversely affected.

The major problem faced by service groups of this kind is the difficulty of guaranteeing an adequate level of financial support. They are too often forced to go from one budgetary crisis to the next. This situation is demoralizing, and leaves these groups vulnerable to the vagaries of public opinion (as reflected in donations) and the cost-cutting realities of an era of fiscal restraint. Until there is some formal recognition of the value of such services, and a corollary decision to guarantee a higher level of priority to the support of these

services, there is little reason to expect much improvement in this area. Obviously, the impact of this will be proportionately greater for the most vulnerable victims of crime.

Needs Resulting from Secondary Victimization

The willingness of the criminal justice system to acknowledge the impact of their current practices is very promising. A great many police forces have already initiated programmes which are aimed at improving the quality of their service to victims and witnesses and others are planning to do so. The rate of development of services at the prosecutorial and court level has been slower, perhaps in part because of an expressed concern that services must be delivered in a manner which guards against interference with the evidence of potential witnesses.

Another problem is that there is so much to be done that the very enormity of the task can be intimidating. Moreover, the extra costs and labour required for such programmes, at least at the implementation stage, can be a disincentive, and it would appear that victims and witnesses are likely to be required to carry certain costs as a result of their participation in the criminal justice system.

INFORMATION NEEDS

Almost every study made of victims of crime highlights the fact that victims place the need for information as their highest priority. What happens now? Who will tell me what to do? Will I have to go to court? What will happen at the court and what do I have to say? When will I get my property back? - these and many other questions are common to those working in the system. They should be dealt with patiently and thoroughly, given the emotional experience accompanying victimization, the complexities of the legal system and the desire to see that justice is done.

The system itself has information needs and these are dealt with later in the report but it would be logical to assume, in the light of what we have learned, that if the victims' needs are better satisfied, then the system will be perceived by them to be relevant and purposeful and its efficiency may thereby be improved. Victims will have a better understanding of what is expected of them and the reasons for those expectations. The more important

information needs of victims fall into these categories:

- A need for information on matters specific to the case in which they are involved. Among other things this would include a need for information related to charges, hearings, adjournments, disposition of the case and the return of stolen property. Access to this information is important to reduce the victims' fears and to help them cope with some realities of the process. For example, a person charged with assault could well be back in the victim's neighbourhood shortly after a bail hearing. To help the victim to adjust to that reality it is important for the victim to know that bail has been granted.

- A need for basic introductory information on the relevant substantive law, the criminal justice process and the roles of such key players as the victim, witness, accused, police, prosecutor, judge, etc. This will serve to orient victims to the process and to their experience within it.

- A need to be aware of any services provided locally to assist victims, the focus of the service, its location, the hours during which assistance is provided and so on. Services in this context are not limited of course to those provided within the justice system but would include social services such as transition houses, sexual assault centres, etc., health services - particularly those offering counselling or emergency assistance - and businesses which provide lock and key repairs.

- A need for a central agency which can collect material on victims and disseminate it to all jurisdictions; it would be helpful, in addition, if such an agency would be staffed with people experienced in the field who could act as consultants to those wishing to initiate programmes for victims.

EXISTING SERVICES

What the Report has said so far on the consequences of victimization is not intended to imply that nothing is being done for victims of crime. We have already established that the Canadian system of medical insurance provides protection against the direct physical consequences of criminal injury. Moreover, victims have at least a limited potential for recovering their financial losses through civil suits, reparative criminal sentences or criminal injuries compensation schemes. The shortcomings of each of these options are significant. Nevertheless, these programmes and policies are in place and can be improved.

There has also been a recent trend towards providing services to victims of crime to assist them in overcoming the emotional and secondary consequences of victimization. The first such services were generally directed to dealing with the needs of special groups of victims, and focussed primarily on victims of sexual assault or child abuse. More recently, police forces, court systems and private agencies have become involved in this area, largely by attempting to provide information, assistance and support to victims or witnesses of crime.

The purpose of this section is to discuss the present services available to victims of crime in Canada. These services are not described in any great detail since there are already two excellent surveys in this area, and the interested reader can more profitably refer to these for further information (Norquay, Geoff and Weiler,Richard: Services to Victims and Witnesses of Crime in Canada, Solicitor General Canada, 1981; DeGagne, Jean-Guy; Weiler, Richard, and Poupart, Lise: The Victim Services Survey, Canadian Council on Social Development, 1983).

The focus of the section is on three major questions: what are the goals or objectives of providing services to victims of crime? who should provide these services? how should these services be delivered to victims?

