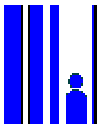
National Consultation *with* Victims *of* Crime

Highlights and Key Messages

July 2001



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A Message from the Solicitor General of Canada

As Solicitor General of Canada, I recognize the need to communicate effectively with the public and to receive input from those who are in direct contact with the corrections and conditional release system. In this report, I am pleased to present the main issues raised during a recent national consultation with victims of crime. The consultation sought input on proposed changes to the *Corrections and Conditional Release Act* and on the service provided to victims by the Correctional Service of Canada and the National Parole Board.

For several years now the federal government has been working with the provinces, territories and all components of the criminal justice system to promote greater sensitivity to victims and their needs. We want to ensure that the system interacts with victims in a respectful and fair manner. While improvements have been made in recent years, it is clear from the results of this consultation process that our work must continue. We need to continue to consult with victims and work in partnership with the provinces and territories to further improve the system.

I want to thank the victims of crime and victim service providers who came forward to share their experiences and to provide their views regarding proposed changes to the corrections and conditional release system. In many cases, the consultation process was difficult for participants. The Department of the Solicitor General, the Correctional Service of Canada, the National Parole Board, and the Department of Justice are indebted to victims for giving of their time to help improve our system.

I am committed to implementing further changes to the corrections and conditional release system to make it more responsive to the needs of victims. The valuable input provided by victims of crime will help guide the implementation of future changes. Victims' rights and needs are, and will continue to be, a priority for the Portfolio of the Solicitor General.

Lawrence MacAulay
Solicitor General of Canada

Introduction - Role of the Victim in the Corrections and Conditional Release Process

When enacted in 1992, the *Corrections and Conditional Release Act (CCRA*) contained innovative provisions to assist victims:

- For the first time, victims were formally recognized in federal legislation governing corrections and conditional release.
- A broad definition of "victim" was incorporated into the legislation that allows the release of information about offenders to people they harmed. In addition to the direct victims of an offender, it included family members, spouses and, when the victim is a child or incapacitated, their guardians or caregivers.
- Victims became entitled to personal information about offenders including information about the sentence and eligibility and review dates for temporary absences and parole.
- Other information was made available when the victim's need to know outweighed the offender's right to privacy, including whether the offender was in custody or not, the location of the penitentiary where he/she was incarcerated and the offender's destination on conditional release.
- Victims were authorized to attend Board hearings as observers.

In addition:

- A decision registry was set up by the National Parole Board (NPB) so that information about conditional release decisions made by the Board could be easily obtained.
- The Mission Statements of both CSC and NPB declare their commitment to recognizing that the protection of society includes taking into account the concerns of victims.

While the *CCRA* introduced some significant reforms with regard to recognizing and responding to the needs of victims it is clear that more remains to be done. This is clear from direct interventions of victims, victims groups, and from the recent Parliamentary review of the *CCRA*. In its response to the recommendations of the Committee the Government committed itself to consult with victims. These consultations were conducted during March 2001. The results of this consultation process with victims are summarized in this document. These findings will help guide the introduction of additional changes to the corrections and conditional release system to further address the needs and concerns of victims.

Context – Parliamentary Review of the Corrections and Conditional Release Act (CCRA)

The *CCRA* was proclaimed in November 1992. The *Act* stipulated that five years after its coming into force, a comprehensive review of the provisions and operations of the *Act* would be undertaken by a Parliamentary Committee. The review was undertaken by the CCRA Sub-committee of the Standing Committee on Justice and Human Rights.

While conducting their review, the Sub-committee travelled to federal institutions and held public hearings with a broad cross-section of individuals and groups with an interest in the correctional system. They heard from victims and victim groups, police, prosecutors, defence attorneys, offender assisting agencies, corrections staff, parole board members, unions and offenders. During their review, issues pertaining to victims received a great deal of attention.

On May 29, 2000, the Standing Committee tabled their report "A Work in Progress: The Corrections and Conditional Release Act". The Committee made 53 recommendations for improvement to the correctional and conditional release process. The report contained six recommendations relating specifically to victims (Annex A).

The Government response (Annex B), tabled October 19, 2000, indicated agreement to take action on the recommendations. The proposed changes included amending the *Act* and expanding services to:

- increase the information that can be provided to victims of crime by the National Parole Board (NPB) and Correctional Service of Canada (CSC);
- offer victims the right to read a prepared statement at NPB hearings;
- offer victims the opportunity to listen to the taped record of an NPB hearing in a CSC or NPB office;
- have CSC continue to refine its strategy to prevent unwanted communications from offenders in federal correctional institutions; and
- establish a national victims' information and complaints office, focussing on the victim-related activities of both CSC and NPB.

Background – Consultation Process with Victims:

The Government response presented a summary of the actions planned by the Government to implement the recommendations of the Committee. However, before implementing specific changes the Solicitor General promised to undertake consultations with victims of crime and victims service providers to ensure that the proposed changes would truly be of assistance to victims.

To conduct the consultations, the Department of the Solicitor General reached out to receive input from a group of "registered victims" – those who have formally indicated to CSC or NPB that they wish to be kept informed of the offender's status. A small number of victim service providers and those that work directly with victims were also consulted.

Eight consultation sessions were held in six cities (Halifax, Montreal, Toronto (2), Winnipeg, Edmonton, and Vancouver (2)) between March 14 and March 30, 2001. The consultation was led by the Solicitor General of Canada in collaboration with the Correctional Service of Canada, the National Parole Board and the Department of Justice. *Lise Pigeon and Associates* facilitated seven of the consultations and compiled an "As-it-was-recorded" report of each session as well as a first draft synthesis of the key messages received during the consultation process. The eighth consultation, facilitated by Germaine Langan, was conducted in Vancouver and focussed primarily on Aboriginal victims of crime. Detailed reports highlighting the messages received at each of the individual consultation locations are available upon request.

As noted, the objective of this consultation was to ensure that the recommendations of the Standing Committee on Justice and Human Rights are implemented in ways that best meet the needs of victims. Three main themes were covered:

(1) Information sharing with victims,
(2) Parole Board recommendations,
(3) A proposed national office for victims.

The smallest number of participants for a consultation session was 15 and the largest was 30; a typical session had 20-25 participants. The sessions lasted a full day except for one of the two Toronto sessions which was conducted in the evening and lasted three hours.

For themes 1 (information sharing) and 2 (National Parole Board recommendations), participants engaged in small group discussions (4 to 6 victims per small group with one official) thereby providing all individuals an opportunity to express themselves in a more intimate setting. The highlights of the small group discussions were then shared and debriefed in plenary. Theme 3 (a proposed national office for victims) was discussed only in plenary.

The Aboriginal victim consultation followed a one-on-one interview format. Several victims from the downtown east side of Vancouver, of various ages and races but predominantly Aboriginal, were interviewed to provide their perception on proposed changes to the corrections and conditional release system.

This consultation process was particularly noteworthy for the ***consistency of the messages heard***. Indeed, it is not an exaggeration to say that with few exceptions participants were virtually unanimous with regard to the messages they delivered across the country and which are synthesized in this report. While each group had original ideas about applications or modalities there was definitely consensus on the key issues.

It is also important to note that while this consultation focused on how victims could be better served once the offender is sentenced and incarcerated (federal corrections and conditional release issues), victims do not parcel their experience and their needs according to the justice system's different jurisdictions and structure. Their experience is a holistic one; they do not differentiate between the various levels of jurisdiction that they may have encountered. As such, some views raised touch on areas of jurisdiction of the courts, provincial/territorial governments, the Department of Justice, the Department of the Solicitor General, CSC or NPB. This report, therefore, reflects not only the feedback received on the specific questions related to the three themes of this consultation, but on broader topics raised by participants as well.

It is noteworthy that victims mentioned many times that they were pleased to have been invited and many saw this consultation as a sign that "at last someone is listening". They expressed hope that their recommendations would be acted upon. Many offered special thanks for having been invited and remarked on how important it was to have an opportunity to share thoughts, ideas and stories with other victims. At the same time, it should be noted that there may be legal and/or operational impediments to implementing all of the recommendations made to us. Nevertheless, we will be moving forward in those areas where enhancements of victim services can take place, recognizing that this will be an evolving process.

General and Overarching Messages

The imbalance of rights between victims and offenders

A frequent message received during the consultation was that victims feel that they have few, if any, rights. Victims expressed frustration with the rights they perceive offenders to have compared to their own entitlements. Victims emphasized that their lives have been deeply and permanently changed as a result of a crime committed against them; the pain and loss they endure will never go away. It was stated frequently that they are the victims, yet feel discounted, and treated unfairly by the justice system. The most frequently mentioned examples of the perceived imbalance of rights include the following.

