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Victims of Crime

RESEARCH DIGEST

Victim Impact Statements:
RECENT GUIDANCE FROM THE COURTS
OF APPEAL

Identity-Related Crime:
WHAT IT IS AND HOW IT IMPACTS VICTIMS

The Darker Side of Technology:
REFLECTIONS FROM THE FIELD ON
RESPONDING TO VICTIMS' NEEDS

Understanding the Experiences
OF YOUTH VICTIMIZATION

Victims before the International
CRIMINAL COURT

Victim-related conferences in 2012



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Moving Forward

It is hard to believe that this issue marks the fifth anniversary since the *Victims of Crime Research Digest* was launched in 2008. This issue reflects, as did the others before it, the diversity of issues facing victims of crime.

The theme of the 2012 National Victims of Crime Awareness Week is “Moving Forward.” This theme recognizes the advances we, victims, government, victim services, have all made towards meaningful change for victims in our country.

This issue of the *Victims of Crime Research Digest* builds on the foundations of previous issues and certainly moves research on victims of crime forward. The first article by Marie Manikis and Professor Julian Roberts, Oxford University, examines recent appellate cases on victim impact statements, which have been part of the *Criminal Code* for more than 20 years. In the second article, Melissa Northcott examines a quickly evolving area, identity-related crime, and presents the results of a review of the literature on this subject and a review of services provided to victims of such crimes.

Another area that is evolving is the use of technology to facilitate violent crime, and Dr. Susan McDonald writes about this “darker side of technology” in an article based on interviews with both front-line victim services providers as well as experts in the field of technology or cybercrimes. Following this, Melissa Northcott provides highlights from research undertaken with youth in Ontario and British Columbia on how they conceptualize their own experiences of victimization. And in the final article, Professor Frédéric Mégret, Faculty of Law, McGill University, examines the role of the victim before the International Criminal Court and how that system, which is relatively new and is a hybrid of common, civil, and customary law, is working.

At the Department of Justice Canada, our policy research on victims of crime is intended to move forward our knowledge and understanding in support of the Government’s expressed priority to support victims of crime in Canada.

As always, we welcome your comments and input.

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Victims of Crime RESEARCH DIGEST, NO. 5

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Victim Impact Statements: RECENT GUIDANCE FROM THE COURTS OF APPEAL

Marie Manikis and Julian V. Roberts

Although crime victims in all common law countries have a right to file a victim impact statement (VIS) to assist a court at sentencing, Canada is the jurisdiction where there has been the most research and judicial attention to the VIS.¹ Judgments shaping the use of VIS have been emerging from courts across the country for years now (Katz 2009). Most of these judgments clarify the nature and role of victim impact evidence at sentencing and contribute to the evolution of VIS in this jurisdiction. They also re-affirm the status of the victim impact statement as an important element of sentencing in Canada. However, despite the important guidance provided by appellate courts in recent years, certain evidentiary questions remain to be clarified by the courts. In this brief article, we comment upon recent (2010 to present) decisions from appellate courts in several provinces. It is significant that most of the

new cases deal with serious personal injury offences, often sexual aggression. This reflects the significance of the VIS for such offences.

Who is a victim?

Several recent judgments address the role of secondary victims, usually family members of primary victims. The jury in *Cook* returned a verdict of manslaughter where the indictment charged first-degree murder. Cook had had an intimate relationship with the victim for a protracted period, and he therefore was aware of the consequences for third parties of any harm inflicted on the direct victim. The trial judge imposed a custodial term of 12 years. The Court imposed a sentence in what may be described as “high-end” manslaughter, due to the influence of several aggravating factors. Although no victim impact statement had been filed according to the requirements under section 722(2), the trial judge

exercised his discretion under section 722(3) to consider the written evidence filed by the victim’s daughter before the sentencing hearing and allowed her to read it before the court. Her testimony made it clear that the homicide, in addition to the death of the direct victim, had inflicted lasting harm upon many other individuals. With respect to victim impact, the trial judge noted the following: “I have decided to take into account, as permitted by section 722(3) of the *Criminal Code*, the impact of the homicide upon the close relatives of the victim.”