The Objectives of Services to Victims

Every needs-assessment study has illustrated the confusion and bewilderment of victims in the face of their involvement with the criminal justice system, and has detailed their lack of awareness of some of

the programmes and services which are available to help them deal with the consequences of victimization. When available these different services to victims are a response to this expressed desire for information and support. There are differences in the specific goals or emphases of individual programmes. However, there seems to be a consensus that services to victims or witnesses of crime have five major objectives.

- To provide victims and witnesses with information on the case in which they are involved, and on their rights and responsibilities within the criminal justice process.

  There has been a trend towards providing victims and witnesses with information on the court setting and legal procedures, and with some degree of support during their involvement with the system. This initiative seems to reflect a widespread conviction that such services can meet the requirements of these individuals while accommodating the effectiveness and efficiency concerns of the system.

- To assist victims in dealing with the consequences of victimization, and in coping with the aftermath of crime.

  A wide range of activities can be included under this heading. On a general level, it can involve such services as providing a locksmith to secure one's residence after a break-in, furnishing short-term emotional support to aid the victim in dealing with the immediate crisis of victimization, or assisting the victim through the complexities of filing insurance or compensation claims. This type of service is even more important to certain special groups of victims. Rape crisis centres have provided victims of sexual assault with the help and support they need to deal with the physical and emotional trauma which so often accompanies such attacks. Agencies dealing with battered women provide emergency accommodation in 'safe houses' and some degree of support to help the victim escape from a desperate situation. Actually, such specialized agencies preceded the development of more general services to victims, and have served as a model for program development.

- To provide crisis intervention services.

A number of agencies are moving towards the development of services for helping people deal with crisis situations. The concern is usually to provide trained intervenors who are prepared to assist emotionally or physically abused women or children, and to thereby contribute to alleviating the suffering caused by violence in the family.

- To sensitize workers within the criminal justice system to the situation of victims, and to train those workers to recognize and respond to the needs of victims and witnesses.

  A great deal of attention is paid to the importance of changing the attitudes and motivation of the people who deal with victims and witnesses of crime. In many ways, this is the key step to an improved situation for victims. Most programs recognize that training police and court workers to consider their 'clients' can result in significant benefits for victims, witnesses and the system at relatively little additional cost.

- To co-ordinate victim-based efforts, and to assure that victims are aware of the services which are available to them.

  The co-ordination objective essentially involves the provision of information to both victims and criminal justice workers. In the former case, an attempt is made to assure that victims are aware of available services, such as criminal injuries compensation or special support agencies or networks. This can involve programmes of general public education as well as direct contact with victims. In the latter case, the goal is to ensure that the existing service system is prepared to accommodate and serve victims, and that justice system workers are able to refer victims to the appropriate agencies and services. There is considerable evidence of a commitment on the part of organizations concerned with victims in the co-ordination of their efforts.

  Unfortunately, the consensus over objectives has not resulted in a widespread expansion of these services. The recent survey by the Canadian Council on Social Development (1983) suggests that the limited growth in this area is a result of a number of factors. Some jurisdictions have yet to clarify the extent of need for such services, or the appropriate auspices for delivering them. Hopefully, the rapid publication of the needs

assessment studies undertaken by the Department of Justice which have now been completed, and which reveal a great deal of consistency in the needs which have been identified, will speed developments in this area. A more important consideration would seem to be the realities of fiscal restraint. It is interesting to note that services tend to be introduced or developed largely on the basis of redirecting existing resources: there is little political support for initiatives which require massive investments of new resources. The Report will deal with the further implications of financial or political constraints in its discussion of the responsibility for providing such services and of the models of service delivery.

The Responsibility for Providing Services

The CCSD survey indicates that there is a great deal of controversy over which components of the justice system should provide services to victims, and over the range of services which should be provided. In large part, this reflects considerable differences of opinion as to the appropriate role of criminal justice agencies in relation to victims. While sensitive to the situation of victims, many practitioners are concerned that victim assistance may compromise the ability of the system to satisfy the needs of society and to guarantee the rights of the accused. The practical result of such concerns is a debate over the most appropriate manner for allocating the responsibility for such services. Some argue that the criminal justice system should fulfill this responsibility, while others insist that such work is better done by private social service agencies such as the Salvation Army, the John Howard Society, etc.