- Offenders have the right to treatment and rehabilitation paid for by the state while victims have little or no state-funded psychological support, treatment or counselling.

- Offenders can participate in educational programs to re-orient their lives after release while victims have no such right to educational programs to help them re-orient their lives or make a necessary change in lifestyle or career.

- Offenders get to see information the victims send to CSC or NPB which is put on their file; victims cannot have access to the file of the offender who harmed them.

- Offenders can get support from government-funded non governmental organizations (NGOs) such as the John Howard Society; victims do not have such government-funded organizations to support them.

- Offenders can waive a Parole Board hearing at the last minute if they choose to; victims (who may have taken the time to travel to the location of the hearing and who may have been through a roller coaster of emotions while preparing themselves for the hearing) do not have the right to cancel a hearing nor to demand that it be held once scheduled. It was stressed that when the offender cancels the hearing, victims feel re-victimized and controlled by the offender.

- Offenders can change their names many times, apparently at little cost to them and possibly with assistance to do it. While victims can also change their name, this must be done at their expense.

Victims want a Voice

Victims want a say (***a real say***) in the justice process. Parents, siblings and extended families of murder victims as well as victims of violent crimes and of sexual assault are frustrated by the extent to which they feel left out of the decision-making process related to the offender who harmed them. Most offensive to them is the ***plea bargaining process*** where their "voicelessness" leaves them feeling alienated by the justice system. For example, the parents of a teenager stabbed eleven times and the brother of someone shot in the back had no say whatsoever when the Crown accepted pleas in each of these separate cases. These pleas both resulted in a seven year sentence and great frustration when the victims learned the offenders could be eligible for release in less than three years.

In addition to wanting a voice related to plea bargains and to sentencing, victims want a voice when offenders are transferred from one institution to another, when decisions are made about parole and other types of conditional release, and when conditions of release are being determined. They want their voice ***to be heard and to count***. Victims indicated that the reasons they want a say is not to be vengeful, but rather to have a sense of fairness and to influence decisions that will impact on their safety, that of their families and of the community.

Some victims indicated a desire to be represented at different stages of the process and a need for an ombudsman. They noted the need for advocacy groups to speak on their behalf and to offer support.

Victims want respect

During these consultations, victims made a strong case for respect. While several victims had positive anecdotes to tell about a sensitive police officer, NPB or CSC staff member or other public official who dealt with them in a helpful and sensitive manner at a particular stage of the process, many aspects of the justice system leave victims feeling they are **not** treated with respect. Whether it be the way a police officer treated them, the tone or response of CSC or NPB staff when requesting information, being prevented from having access to the file of the offender who harmed them, or being ignored by the Crown in cases of plea bargaining — victims oftentimes feel they are not treated with respect. Victims want respect from the system in general and from the individual players within the system with whom they come in contact.

One victim noted that the principles dictating how offenders will be treated are captured in legislation, the *CCRA*, (i.e., decisions pertaining to offenders must be made "in a forthright and fair manner") but that the principles applying to how victims will be treated are not outlined in any legislation; it was suggested that these same principles should apply to victims.

Some victims perceive the system as being "afraid" of victims and believe that much training is required to help the different players in the system deal with and understand victims.

Victims live in fear

Victims frequently indicated that they live in fear of the offender who harmed them. They live in fear of being contacted by the offender and fear the day the he/she will be released. They fear for themselves and for their families. In some cases, this fear goes very far — as far as preventing victims from even *asking* for information because they fear reprisals (or re-victimization) should the offender become aware that the victim is the least bit *interested* in the system or in their case.

It is particularly important to note that victims fear reprisals if they prepare a statement for the Parole Board indicating why they believe the offender should not be released or requesting conditions on the release. The fear is heightened greatly for victims of sexual offences and domestic violence.

Theme 1 – Information Sharing

What information do victims need and want?

As noted, the consultation was organized under three themes. Theme 1, information sharing, generated a great deal of discussion. Arguably, the overwhelmingly dominant theme expressed by victims during the consultation process was the need for information. Victims consistently emphasized the need for ***comprehensive victim-centred information*** in three key areas: a) information on their specific case; b) information regarding how the criminal justice system works generally; and, c) information on where to obtain help/counselling, etc.

a) Information on their specific case

Victims emphasized the need for **more information about the offender** that harmed them, particularly information on program participation and institutional conduct. This view was stated consistently across the country. Victims felt strongly that the Government response did not go far enough on this issue. Many stated that if this type of information can be made available to observers at parole hearings or by listening to an audiotape of hearings, then it should also be available at earlier points in the offender's sentence.

Many victims expressed a need for information on the offenders' behaviour or state of mind. If offenders are not involved in any rehabilitation programs, they would like to know whether it is because the system has determined that the offender has been rehabilitated or because he/she is refusing to participate. Victims emphasized that they want programming information to gain a sense that the offender is making an effort to change. Many indicated that their fears would be somewhat reduced by learning that the offender is making progress.

Victims supported the proposal to expand the type of information provided to victims to also include information on new offences committed by conditionally released offenders. Some suggested that the proposal should not just be limited to offenders of conditional release; they would also like information of new offences committed by offenders while in custody.

Support was also offered for the proposal to provide victims with information on transfers that offenders receive. Some victims felt that information on <u>all</u> transfers should be provided to victims <u>in advance</u> of the transfer taking place. The Government response indicated that advance notification would only be undertaken for transfers to minimum security institutions where offenders may have greater access to the community.

Victims noted that CSC and NPB use a huge amount of information to make a decision about release and as this decision will impact directly on them, they feel entitled to access additional information. Most victims stressed that their need to know is motivated primarily by security and safety reasons, not vengefulness. Nevertheless, some indicated that they wanted to know more details in order to try to influence decisions with which they do not agree. Victims also expressed a strong need to receive information that would help them understand the reasons or rationale for decisions made about the offender by CSC and NPB.

b) Information regarding how the criminal justice system works

Victims noted frequently the need for more information regarding the criminal justice system in general. This theme was raised consistently across the country. In Halifax, it was described as the need for a "databank" of information and research material for victims. In Toronto, it was described as the need for a "binder" that would provide victims with all the information needed to understand the police investigation, the court process, the sentencing process, as well as the offenders incarceration and release. In Edmonton, it was described as the need for a "roadmap" that would explain the criminal justice system from the point a crime is committed through to the time that the offender is no longer under sentence.

Examples of information victims would like to receive regarding the criminal justice system generally include:

- how the system works from beginning to end (the different steps of the police inquiry and court processes, sentencing, corrections, parole and release);
- how the sentencing process works and when offenders become eligible for releases;
- the rights of victims at each step of the process;
- the options and choices the victim has at each step;
- the roles and responsibilities of the different parties at each step (this should be very detailed and include, for example, what discretion a warden has regarding temporary absences/work release and who is a qualified escort);
- the rights of offenders, particularly the right to receive information provided by victims;
- how to go about mediation or restorative justice if that is of interest to a victim;
- how to prevent an offender from contacting themselves or their family;
- information on the emotions a victim could expect to experience at different times – the psychological cycles/effects of being a victim.

c) Information on where to obtain help/counselling etc.

The consultation process found that victims are very often unaware of existing services or how to access them. Many were not aware of police victim service units or the various provincial/territorial victim service programs. Victims stressed that there needs to be better co-ordination among all levels of Government and the agencies that provide services to victims to ensure that victims are aware of and can access the available services.

How do the victims want to receive this information?

Victims provided a number of views regarding how they would like to receive information.

- Victims want and need to receive information about the justice system in a proactive manner from the moment the crime is committed. Victims stressed that the system should automatically reach out to them to make them aware of their right to receive information. Victims could then choose whether or not they are interested in receiving on-going information from CSC or NPB. It was articulated clearly that victims feel the onus to request information should not rest with them. It was emphasized that the system also needs to recognize that the desire or need for victims to be involved may change over time.
- Victims want information in a timely manner. It was stressed that timely notification of release is necessary to allow support mechanisms to be put in place, and to ensure the security of victims.
- Victims want dedicated CSC victim liaison officers that provide service exclusively to victims; they feel strongly that officials who serve both offenders and victims cannot do both jobs well and cannot gain the full trust of victims.
- Victims need continuity when working with officials, i.e., they don't want to have to speak to a new person each time they need information. They want this person to be well trained in victims' issues (e.g., sensitivity training, grief process, post-traumatic stress), to be helpful, patient and compassionate.
- Victims need the information to be provided at no cost to them and in a variety of formats (in-person, through documentation, by phone, website, video and through any other new electronic means as the technology evolves). Victims stressed that individual needs vary greatly, accordingly, they want to be given choice about what information they can receive and how they can receive it.
- They need/want the information explained to them in person or on the phone by someone who is both very knowledgeable about the process and the system and very sensitive to victims' needs; they also need this information in writing so they can refer back to it as required.