The critical question in this judgment was whether the additional harm visited upon other victims and documented in the impact statement constitutes a legitimate aggravating factor. Writing for the Quebec Court of Appeal, Associate Chief Justice Hilton concluded that “the trial judge committed no error in making use of [the victim’s daughter’s] statement to

¹ For reviews of VIS research in Canada and other countries, see Roberts (2009), Roberts and Manikis (2011), Roberts and Edgar (2006), and Prairie Research Associates (2005).



reach a conclusion that the devastating effect of [the victim's] death on her immediate family constituted an aggravating factor." The decision in *Cook* provides an unambiguous affirmation of victim impact evidence as a source of aggravation at sentencing.²

In *Johnny*, the accused, who was a member of an Aboriginal community, was convicted and sentenced for aggravated assault (after placing his victim in a coma and on life support) as well as robbery of a jewellery store. When assessing the harm, the sentencing judge made reference to the impacts of the aggravated assault upon the victim and his family members, including the victim's children and his retired mother and father on "whom a significant care burden has now been placed with respect to [victim] Randall Cote." The sentencing judge also referred to the victim impact statements provided by the clerks who worked at the store and by the store owner who had been present during the robbery. The defence appealed the sentence suggesting that the sentencing judge erred in failing to expressly have regard at sentencing to the Aboriginal circumstances of the accused. The appeal, however, was rejected.

For the purposes of submitting a VIS, courts have adopted a wide definition of victims, which not only includes the immediate victim of the crime. For example, in these two cases, the ancillary harm suffered by family members is unambiguously treated as relevant evidence at sentencing.

Lessons for Counsel: Object now or forever hold your peace...

Recent decisions also have consequences for criminal practitioners. One of the lessons of *Revet* and *R. v. G.(K.)* concerns the role of counsel with respect to a victim impact statement. These two decisions make it clear that defence counsel should examine the VIS carefully, with a view to establishing whether there is any content to which objection should be made or which may require cross examination of the victim. In *Revet*, the VIS contained information which the appellant asserted went beyond the proper scope of the VIS,³ yet defence counsel had not contested these matters. The majority of the Saskatchewan Court of Appeal ruled that by failing to object to elements of the VIS, defence counsel were held to have assented to the contents of the VIS which ultimately affected the sentence imposed. In a lengthy and robust dissent in *Revet*, Jackson, J.A., took a different view. The dissenting opinion affirms the position that the VIS cannot be used to supplement the facts presented by the Crown, and that defence counsel's failure to object to the contents of the VIS did not transform those contents into probative evidence.

However, both the majority and dissenting opinions re-affirm the position that within an adversarial model, facts relevant to sentencing must derive directly from the parties, and not from other sources such as a victim impact statement or a pre-sentence report. This position also finds support from

Dunn, a decision from the British Columbia Court of Appeal. In this case, the Court had been influenced by the VIS to impose a restitution order. The trial judge's restitution order was prompted by his consideration of the victim impact statement and not as a result of a request from the prosecutor. The order was therefore "an afterthought made without the benefit of full argument"; the judge simply pronounced the order without exploring the offender's ability to pay or resolving how the order fits in with the other aspects of the sentence. Accordingly, the appeal was dismissed and the restitution order set aside.

R. v. G.(K.) goes a step further than *Revet* or *Dunn*. The Crown in this case had conceded that sections of the VIS exceeded the scope of the VIS and should have been excised or ruled inadmissible. Defence counsel failed to object to these sections despite having ample opportunity to do so. This failure was interpreted by the Ontario Court of Appeal to vitiate any claim that the sentencing hearing was unfair. Taken together, these three judgments further establish the status of the VIS as an important element of sentencing in Canada and also reaffirm the role of counsel within the context of an adversarial proceeding. Furthermore, they clearly suggest that the content of VIS cannot be challenged on appeal if it was not contested during sentencing.

In *R. v. M. (W.)* the British Columbia Court of Appeal (BCCA) took a somewhat different approach to the VIS. The appellant appealed a five-year

² For additional commentary on victim impact statements at sentencing and issues arising from *R. v. Cook*, see articles in the *Canadian Criminal Law Review* 15(1) and 15(2).

³ Namely, "describing the harm done to, or loss suffered by, the victim arising from the commission of the offence" (s. 722.(1)).



sentence imposed for two counts of sexual assault against his stepdaughters. One ground of appeal was that the Court had admitted victim impact statements without allowing cross-examination to establish the veracity of their contents. The BCCA ruled that the statements were “not tendered for their factual truth; they are expressions of the emotional impact and the other effects these offences had on the complainants, and as such, the appellant’s disagreement with some of their contents does not raise any reviewable issue on appeal.” This may suggest that the VIS carries no evidential value, but merely rounds out the Court’s understanding of the consequences of the offence, which would inevitably diminish the need for defence counsel to contest the content of these statements.

The Content, Role and Limits of VIS in Sentencing

The VIS regime in Canada (and all other common law countries except the US; see Roberts 2009) does not permit victims to make recommendations for sentencing⁴; it is well established in the case law now that if comments are expressed as to the appropriate sentence, these should be

excised by the Crown.⁵ In the event that they are expressed without warning in oral delivery of the VIS, they should be set aside by the Court.⁶

In *Penny*, the appellant contended that the Court had improperly considered information in the VIS which was not part of the victim’s testimony. The New Brunswick Court of Appeal reaffirmed the position that the VIS should be restricted to the limits set out in the *Criminal Code* provisions, namely to provide a description of “the harm done to or loss suffered by the victim” (s. 722(1)). The inference from this judgment is that had the VIS contained extraneous information which had a material impact upon the sentence it would have constituted reversible error. In *Penny*, however, the contentious passage did not contain such information; it merely elaborated on the circumstances in which the offence was committed.