There is also a concern within both public and private agencies on the appropriateness of being involved with offenders while also dealing with victims. There is a sense that this may well represent a potential conflict of interest, especially to the extent that the services involve some form of victims' advocacy. This is compounded in the voluntary or private sector by the issue of the priority of services to victims, and the question of the specific role these agencies should play and the specific services they should provide. The problem is well illustrated by the difference of opinion regarding the extent of services which should be provided by sexual assault centres. For example, it is not clear whether sexually abused children can best be served by general child welfare agencies or

by specialized sexual assault centres. Nor is it clear who can best provide crisis intervention, information or support to sexually abused adults. There is also considerable disagreement between sexual assault centres and provincial authorities over the political stances and advocacy actions of some such centres. There is little reason to believe that there will be an early or easy resolution of these questions. However, some encouragement can be taken from the interest most agencies have expressed in exploring possibilities for greater co-operation and co-ordination in the provision of services to victims.

The Organization and Delivery of Services

The CSSD Survey found that there is a great deal of support for providing services to victims and witnesses within the framework of existing programmes and services, or by redeploying existing resources to deal with new responsibilities. This is accompanied by an increasing reluctance to adopt the 'special project' approach, largely because of a resistance to sharing the costs of these programmes or a reluctance to becoming involved in programmes which require major or sustained injections of new resources.

In practical terms, this has meant that services are either provided directly by agencies within the justice system, or indirectly by contracting the task out to the private social service network. In the former case, the services can be based in police departments, in the court system, in correctional agencies or in some combination of the three.

There are three approaches to a police-based system of providing services. The first is to create a specialized services unit within the police force to deal with the requirements of victims. This approach has been adopted by the police forces in Edmonton, Calgary and Kitchener-Waterloo. The second approach is to blend the victim services unit within an existing service or division of the police force. St. John and Regina are developing proposals based on this strategy. The third approach is to attempt to reorganize existing resources so that a police department can maximize the return on current resources. The city of Vancouver and the R.C.M.P. are perhaps the best examples of proposals for operationalizing such an initiative. As an illustration, the CCSD survey indicates a high level of recognition on the part of most R.C.M.P. detachments of the importance of victims' services as an inherent element of a police officer's responsibilities.

Moreover, the majority of detachments indicate that they provide services to victims and witnesses, especially in the area of linking the victim or witness to the legal system. Unfortunately, this commitment does not seem to be accompanied by a plan to develop services or by a participation in community-based planning or inter-agency co-ordination.

Court-based services are generally concerned primarily with the welfare and requirements of witnesses, and with the objective of improving the court process. This could involve an improved case management system such as the one being developed in British Columbia, or the provision of improved services to witnesses (e.g., transportation, babysitting). In either case, the product generally springs from the belief that such services will result in faster and more efficient justice by assuring the participation of more co-operative witnesses.

The final strategy is the combined victims/witnesses services approach, which directs the police to an emphasis on victims and the court-based unit to assisting witnesses. The only fully operational unit of this type is based in Winnipeg, where the victim and witness components were developed concurrently under a single advisory committee. It is too early to assess conclusively the potential advantages of this two-tiered approach, but it does seem to maximize the potential for rationalizing scarce resources in this area.

A number of programmes have also been developed within the volunteer social services network, by agencies such as the Salvation Army or the John Howard Society. Such programmes can best be distinguished on the basis of their targeted population. Some are designed for victims and witnesses in general and offer a broad range of services. The programmes offered by the Salvation Army in Ottawa, and by the John Howard Society in Lethbridge are examples of this. Others offer services to specific populations such as victims of family violence or sexual assault. The Restigouche Family Crisis Intervenors Program is an example of this type of service. Transition homes and rape crisis centres also generally use this approach.

In spite of this activity, we must conclude on a somewhat pessimistic note.

The CSSD survey discovered no substantial development of such services or projects over the last two years. A number of existing projects have either been

terminated or given diminished levels of support, and some previously planned programmes have not been implemented. This appears to reflect a lack of resources more than anything else, although there is also some debate over the emphasis of proposed services or the appropriateness of the organizations requesting support. In sum, these various demonstration projects hold great promise for the future. However, it would appear that many jurisdictions are unwilling or unable to assume the financial burden of these projects once the federal government's demonstration grant funding is exhausted. Police and court-based programmes which can demonstrate their cost efficiency seem to be the best protected from such cutbacks. For the most part, however, it seems clear that fiscal restraint presents a significant hurdle for the victims' initiative to overcome. The contributions of existing programmes only serve to highlight the fact that most jurisdictions have done relatively little in this area. We can only hope that the lessons gained through existing programmes and demonstration projects will speed development.

Some examples of different forms of service to victims are described in Appendix I of the Report.