- Information needs to be accessible. Participants at the Halifax consultation, particularly those from Newfoundland and Labrador, stressed the need for regional and local services. They remarked that the NPB regional office in Moncton, N.B. is very far away.
- Victims need to be able to trust the information is accurate, complete, and provided consistently across Canada. Accountability needs to be built into the system.
- In Edmonton and Winnipeg it was suggested that a "Victim File" be created when the offence occurs. The file could follow the victim through the criminal justice system and include all relevant information regarding the offender that harmed them.
- Victims want an integrated approach – they want a more seamless approach to receiving information. Victims expressed frustration with being "referred" back and forth between CSC and NPB to receive information about a federal offender. Some victims suggested that a centralized CSC/NBP victims' centre with knowledgeable staff could resolve this problem.

How should the information be presented?

- Most victims stressed that written information should be available in plain language and written from a victim's perspective (preferably with the assistance of victims). Information also needs to be available in a form that will meet the needs of new Canadians, those with limited literacy, and those with communications challenges.
- Again, it was suggested by many that information could be packaged in a binder that has a section explaining each step of the criminal justice process; this would allow the victims to remove or review a specific chapter when they need it. Victims would find it reassuring to know that they have all the information at hand, but that they can use only a small portion of it at a time. Some victims indicated that support should be available to victims to help them understand each stage of the process and to refer them to the relevant section of the "binder" given the stage of their particular case.

Theme 2 – Parole Board Recommendations

Theme 2 focussed on issues relating to the National Parole Board, specifically the proposals to provide victims with access to the audiotaped record of NPB hearings and to provide victim with the opportunity to read a prepared statement during Parole Board hearings. Both proposals received backing, however for many victims it was felt that the proposals did not go far enough. Participants offered advice regarding how the proposals could be expanded and implemented in a manner that could better address their needs.

Listening to audiotapes of Parole Board Hearings

Victims offered support for the proposal to make access to tapes of parole hearings available for consultation purposes. Victims stressed that the tapes should be brought as close as possible to them, e.g., to the local police station and that there should be no cost to them to access the tapes. Some victims expressed a preference to listen to the tapes without any official present, or to have the option to take the tapes home to be listened to in private.

Many victims indicated that in addition to accessing the audiotape, they would also like to have access to a transcript of the hearing. Consideration should also be given to victims with special needs who may not be able to easily access a CSC or NPB office. The need to improve the quality of hearing tapes was also emphasized.

Many victims indicated a need for assistance when listening to the tapes in order to understand the purpose and process of the hearing, the terms used, the roles of the different parties, the type of questions being asked and the criteria that will be used to make a decision.

Victims indicated that there should be no time limit on when they can access the tapes. Victims stressed that they should be able to have access to the tapes even if they attended the hearing. It was also suggested that the legislation to allow access to the tapes should be retroactive in order to allow victims to hear tapes of hearings held prior to the new legislation coming into force.

While supporting the recommendation to provide victims with access to hearing tapes, many participants indicated that they would prefer to be able to listen to or participate in hearings in "real-time" through the use of modern technology: teleconferencing or video-conferencing for those who can't be on-site, closed-circuit television or the possibility to observe from behind a one-way glass for those who can and want to be on-site, but not in the same room.

Some participants suggested that Parole Board hearings should be in the public arena. They felt strongly that since release of an offender into the community may impact on the community, it should not be a private matter.

Reading a Prepared Statement at Parole Hearings

Victims indicated consistently that they should be allowed to make a statement at Parole Board hearings. Many also indicated that the proposed recommendation is too restrictive.

- Most victims do not want to be restricted to reading a statement at the beginning of the hearing; they want *choice* as to when they will speak.

- Victims want to make an informed statement; to do so, they believe they should have access to all the information about the offender while incarcerated *in advance of the hearing,* and that they should be allowed to take this information into consideration in preparing their statement.
- Many victims want to be able to rebut information provided by the offender if they believe it is incorrect; some want to be able to comment on claims of progress.
- Some victims indicated a need for financial assistance in order to be able to attend the hearing.
- Victims want to know that the Parole Board has all the information about the offender (for example, the cruelty of the offence, the offender's previous criminal behaviour, forensic reports of the crime). Some victims want to be able to probe the Board on what information it has and be allowed to draw their attention to possible information gaps.
- Victims want their statement to have an impact; they want it to be considered in decision making. Several victims indicated they do not want to participate in something that just offers the *appearance* of giving victims voice.
- Victims repeatedly stressed that they do not want their statements shared with the offender; many want the possibility of being heard by the Board "in camera". Victims find it offensive and most of all *a threat to their security* to have to share with the offender their inner most feelings and fears. Many victims fear reprisals by the offender for anything they may say that could be construed as limiting the offender's chances for parole. As a result, many indicated they will either not use the opportunity to make a statement to the Board or censor themselves. The system needs to recognize that information sharing with the offender will be a barrier to victims submitting statements.
- It was stressed that training of NPB members in victims' issues will be essential to their understanding victim concerns.
- Victims need reasonable advance warning of hearings; they need time to prepare.
- Waiver of parole hearings cause stress to victims and should not be allowed; or, if allowed, the offender should be penalized, especially for last minute cancellations (for example, by having to wait at least six months to reschedule a hearing).
- A support person should be able to read the statement if the victim cannot. Also, a statement through video or audiotape should be allowed in lieu of an in-person reading.
- With regard to the statement itself, some victims indicated a need for guidance about how to present a statement (do's and don'ts).
- Victims want to be allowed to speak about the impact since the offence – not only since the conviction. Also, victims want to make statements about conditions of release.
- The victims desire to read a prepared statement should not be considered vengeful; it is a means to share vital information about the offender.

- There was no consistent message with respect to the age at which children should be allowed to attend a hearing and present a statement. Some participants indicated that age 16 should be the limit, while others felt that if a 14 year-old can read an impact statement at sentencing, it should be the same age for parole hearings. Many participants felt the assessment of a child's capacity and readiness to participate should be at the discretion of the guardian.

Other views about the parole and release processes expressed often by victims during the consultations

- "Parole should be earned – there should be no statutory release."
- "Parole should not be given in cases of violent offences."
- "Offenders should be obliged to take all treatment programs offered to them or penalized accordingly (not allowed to be put on parole)".
- "Even if they are a "model" inside, the Parole Board should not interpret that to mean that they will be a model outside."
- "Offenders should get restraining orders upon release."
- "Offenders should be supervised upon release – always ."
- "Parole Board should not consider victim-offender mediation as a factor in a parole decision."
- "Parole should start after the full sentence has been served."
- "Victims should have recourse re: a NPB decision."
- Victims want "truth in sentencing" (25 years should be 25 years). Many victims indicated that they were shocked when told about conditional release programs and how soon after sentencing some offenders could return to the community.

Theme 3 – Proposed National Office for Victims

By and large, victims were not "attached" to the mechanism of a national office per se; however, they did have strong views regarding the services they need. Victims did not care as much about the concept of a national office as they did about timely service and information, regardless of where these services originate. In short, victims want a National office to ensure:

- that they receive complete, accessible, and timely information;

- that information is user-friendly and that it is provided by trained dedicated and professional staff;
- that information and support services are delivered in a manner that demonstrates respect for victims;
- that victims are referred to counselling and other relevant services;
- national standards regarding victims issues, including professional standards for those working with victims (e.g., victim counsellors, grief counsellors);
- an advocacy function, with influence to recommend policy/legislative change;
- that their complaints are resolved.

Victims stressed that a national office should have a clear mandate. It should not duplicate the services offered at the community or provincial levels, nor duplicate the role of Justice Canada's Policy Centre for Victim Issues. Victims indicated that the office should be integrated with existing services yet independent from CSC and NPB. Victims indicated that a future National Office should be small. They clearly indicated a preference for allocating resources in a manner that would improve services close to them.

Role of a National Office and Services It Could Provide

Outreach and Information Function:

- The office should be proactive in contacting the victims; it should be given the names of victims immediately and follow victims throughout the whole process; it should hold a "victim file" and be able to track the victims and the services they have received;
- it should be the central location for information;
- it should co-ordinate information from all parts of the system to help victims understand and work with the system;
- it should produce and disseminate information materials (written and in other media such as videos);
- it should provide information to victims on the offender who harmed them (transfers, rehabilitation programs, parole hearings, conditions of release, etc.);
- it should offer a 1-800 number and a Website for victims;
- it should feed the community offices in each jurisdiction with up-to-date and relevant information.