Woodward, a very recent judgment from the Ontario Court of Appeal, provides another example of the importance of the VIS in establishing, for the purposes of sentencing, the harm caused by the offender. In dismissing the appeal against the sentence, the Court noted that “the victim impact statement filed by the complainant speaks to the immediate harm she suffered.” The judgement

then describes some of the contents and provides quotes from the VIS.

Furthermore, in *Arcand*, the Alberta Court of Appeal also confirmed the importance of VIS in assessing harm. In a case where no VIS was submitted, the Court noted the difficulty in assessing harm without any references being made to the circumstances of the complainant. The appellate court stated that a VIS contributes to the full appreciation of the facts and “mitigates the risk that the focus in sentencing will be on the offender only.” Thus, the Court of Appeal stressed the importance of the duty to inquire into the opportunity to prepare a VIS under section 722.2, to ensure that victims were informed of their “right” to make a VIS, which had not been mentioned by anyone in the sentencing hearing, including Crown counsel. Accordingly, the Court clearly articulated that “the sentencing judge should ensure that the complainant has been properly informed, whether by Crown counsel or otherwise, of the right to make a victim impact statement.”

Similarly, the New Brunswick Court of Appeal in *Steeves* reasserted the importance of victim impact statements and the relevance of harm in joint submissions and sentencing, but placed limits on its power to

⁴ See *R. v. Bremner* (2000), 146 C.C.C. (d) 59, [2000] B.C.J. No. 1096, 2000 BCCA, in which the Court of Appeal stated that victims should not have been allowed to suggest the sentence they wished to be imposed and allowed an appeal of the sentence since the statements contained such material. See similar comments held in *R. v. Gabriel* (1999), 137 C.C.C. (3d) 1 (Ont. Sup. Ct. Jus.), regarding victim recommendations at sentencing.

⁵ See, for example, *R. v. S.(A.)* (2009) ONCJ 625 which stated that the Crown has a gate-keeping function in an effort to determine that the VIS complies with the *Criminal Code* requirements.

⁶ In *Cody*, the Court noted that the VIS contained the victim’s recommendation of the maximum sentence for an offence, which was well beyond the usual sentencing range. The judge did not follow the victim’s sentencing recommendation but nevertheless mentioned that he understood the sentiments that would inspire the victim to express the views that she did regarding the defendant. In this case, despite the fact that this recommendation did not have a material impact upon the sentence, the appellate court and the trial judge did not expressly prohibit the use of sentencing recommendations.



influence on sentencing.⁷ In this case, the accused, a recovering drug addict, pleaded guilty to theft, fraud and breach of undertaking towards her employer and repeatedly towards her parents. The parties in this case presented a joint submission suggesting that the accused be sentenced to two years of imprisonment, but the trial court, merely relying on the harm described in the victim impact statements, ruled that the proposed sentence was not long enough and sentenced the accused to forty-eight months of imprisonment, in addition to the three months spent in jail on remand. The accused appealed the sentence, and the appellate Court set aside the trial court's decision, replacing it by the cumulative two-year jail term, initially proposed in the joint submission. The appeal was granted on the basis that the trial judge "was overwhelmed by the victim impact statements' poignant account of the misery suffered by the appellant's parents" which "overshadowed the several mitigating circumstances revealed by the record."

The appellate court in this case underlined the importance of victim impact statements by suggesting that they have "a significant role to play in the imposition of a sentence," but noted that they cannot be allowed to determine the process by overturning the joint submission. In other words, whilst VIS are important and useful in assessing victim harm, they should be considered along with all other relevant factors when determining a sentence.

Finally, in *Tejeda-Rosario*, the Ontario Court of Appeal dealt with a relatively rare situation involving both civil and criminal proceedings to suggest that a civil suit does not affect the importance of a VIS at sentencing. The offender was a psychiatrist who had been convicted of two counts of sexual assault against one of his patients. The trial court had taken the position that the civil suit drained the VIS of any significance as a consideration in the determination of sentence. The Court of Appeal rejected this view, noting that the psychological harm arising from the offence—and giving rise to the civil suit—was also properly a matter for the sentencing judge in the criminal proceeding.