Networking and Support Function:

- The office should provide referral and counselling services;
- it should ensure continuity with the victims at the various stages of the process including after offender is released;
- it could refer victims to the CSC institutional "victim co-ordinators" or NPB regional staff.

Policy Function:

- The office should collect intelligence about needs of victims and how the system is working for them;
- it should use this intelligence to have input in any new policies or legislation that will directly or indirectly impact on victims;
- it should be involved in research and on-going monitoring, and have the capacity to evaluate recent system changes;
- it should have a federal role in setting national and provincial standards re: victims issues, including criteria for mediation / reconciliation;
- it should develop professional standards for those working with victims (e.g., victim counsellors, grief counsellors).

Advocacy Role:

- The office should be the premier defender of victims rights.

Education Role:

- The office should train the different players in the system about victims' issues ;
- it should train people to be victim advocates.

Investigation Function:

- The office should have the power to investigate victims' complaints and resolve them;
- it should have an Ombudsman role (like the Correctional Investigator) to deal with violation of rights.

Characteristics of a National Office:

Victims provided strong messages with regard to **how** they want to receive services. In particular, victims want the office staffed with compassionate, understanding, victim-centred, fulltime dedicated staff. They want the office to be accessible – i.e., it must have reasonable hours for national service. They want an office that is flexible, adaptable and capable of serving many types of victims (aboriginal, different cultures and languages, people with disabilities or who are challenged in any way, etc.). Some participants suggested that the office should be arms length from CSC and NPB; possibly reporting directly to Parliament.

Current Status and Next Steps:

On May 9, 2001, the Solicitor General announced that effective July 2001, victims of crime will have the opportunity to read a prepared statement at National Parole Board hearings. Consistent with the views raised during consultations with victims, NPB developed a policy that offers victims a choice regarding when they would like to present their statement during the hearing. Victims can also choose whether they want to make their presentation orally and in person or on audio or videotape. All victims registered with CSC or NPB to receive information about the offender that harmed them will be informed in writing of this new entitlement. Further information pertaining to victims reading a statement at NPB hearings is available on the NPB website (www.npb-cnlc.gc.ca) or by contacting NPB regional offices.

Further policy and legislative changes discussed during the consultation including: expanding the type of the information that can be provided to victims; providing access to the taped record of an NPB hearing; refining strategies to prevent unwanted communications from offenders; and, establishing a national CSC/NPB victims' information and complaints office are under development. The introduction of legislation to implement these amendments is a priority for the Solicitor General.

It should be noted that many of the recommendations received during the consultation process go beyond the mandate of the Solicitor General of Canada. Some of the recommendations fall under the purview of the Department of Justice Canada. Officials from the Department of Justice Policy Centre for Victim Issues were partners in the consultation process and have taken note of the areas of concern under the responsibility of that Department. Many other recommendations received during the consultation relate to policing services or the court process, still others fall under the authority of provincial and territorial victim services.

Given the various levels of jurisdiction involved with the issues raised in this report, the Department of the Solicitor General Canada is committed to sharing these results broadly. Officials from the Department of the Solicitor General will use existing federal/provincial/territorial fora to disseminate these result to police, Crowns and the judiciary. Planning is underway for officials to meet with provincial and territorial Directors of Victim Services to report on findings and explore opportunities to work co-operatively to respond to concerns raised by victims.

Victims told us clearly that they want a more seamless delivery of services from the time the crime is committed through to the moment that the offender is no longer under sentence. It is hoped that the findings of this consultation process, the follow-up with other partners in the criminal justice system and a continued open dialogue with victims will go a long way towards improving the service that is provided to victims.

Annex A

A WORK IN PROGRESS:
The *Corrections and Conditional Release Act*
Sub-committee on Corrections and
Conditional Release Act
of the
Standing Committee on
Justice and Human Rights
Paul DeVillers, M.P.
Chair
May 2000

CHAPTER 8:
VICTIMS' RIGHTS

8.1 Since the early 1980s, there have been numerous policy and legislative developments with respect to the rights and entitlements of victims. Most importantly, the *Criminal Code* was amended by Parliament in 1989 to allow for victim impact statements, victim fine surcharges, and to improve restitution and compensation measures. There have been other amendments to the *Code* and the *Young Offenders Act* since then. In adopting the *Corrections and Conditional Release Act* in 1992, Parliament for the first time clearly allowed legislatively for victim participation in the corrections and conditional release process.

8.2 In October 1998, the standing committee tabled its fourteenth report entitled *Victims' Rights - A Voice, Not A Veto* containing 17 recommendations. The standing committee proposed the adoption of a victims strategy, the establishment of an office for victims of crime, and recommended a number of changes to the *Criminal Code* and the *Corrections and Conditional Release Act* to be included in an omnibus bill containing a preamble setting out Parliament's legislative policy intention. The government's response to the standing committee's report in December 1998 was followed by the adoption by Parliament in June 1999 of Bill C-79, which contained a number of amendments to the *Criminal Code.* Neither the government response nor the subsequent legislation dealt with the Act, and further initiatives were left in abeyance, pending the report of the Sub-committee. The standing committee's report provides the point of departure for the Sub-committee's consideration of victims' issues. The Sub-committee reconsidered each of its recommendations for changes to the Act; however, this chapter also deals with other issues not addressed by the standing committee.

8.3 The Act deals with victims' concerns in several ways. First of all, Part I and Part II of the Act both contain definitions of who victims are. Secondly, the Act contains provisions with respect to offender information that can be received by victims from the Correctional Service and the Parole Board, and offender information they can provide to these agencies. Thirdly, the Act deals with the presence of observers, including victims, at Parole Board hearings.

8.4 As the standing committee said in its 1998 report, generally the needs of victims are not complicated. They want information about the corrections and conditional release system and the progress of the case in which they are involuntarily involved. They wish their voices to be heard at different stages of the corrections and conditional release process. They want redress where these rights are not respected. These issues are addressed in this chapter.

8.5 The Sub-committee believes the rights and needs of victims can be effectively addressed within the corrections and conditional release system without compromising or weakening its fairness or effectiveness. The Canadian Criminal Justice Association offers the following advice to the Sub-committee, which it follows in this chapter:

> Reasonable steps should be taken to accommodate the reasonable and legitimate demands of victims. What is most important is ensuring that the role of the victim does not launch another adversarial process, that the rights and interests of all parties are respected and that there is no opportunity for vengeance to become an influencing factor. Adjustments to current practice would be required, but, as usual, the system will manage to adjust.[103]

RECEIVING OFFENDER INFORMATION

8.6 Section 26 and section 142 of the Act deal with the provision, by the Correctional Service and Parole Board respectively, of offender information to victims, as defined by the Act. Both provisions deal with information that must be provided to victims or their families, on request. They also deal with information that may be provided to victims, on request, if the interest of the victim clearly outweighs the invasion of the offender's privacy resulting from the disclosure.

8.7 The following offender information must be provided to victims or their families on request:

- the offender's name;
- the offence for which the offender has been convicted;
- the court where the offender was convicted;
- the date the offender began to serve his sentence;
- the length of the sentence; and
- temporary absence, day parole, and full parole eligibility and review dates.

8.8 The following offender information may be provided to the victim or their family on request:

- the offender's age;
- the penitentiary where the sentence is being served;
- the date of release on temporary absence, work release, day parole, full parole, or statutory release;
- the date of a detention hearing;
- the conditions of temporary absence, work release, day parole, full parole, or statutory release;
- the destination of an offender on temporary absence, work release, day parole, full parole, or statutory release, and whether the offender will be in the vicinity of the victim while travelling to the destination;
- whether the offender is in custody, and if not, why not; and
- whether the offender has appealed a Parole Board decision (National Parole Board only).

8.9 There is a clear distinction between the two classes of offender information to be provided to victims or their families on request. The first category that must be provided to a victim consists of information that is largely already in the public domain and is available within other parts of the criminal justice system, especially in the form of criminal court records. Such information as the date a sentence commences, or the eligibility or review dates for various types of conditional release can be calculated based on publicly available information, and is a minimum impairment, if any, of an offender's privacy.

8.10 The second category that may be provided to a victim or their family on request is largely not in the public domain, and because it provides details of the management of an offender's sentence, is an infringement of privacy rights protected by the *Privacy Act*.[104] For these reasons, this type of information can only be provided to a victim after the responsible authority has applied the statutory test of balancing the interests of the victim against the privacy of the offender.

8.11 As indicated earlier in this chapter, one of the requests made by victims and those acting on their behalf is for more information about the case of the offender with whom they are involuntarily involved. This information on the management of the offender's sentence does two things. It allows victims to track the sentence and have a minimum sense of security with regard to where the offender is serving his sentence. It also allows the victim to determine whether they will be providing information to corrections and conditional release authorities about the impact on them of the offender's criminal act.

8.12 In urging that victims be provided with more offender information, Victims of Violence made the following argument:

> The offender's right to privacy prevents the victim from being kept informed as to whether the offender, for instance, is partaking in anger management courses or if he has been involved in violent acts within the prison. Many victims are related to the offender in their case and, upon release, the offender may come into contact with the victim and the victim's family. Should the family not have the right to know? There seems to be great secrecy surrounding the offender's conduct in prison even though this information could possibly benefit the victim.[105]

8.13 Victims are concerned about the level of risk an offender represents to themselves and to the community resulting from any form of conditional release. They believe they can measure that risk and make any adjustments they feel necessary if they have access to more information about the management of the offender's sentence than is already available to them. To address this issue, the Canadian Resource Centre for Victims of Crime has submitted to the Sub-committee that:

> There is certain information that victims would like to have access to which is currently prohibited by law, such as: information on programs the offender has taken to address his problems and the success of these programs. If the victim gets a sense that the offender is taking genuine steps to improve himself, then there might not be such fear or concern when he is released.[106]

8.14 In the same vein, the Ministry of the Attorney General of Ontario Office for Victims of Crime made the following recommendation:

> ...Section 26 of the CCRA should be reviewed to assess what additional information should be supplied to victims but while some personal offender information should be protected, institutional conduct or activity relevant to risk should be released.[107]

8.15 After reviewing these arguments and others, the Sub-committee has concluded that the Act should be amended to allow for the provision of more offender information to victims requesting it. This information should relate to the management of the offender's sentence by corrections and conditional release authorities. More particularly, this additional information should allow the victim to have a sense of what the offender has done to address criminogenic factors while incarcerated. It should also allow the victim to have a sense of the offender's likelihood of reoffending and to take any necessary steps to cope with it.

8.16 The Sub-committee believes victims should have access to information about the offender's participation in programs, the offender's conduct while incarcerated, and the offender's reincarceration for having committed a new offence while on any form of conditional release.

8.17 However, because this type of information is invasive of the offender's privacy rights, the Sub-committee believes it should only be made available to the requesting victim after a privacy balancing test has been applied by the responsible authority. As well, because some of this information may be detailed and complex, it should be made available to victims or their families in a form adequate to assist them, while being minimally invasive of the offender's privacy rights.

RECOMMENDATION 36

The Sub-committee recommends that paragraphs 26(1)(*b*) and 142(1)(*b*) of the *Corrections and Conditional Release Act* be amended to allow for the provision to victims, as defined in the Act, of offender information related to offender program participation, offender institutional conduct, and new offences committed by a conditionally released offender resulting in reincarceration.

8.18 Subparagraph 26(1)(*b*)(*ii)* of the Act allows the Correctional Service to provide a victim with information as to the penitentiary in which a sentence is being served. This provision was dealt with indirectly in part by recommendation 16 of the standing committee's 1998 report on victims' rights. It was recommended, among other things, that the Act be amended to require the Correctional Service to notify victims of anticipated offender transfers.

8.19 The issue of offender transfer from one penitentiary to another, among other matters, was addressed by Rosalie Turcotte for CAVEAT BC in her discussion paper entitled *Openness and Accountability Within the Correctional Service of Canada: A Time for Change*. In urging that section 26 be amended, she makes the following argument:

> Legislation should be created which would require CSC to advise and seek out the victims' views, prior to the decision being made, whenever a transfer is being contemplated by CSC in the routine administration of an offender's sentence.[108]

8.20 She goes on to recommend that subparagraph 26(1)(*b*)(*ii*) be amended to add the words `planned to be served,' so as to require the Correctional Service to advise a victim or family members of a transfer before it is effected. In her view, this would bring this development to the victim's attention and allow for the provision by them of information not in the offender's file that may be relevant to the institutional transfer decision.

8.21 Because the Act does not at the present time clearly allow for the provision of institutional transfer information to victims or family members before the actual transfer takes place, the Sub-committee agrees with this recommendation. Although the time within which transfers are effected is in most instances too compressed to allow for the provision of new information, this recommended amendment would at least provide the victim with notice of a planned, anticipated, or scheduled inmate transfer.

RECOMMENDATION 37

The Sub-committee recommends that subparagraph 26(1)(*b*)(*ii*) of the *Corrections and Conditional Release Act* be amended to allow for the Correctional Service of Canada to advise victims (as defined in the Act) in a timely manner, and wherever possible in advance, of the planned, anticipated, or scheduled routine transfer of inmates.

8.22 Recommendation 14 of the standing committee's 1998 victims' report proposed that the Act be amended to facilitate victim access to audiotapes or transcripts of Parole Board hearings by making them available for consultation purposes. The purpose of this recommendation was to make offender information available to victims unable to attend a particular parole or detention hearing. As well, it would have the effect of opening up the corrections and conditional release system still more to Canadians.

8.23 The Parole Board does not at the present time produce transcripts of its hearings, although they are recorded on audiotape. To require the Parole Board to transcribe these audiotapes would represent a significant expenditure and delay victim access to the information revealed during a hearing. The Sub-committee therefore adopts standing committee recommendation 14 as its own, making it only applicable to audiotapes.

RECOMMENDATION 38

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to facilitate victim access, for consultation purposes at Correctional Service or Parole Board offices, to audiotape recordings of Parole Board hearings.

PROVIDING VICTIM INFORMATION

8.24 Section 140 of the Act allows for the presence of observers at Parole Board hearings. They have the right to attend, but not to participate in, these proceedings. Victims, as defined in the Act, are allowed to attend hearings as observers. The file of any offender appearing before the Parole Board will usually contain the victim impact statement and other sentencing court documents, as well as any other information provided by the victim concerning the impact of the offence on them.

8.25 Many victims and victims groups believe this is not adequate. They argue that victims should be able to participate directly and fully in Parole Board hearings. The standing committee dealt with this issue in recommendation 15 of its October 1998 victims' report. At that time, it recommended that the Act be amended to provide victims with a presumptive right to be present at Parole Board hearings and to read an updated victim impact statement, or to provide one by way of audiotape or videotape.

8.26 Similar recommendations were made to the Sub-committee by the Canadian Police Association,[109] the Ministry of the Attorney General of Ontario Office for Victims of Crime,[110] and the Canadian Resource Centre for Victims of Crime.[111] The Sub-committee agrees with these recommendations and with the position taken by the standing committee. It also wants to add several elements to the standing committee's recommendation.

8.27 The Canadian Criminal Justice Association, in reporting the views of a victim organization, offers the following cautionary note:

> ... hearings should not become a duplication of the trial and the participation of the victim should not become an adversarial process. That is not to be the objective, nor would it be a proper way of administering justice. Victims should be invited to comment on specific points:
>
> 1. Describe the impact of the offence on them.
> 2. Express their fear and apprehensions relative to a potential release.
> 3. Request that specific conditions be imposed to enhance their safety.[112]

8.28 The Sub-committee agrees with and adopts the sentiment of this caution as its own. Any statement presented to a Parole Board hearing in whatever form it takes should contain information dealing with issues arising since the offender was convicted. Among other matters, such a statement could deal with the continuing impact of the offence on the victim, any personal safety concerns the victim may have with regard to the offender, and any conditions the victim may believe should be applied to any form of conditional release. The victim should not comment on the sentence imposed by the court or on whether conditional release should be granted to the offender.

8.29 The Parole Board, in its July 1999 response to the Sub-committee's written questions, indicated that it was developing a comprehensive action plan in response to the standing committee's recommendation 15. In addition to establishing victim application processes, criteria for victim participation, and offender information-sharing requirements, the Parole Board's action plan has also begun to elaborate a process for conducting the hearing itself. Under the proposed process, the victim will read his statement at the beginning of the hearing, before the offender interview itself takes place. If a victim statement is to be presented on audiotape or videotape, it will take place at that same point. After this has occurred, the offender interview by Parole Board members will then take place, and the victim will be able to remain as an observer.

8.30 The Parole Board is to be commended for beginning to develop an action plan for implementation of the standing committee's recommendation. The Parole Board does, however, express some concern about the potential number of victims who will want to participate actively in its hearings. There are two definitions in the Act of victims who may receive offender information. The first is contained in section 2 and section 99 of

the Act that define a victim as the person suffering the consequences of the offence or, in case of death, a spouse or relative of that person. The second definition is contained in subsection 26(3) and subsection 142(3) of the Act. They define a victim as a person suffering physical or emotional harm at the hands of the offender, whether or not there has been a prosecution or conviction, so long as a criminal complaint was made or an information was laid under the *Criminal Code*.

8.31 The Sub-committee shares the Parole Board's concern. It believes victim participation in the Parole Board process should be enriched. But it should be done in such a way that it does not unduly disrupt the inquisitorial process already in place. A victim, as defined in section 2 and section 99 of the Act, should be presumptively permitted to read their statement in person, or have it presented in audiotape or videotape form, at the beginning of a Parole Board hearing. This victim has suffered the consequences of the offence for which the offender has been convicted, and has a direct interest in his conditional release. This does not prevent other victims, more particularly those defined in subsection 26(3) and subsection 142(3) of the Act, from submitting victim impact information in other forms and at other times to corrections and conditional release authorities. They will also still be able to attend Parole Board hearings as observers.

8.32 Victim presentations to Parole Board hearings are meant to communicate directly their concerns about an offender's release and the impact of the offence since conviction. This is done most effectively by victims themselves communicating this information directly to Parole Board members. To allow intermediaries or representatives to communicate this information on behalf of victims may cause hearings to become more complex and to bog down, leading to delays in decision making.

RECOMMENDATION 39

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to allow victims, as defined in section 2 and section 99, to presumptively attend and personally read statements, at the beginning of Parole Board hearings, that set out the impact of the offence on them since the offender's conviction, or any concerns they have about the conditions of any release. Such victims should also be able to present their statements on audiotape or videotape.

UNWANTED COMMUNICATIONS FROM OFFENDERS

8.33 Victims and organizations representing them have identified unwanted communications from offenders as a source of fear and distress. It takes the form of telephone calls, mail and communication through third parties. Although it may not occur that frequently, when it does it has a disturbing effect on victims and those close to them.

8.34 The standing committee dealt with this issue at recommendation 17 of its report, and described initiatives taken by corrections and conditional release authorities. More particularly, section 95 of the *Corrections and Conditional Release Regulations* permits a penitentiary warden to prohibit an inmate from communicating by mail or telephone with any person, if the safety of any person would be jeopardized, or the recipient or intended recipient requests in writing that they not receive any inmate communications.

8.35 At that time, the standing committee urged the Solicitor General to take further steps to prevent unwanted communications from inmates in federal correctional institutions. Both the Ministry of the Attorney General of Ontario Office for Victims of Crime and the Canadian Resource Centre for Victims of Crime have made proposals on this issue to the Sub-committee. The Office for Victims of Crime recommended that the Solicitor General direct both the Correctional Service and the Parole Board to take administrative measures, including insertion of notice of offender non-contact remedies, into all victim publications and communications.[113] The Resource Centre for Victims of Crime recommended that section 95 of the Regulations be amended to remove any discretion wardens may have in prohibiting unwanted inmate contact with victims. They also urged better monitoring of inmate telephone calls.[114]

8.36 The Sub-committee welcomes these recommendations as presenting concrete, practical options for consideration. However, the Sub-committee believes a more comprehensive approach to this issue is required. The frequency of unwanted inmate communication and the means by which it happens must be determined before effective counter measures can be developed. Therefore a strengthened version of the standing committee's recommendation is preferred as providing a more comprehensive approach to this issue.

RECOMMENDATION 40

The Sub-committee recommends that the Solicitor General of Canada, in conjunction with the Correctional Service of Canada and the National Parole Board, develop a comprehensive strategy to prevent any unwanted communications from offenders in federal correctional institutions, especially with victims.

VICTIMS' INFORMATION AND COMPLAINTS OFFICE

8.37 Since Parliament adopted the *Corrections and Conditional Release Act* in 1992, both the Correctional Service and the Parole Board have undertaken a number of initiatives to provide victims with case-specific and general information. They have also engaged in a number of outreach and public education activities including, among others, the publication of pamphlets, fact sheets, and newspaper inserts.

8.38 The National Parole Board operates toll-free telephone lines in most of its regions. It also operates a decision registry that makes its conditional release

decisions available to victims and other interested persons, and facilitates the attendance of observers, including victims, at its hearings. Moreover, the Parole Board has appointed a community liaison officer at each of its regional offices, to assist in providing victims with services and information to which they are entitled under the Act. The Correctional Service has appointed victim liaison coordinators at each of its regional offices, community parole offices, and correctional institutions. In both cases, these functions are performed by Correctional Service and Parole Board employees in addition to other daily responsibilities. The Correctional Service and the Parole Board jointly provide victims with one-stop services in the Ontario and Pacific regions out of Board offices, where all offender files are located.

8.39 Community liaison officers and victim liaison coordinators perform the following core duties, among others:

- receive requests for information from victims;
- obtain information from police and other sources to ascertain victim status;
- inform victims in writing of their status and provide information;
- contact victims when significant developments occur;
- maintain information regarding victim contacts;
- ensure relevant information provided by victims is forwarded to decision-makers;
- refer victims in need of counselling and other services to appropriate sources; and
- provide victims with other sources of information such as the Parole Board Decision Registry and access to Parole Board hearings as observers.[115]

8.40 A number of victims and organizations representing their interests have told the Sub-committee that even though the Correctional Service and Parole Board have put these services into place, they do not always get satisfaction. They say they cannot always contact the right person within these agencies who can provide them with accurate, up-to-date, case-specific or general victim information. They also complain about getting different, and at times conflicting, offender information they have requested and to which they are entitled. They also feel they are not always treated respectfully by the persons with whom they have to deal. At times, victims' or their families' interests are not fully taken into account, nor are they adequately consulted by Correctional Service or Parole Board boards of investigation reviewing the circumstances of corrections and conditional release system breakdowns, with tragic consequences.[116]

8.41 Finally, victims believe they do not have an independent, disinterested office or authority to which they can have recourse to effectively deal with their complaints. This point was made by the Canadian Resource Centre for Victims of Crime when it said:

> Victims have no Correctional Investigator or any equivalent if they feel that their rights have been ignored or violated. There is no official office where victims can go if they have concerns/complaints about issues where they feel they have been mistreated or are not getting access to the information they deserve.[117]

8.42 A number of organizations making submissions to the Sub-committee agreed with this submission and made proposals for dealing with the issues it addresses. For example, the Canadian Police Association recommended that the Office of the Correctional Investigator be expanded or a parallel entity be established.[118] The Ministry of the Attorney General of Ontario Office for Victims of Crime proposed that the Office of the Correctional Investigator be expanded to also receive victims' and correctional staff's complaints about the National Parole Board and provincial parole boards.[119] Victims of Violence,[120] Mothers Against Drunk Driving,[121] and the Canadian Resource Centre for Victims of Crime[122] proposed that the Act be amended to provide for the establishment of a victims' ombudsman office, equivalent to that of the Correctional Investigator.

8.43 The Sub-committee seriously considered each of these alternative proposals, and others, before making its findings and developing its recommendations. The Correctional Service and the Parole Board have taken substantial steps since 1992 to meet the needs and requirements of victims, their families, and those close to them. But still more has to be done.

8.44 Because the corrections and conditional release system is complex, victims and their families are at times confronted by an informational maze to which they are unable to find the entry point. They first have to determine what their rights or entitlements are. Once this is found out, they have to then determine whether the Correctional Service or the Parole Board is where they have to go. Finally, they have to figure out whether they have to go to a regional office, a community parole office, or a correctional institution to get the offender information to which they are entitled. If victims or their families are dissatisfied at any point in this maze, they have no outside complaint body at their disposal to provide assistance.

8.45 If a victim or family member is not satisfied with the conditional release information received from the Parole Board Decision Registry, there is no established complaints mechanism to which they have access. If a victim or family member is dissatisfied with the treatment received when attending a Parole Board hearing as an observer, there is no independent mechanism in place to which that person has access. The same applies to victims denied observer status who are unhappy with the reason given for their exclusion. Victims and family members unhappy with the information from, or the consultation by, boards of investigation have no complaints mechanism open to them.

8.46 After examining all of these issues, the Sub-committee has concluded that victims have identified two needs. The first of these needs is for a clearly identified entry point for access to information to which they are entitled. This is especially important where there are several possible sources within the Correctional Service and the Parole Board where this information can be obtained. This access point could be available to obtain the required victim information directly or to direct the victim to the source in the corrections and conditional release system where it can be obtained.

8.47 The second need identified by victims and those representing them is for an independent mechanism that can receive, investigate and resolve complaints they have about their contacts with the Correctional Service and the Parole Board. This mechanism would not be restricted to addressing individual complaints, but would also have to be able to conduct system-wide reviews when necessary.

8.48 The Sub-committee is convinced that such an independent information and complaints mechanism is required, but does not believe it needs all the powers and resources accorded to the Correctional Investigator as a specialist ombudsman office. The Sub-committee is convinced, however, that the informational and complaints needs of victims and their families for timely assistance can be met by amending the Act to add part IV to it, establishing the victims' information and complaints office.

8.49 This office should be a supplementary source of victim information, building upon, not replacing, what the Correctional Service and Parole Board have put in place since 1992. It should both provide victims with direct access to information and indicate where in the corrections and conditional release system they can find it. It should independently investigate, resolve and report upon complaints it receives from victims, their families and those close to them. The office should not be restricted to investigating individual complaints, but should also be enabled to address the system-wide context for victim concerns.

8.50 Its jurisdiction, however, should be restricted to information and complaints about the federal corrections and conditional release system, leaving other matters such as provincial and territorial parole and corrections, and police and prosecution responsibilities, to other levels of government.

8.51 The proposed victims information and complaints office, as well as the Correctional Investigator (recommended elsewhere in this report), should, in the Sub-committee's view, be accountable to both the Solicitor General and Parliament. This can be done by having its special and annual reports tabled simultaneously with the minister and in both Houses of Parliament.

8.52 The Sub-committee believes that a thorough consideration of the office's special and annual reports will be encouraged if they contain Correctional Service and Parole Board reaction to its findings, conclusions and recommendations. Elsewhere in this report, the Sub-committee has recommended that section 195 of the Act be amended to require that the Correctional Investigator's special and annual reports contain the Correctional Service's comments, not just a summary of them prepared by the Correctional Investigator. The Sub-committee believes a parallel recommendation should apply to the proposed victims information and complaints office.

8.53 Finally, for accountability to have real meaning, there has to be assurance that special and annual reports receive parliamentary consideration. At the present time, section 192 and section 193 require the tabling in each House of Parliament of the Correctional Investigator's special and annual reports. They are then referred, under the standing orders of the House of Commons, to the appropriate standing committee for consideration. There is, however, no requirement that a standing committee actually review any such report. Standing committees are masters of their own agendas and work plans; the House only rarely directs their work. The Sub-committee has considered this issue elsewhere in this report where, in dealing with the Office of the Correctional Investigator, it has recommended that the Act be amended to require that its reports be referred to the relevant standing committee of the House of Commons for consideration. The Sub-committee believes the same recommendation should also apply to its proposed victims information and complaints office.

RECOMMENDATION 41

The Sub-committee recommends that:

(a) the *Corrections and Conditional Release Act* be amended by adding part IV to establish the victims' information and complaints office, to have jurisdiction over victim-related activities of both the Correctional Service of Canada and the National Parole Board;

(b) this office be empowered to both provide information to victims as defined in the Act and to receive, investigate, and resolve individual and system-wide victim complaints; and

(c) the office be empowered to table its special and annual reports containing Correctional Service and Parole Board comments on its findings and recommendations, simultaneously with the Solicitor General of Canada and Parliament. The Act should provide for the referral for consideration of such special and annual reports to the appropriate standing committee of the House of Commons.

103# Brief, p. 19.

104# R.S.C. 1985, c. P-21, as amended.
105# Brief, p. 2.
106# Brief, p. 7.
107# Brief, p. 5.
108# Brief, p. 6.
109# Brief, p. 12.
110# Brief, p. 5.
111# Brief, p. 16.
112# Brief, p. 18.
113# Brief, p. 8.
114# Brief, p. 16
115# Solicitor General, Working Group Studying the Provisions and Operation of the *Corrections and Conditional Release Act*, *Provisions Relating to Victims*, February 1998, p. 18-19.
116# July 19, 1999 letter to the Sub-committee from Steve Sullivan, President, Canadian Resource Centre for Victims of Crime.
117# Brief, p. 11.
118# Brief, p. 12.
119# Brief, p. 7.
120# Brief, p. 3
121# Brief, p. 3.
122# Brief, p. 9-13.

Annex B

RESPONSE TO THE REPORT OF THE SUB-COMMITTEE ON *CORRECTIONS AND CONDITIONAL RELEASE ACT* OF THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS: A WORK IN PROGRESS: THE *CORRECTIONS AND CONDITIONAL RELEASE ACT*

NOVEMBER 2000 (revised)

VICTIMS' RIGHTS

The movement to provide more inclusive processes for victims continues to gain momentum in Canada. In this context, the Standing Committee report, "Victims' Rights - A Voice - Not a Veto", addressed the importance of greater involvement by victims in the corrections and conditional release systems. The Government of Canada is now committed to taking further steps to address the concerns of victims and is currently engaged in a variety of efforts to move towards a more comprehensive strategy and relationship with victims. Within the Ministry of the Solicitor General, considerable advances have been made to recognize and respond to the needs of victims, particularly since the implementation of the *Corrections and Conditional Release Act.*

The Correctional Service of Canada and the National Parole Board have developed a number of services and initiatives to assist victims. Both agencies provide information to victims as stipulated in the *Corrections and Conditional Release Act* through Victim Liaison Co-ordinators in all CSC institutions and parole offices, and National Parole Board Regional Community Liaison Officers. CSC and NPB operate joint Victims Units in the Ontario and Pacific regions, and share a national data base to provide timely information exchange. Victims are allowed to attend National Parole Board hearings as observers, and to access NPB decisions through a decision registry that, by providing the reasons for decisions, serves as a source of additional information about the offender who harmed them. CSC has experience with victim-offender mediation services and supports such restorative approaches when appropriate. In addition, both agencies have continued to learn from victims and their advocates through consultations, and joint educational initiatives with victims. Victim sensitivity training for CSC and NPB employees and publications directed to victims have been developed. CSC and NPB also liaise with provincial victim service providers.

In order to build on progress to date, the Ministry recognizes the need for development of a comprehensive strategy based on consultation and involvement of all relevant stakeholders with particular emphasis on victims and their advocates. The strategy must provide balance, addressing the respective needs, concerns, and privacy rights of both victims and offenders.

The strategy must also take into account that the Ministry through its agencies is not mandated to be the sole or primary service provider to victims. Rather the Correctional Service of Canada and the National Parole Board are key partners with other levels of government and community based groups who must work collaboratively to co-ordinate and provide improved information and services for victims.

Victims have told the government that what they want is more information, more access to information earlier in the process, more opportunities to be heard, and more opportunities to provide information. All these things can best be achieved with an approach that seeks to understand and address the underlying needs that create these requests and interests. The underpinning of the Government' s strategy will be to endorse an open, citizen-centered approach that begins at the first opportunity that the Government has, through its agencies, to be of assistance to the victim and to promote, with the general public, understanding of our mandate.

The Government is committed to exploring a delivery structure that uses a co-ordinated approach through both NPB and CSC, giving both clarity and focus to the concerns and needs of victims. The development, design and operation of this structure will be guided by the strategy, and will consider the views of, and links to, relevant stakeholders and partners. There is broad support for consultations with victims and victims' groups with respect to the effectiveness of implementation of any new initiatives.

The Government also recognizes that restorative justice is an emerging approach in which some victims have a significant interest and where their views must be part of the consultative process. Both CSC and NPB are looking into the potential for initiatives that would contribute to community healing for all parties and to enhanced safety achieved through a more balanced approach to the needs of victims, offenders and the community. A criminal justice system that is more inclusive, accountable, reparative and collaborative would continue to evolve. The responses to the recommendations in this Chapter are in keeping with the strategic direction described earlier.

RECOMMENDATION 36

The Sub-committee recommends that paragraphs 26(1)(*b*) and 142(1)(*b*) of the *Corrections and Conditional Release Act* be amended to allow for the provision to victims, as defined in the Act, of offender information related to offender program participation, offender institutional conduct, and new offences committed by a conditionally released offender resulting in reincarceration.

Response: Action to be taken

The Government recognizes the desire of some victims to receive additional information about the offender who harmed them and accepts the principles underlying this recommendation. A number of measures to provide victims with additional information will be pursued including:

- providing information to victims about new offences committed by a conditionally released offender resulting in federal reincarceration;
- providing victims with information and the reasons for transfer of the offender who harmed them and, where the transfer will place the offender in a minimum security institution, advance notification of the transfer wherever possible;
- providing access, for consultation purposes, to audiotape recordings of National Parole Board hearings. Information regarding the offender's conduct and participation in programs will be available through this medium; and
- expanding the ability to communicate more directly and effectively with victims of crime, and providing information to victims through creation of a national CSC/NPB Victim Unit and expanding regional services within their respective mandates.

However, the Government takes note of the concerns expressed in *Victims' Rights - A Voice - Not a Veto* that releasing information about offenders' program participation throughout the sentence could result in an inordinate loss of privacy that could run the risk of infringing the Charter of Rights. It is believed that providing additional information about transfers will be indicative of the offender's institutional conduct and the progress, or lack thereof, he or she may be making, is relevant to risk assessment, and would be a specific and defined expansion of releasable information.

With respect to the final part of this recommendation, the Government accepts the recommendation of the Committee that all new offences committed by a conditionally released offender resulting in federal reincarceration be provided to victims.

Victims may now be notified whether or not an offender is in custody and in addition would be told about the offences resulting in federal reincarceration. However, in some cases, offenders commit an offence while on conditional release but may only be convicted after they have reached warrant expiry date. Such information is not provided to CSC if the offender receives a provincial sentence. As mentioned in the preamble to this Chapter, the Government is committed to working collaboratively with victims, victims' advocacy groups, and other levels of government to ensure, as far as possible, a seamless service delivery for victims. This area will therefore be further explored within those venues.

Finally, it should be noted that section 8(2)(m) of the *Privacy Act* permits the release of personal information in the public interest based on specific criteria. This option is available to the Commissioner of Corrections and the Chairperson of the National Parole Board when the public interest clearly outweighs the loss of privacy, for example, when the victim may be considered to be at risk from the offender.

RECOMMENDATION 37

The Sub-committee recommends that subparagraph 26(1)(*b*)(ii) of the *Corrections and Conditional Release Act* be amended to allow for the Correctional Service of Canada to advise victims (as defined in the Act) in a timely manner, and wherever possible in advance, of the planned, anticipated, or scheduled routine transfer of inmates.

Response: Action to be taken

The Correctional Service of Canada recognizes the interest of some victims in transfers of offenders, and in particular transfers which could place the offender in the vicinity of the victim and in a situation where he or she could have access to the community. Each year, offenders make thousands of applications for transfer and CSC makes thousands of transfer decisions. In addition, anticipated decisions may be subject to change. Full implementation of this recommendation would be confusing and of limited utility to victims and would be a significant administrative burden.

The Government intends to take action to make information about all transfers, and a brief reason for any transfer, available under paragraph 26(1)(b), shortly after the transfer takes place. This would considerably expand the scope of the information currently available to victims. Only in cases where the release of this information could jeopardize the safety of any person or the security of the institution would it not be released.

In addition, when a planned, anticipated, or scheduled routine transfer would place the offender in a minimum security institution where the offender could have access to the community, the Government will explore procedures to provide notification 'in a timely manner, and wherever possible in advance', of the transfer. This approach would target transfers that could alarm victims who are afraid of the offender being in their area.

This expansion of available information would be particularly useful to victims of offenders serving longer sentences who may not have access to information from NPB decisions until a number of years after their sentence. The Government will initiate a dialogue with victims to determine how these new measures can be as responsive as possible to their needs.

RECOMMENDATION 38

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to facilitate victim access, for consultation purposes at Correctional Service or Parole Board offices, to audiotape recordings of Parole Board hearings.

Response: Action to be taken

The Board, in consultation with the Correctional Service, will develop processes to facilitate access by victims to hearing tapes in a way that will enhance their understanding of the decision-making process. Some restrictions may be necessary consistent with the concept that this initiative is to respond to victims who are not able to attend the hearing.

For example, that only the most recent hearing tape would be made available, tapes could only be listened to while the offender was under sentence, and that some tapes might not be accessible due to safety and security concerns. It should be noted that the quality and clarity of hearing tapes is often problematic, and steps will be taken to make improvements.

RECOMMENDATION 39

The Sub-committee recommends that the *Corrections and Conditional Release Act* be amended to allow victims, as defined in section 2 and section 99, to presumptively attend and personally read statements, at the beginning of Parole Board hearings, that set out the impact of the offence on them since the offender's conviction, or any concerns they have about the conditions of any release. Such victims should also be able to present their statements on audiotape or videotape.

Response: Action to be taken

The Government will provide victims with the opportunity to read a victim impact statement during the initial phase of a conditional release hearing. Currently victims have a presumptive right to attend Board hearings. The *CCRA* states that the Board shall allow observers to attend hearings unless there are demonstrated security or privacy concerns, and it is very rare for an application to be denied. Additionally, the Board already accepts written, audiotaped and videotaped submissions for consideration in decision making.

This ensures the interests of victims are recognized and that the inquisitorial nature of Board hearings is preserved. The Board believes that this process will best serve the exchange of information and contribute to the risk assessment process.

An increase in the number of victims attending hearings when they are allowed to read a statement is anticipated. This initiative is complex. The Government will respect the needs of victims including assistance obtaining statements, providing information about the hearing process and their participation, and accompanying and briefing them before, during and after the hearing.

RECOMMENDATION 40

The Sub-committee recommends that the Solicitor General of Canada, in conjunction with the Correctional Service of Canada and the National Parole Board, develop a comprehensive strategy to prevent any unwanted communications from offenders in federal correctional institutions, especially with victims.

Response: Action to be taken

Section 95 of the *Corrections and Conditional Release Regulations* now enables an institutional head to prevent an inmate from communicating with a person by mail or telephone, if the recipient submits in writing their desire not to receive any communication from the inmate.

Further to the above, CSC has operated an inmate telephone system, for the last three years, which limits the telephone numbers to whom an inmate may place a call. If CSC is alerted that a victim, or any member of the public, is receiving unwanted telephone calls, the number can be removed from the inmate's approved list. There are some limitations to the system in that

3-way calling cannot be prevented but if CSC is advised that this is occurring, steps will be taken to address the problem. Also, advances in technology may allow further refinements to be made to the system in the future. With respect to offenders on conditional release, the National Parole Board may impose a 'no contact' condition if it is warranted.
Violation of such a condition may result in reincarceration.

The Ministry will enhance its communication efforts to victims to ensure that every effort is made to inform victims who are currently registered, as well as those registering for the first time, of their right to stop unwanted communication from offenders. One such initiative is the upcoming publication of A Handbook for Victims that will be provide general information on the corrections and conditional release process as well as an explanation of victims' entitlements, including the right to prevent unwanted communication from offenders.

As well, the creation of the CSC/NPB Victims' unit proposed in response to recommendation 41 could serve as a venue to gather information and continue to improve on the action being taken based on advances in technology or other emerging initiatives.

RECOMMENDATION 41

The Sub-committee recommends that:
(a) the *Corrections and Conditional Release Act* be amended by adding part IV to establish the victims' information and complaints office, to have jurisdiction over victim-related activities of both the Correctional Service of Canada and the National Parole Board;
(b) this office be empowered to both provide information to victims as defined in the Act and to receive, investigate, and resolve individual and system-wide victim complaints; and
(c) the office be empowered to table its special and annual reports containing Correctional Service and Parole Board comments on its findings and recommendations, simultaneously with the Solicitor General of Canada and Parliament. The Act should provide for the referral for consideration of such special and annual reports to the appropriate standing committee of the House of Commons.

Response: Action to be taken

The Government accepts the goals and purpose of the recommendation, but does not support the need for an independent body to provide victims' information and respond to complaints. The National Parole Board and the Correctional Service of Canada are accountable for delivery of legally mandated services. The Government believes victims will receive more comprehensive and timely information by enhancing and expanding services provided to victims and the resources for providing these services. The needs of victims will thus be addressed more effectively and efficiently.

The Government will examine an enhanced administrative structure that will respond to victims' needs for timely and accurate information within the strategy outlined in the preamble to this Chapter. It is proposed that a national CSC/NPB unit for victims be created:

- to provide initial information and to perform a broker or referral function, directing the inquiry to the appropriate NPB regional office or CSC operational unit;
- to receive complaints and rectify problems;
- to provide a 'victims' lens' at the national level for both NPB and CSC;
- to ensure the needs of victims, relative to the needs of offenders, are brought to the attention of other government departments;
- to develop information for dissemination to victims and the general public;
- to complement the work being done by the Department of Justice's Policy Centre for Victims Issues;
- to provide input into the development of training materials; and
- to provide reports annually to the Solicitor General.

NPB Regional and CSC institutional and community victim services officers would continue to be the primary sources of ongoing information about the status of the offender. They would also provide support to victims who choose to read a statement at NPB hearings, or access hearing tapes. This coordination of expanded functions would provide a seamless and comprehensive service to victims in contact with the Board or the Correctional Service.

These services for victims will take advantage of existing and emerging technologies to ensure a comprehensive service is available across the country.

The Government supports the avenues of complaint currently available to victims through the Commissioner or Chairperson, the Minister, or Members of Parliament.

A detailed model to efficiently meet the needs of victims will be examined and consultations will be undertaken.