These recent cases unambiguously confirm that VIS are relevant at sentencing to assess and understand the harm victims have suffered as a result of the offence. They also recognise the limits of VIS regarding their content and their weight at sentencing. Despite reaffirmation of the status of VIS as an important element at sentencing, courts have yet to establish in an unambiguous way the role and impact of VIS at sentencing. Whilst some decisions above consider VIS as probative evidence which can affect the sentence (see, for example, *R. v. Cook* and *Revet*), others suggest that it is merely an expression of the emotional impact the offence has had on the victim, which can help the judge understand the consequences of the offence (see, for example, *R. v. M. [W.]*). The nature of VIS can have important consequences on all involved individuals in the process,⁸ and thus specifying its

exact nature would contribute to greater clarity in sentencing on whether cross-examinations regarding the VIS are accepted or not in Canada.

Conclusion

This brief overview of the recent case law suggests that in recent years, Canadian appellate courts have reflected on the definition of victims, the nature and content of VIS. Whilst all cases have underscored the importance of victim impact statements as well as their limits in sentencing, some ambiguity still remains with regards to the nature of the information contained in these statements. Most cases have treated this information as evidence of harm, but others have suggested that the expression of emotional harm carries no evidential value, and should merely be used by judges to understand the consequences of the offence. Furthermore, some of these cases suggest that the use of the VIS provisions impose positive duties on the actors within the process: prosecutors have a duty to inform victims about the opportunity to make a statement and disclose the victim impact statement prior to trial (see *Lonegren*), and judges are to inquire as to whether this duty was respected and take the VIS into account during the determination of the sentence. Finally, to adequately defend their clients' interests, defence counsel also have an important duty to verify the contents of the VIS and object to any irrelevant or inadmissible elements before the sentencing decision is made.

⁷ For additional commentary on the relevance of harm and victim impact statements during plea negotiations and joint submissions, see Manikis (2012).

⁸ For instance, if VIS are considered probative evidence of harm that can affect the sentence or be considered as an aggravating factor, we can reasonably expect cross-examinations to be considered more important and used more frequently during sentencing. Currently, the courts have not yet attained a consensus on this matter. For further details, see Roberts and Manikis (2010).



References and Recent VIS-related Publications

Katz, Karen Marie. 2010. Opposing scales of justice: Victims' voices in the sentencing process. *Canadian Criminal Law Review* 14:181–230.

Manikis, Marie, and Julian V. Roberts. 2011. Recognizing ancillary harm at sentencing: A proportionate and balanced response. *Canadian Criminal Law Review* 15 (2): 131–144.

Manikis, Marie. 2012. Recognizing victims' role and rights during plea bargaining: A fair deal for victims of crime. *Criminal Law Quarterly*. Forthcoming.

McDonald, Susan, and Katie Scrim. 2011. Canadians' awareness of victim issues: A benchmarking study. *Victims of Crime Research Digest* 4:4–8.

Prairie Research Associates. 2005. *Multi-site survey of victims of crime and criminal justice professionals across Canada*. Ottawa: Policy Centre for Victim Issues, Department of Justice Canada.

Roberts, Julian V. 2008. Victims of crime: Successes and challenges in the years to come. *Victims of Crime Research Digest* 1:3–7.

Roberts, Julian V. 2009. Listening to the crime victim: Evaluating victim input at sentencing and parole. In *Crime and Justice*, ed. M. Tonry. Chicago: University of Chicago Press.

Roberts, Julian V., and Allen Edgar. 2006. *Judicial attitudes to victim impact statements*. Ottawa: Policy Centre for Victim Issues, Department of Justice Canada.

Roberts, Julian V., and Marie Manikis. 2010. Victim impact statements at sentencing: The relevance of ancillary harm. *Canadian Criminal Law Review* 15(1): 1–29.

Roberts, Julian V., and Marie Manikis. 2011. *Victim impact statements at sentencing: A review of empirical research*. London: Victims and Witnesses Commissioner, England and Wales.

Cases Cited

R. v. Arcand (2010), 2010 ABCA 363, 2010 CarswellAlta 2364, [2011] 641, 264 C.C.C. (3d) 134, 40 Alta. L.R. (5th) 199, [2011] 7 W.W.R. 209, 83 C.R. (6th) 199.

R. v. Cody (2009), 2009 BCCA 123, 2011 CarswellBC 889, [2009] B.C.W.L.D. 3090.

R. v. Cook (2009), 2009 QCCA 2423, 2009 CarswellQue 12692, 250 C.C.C. (3d) 248, 71 C.R. (6th) 369 (Que. C.A.).

R. v. Dunn (2010), 2010 BCCA 22, 2010 CarswellBC 350, [2010] B.C.W.L.D. 2556.

R. v. G.(K.) (2010), 2010 ONCA 177, 2010 CarswellOnt 1289, 266 O.A.C. 334 (Ont. C.A.).

R. v. I.(K.) (2011), 2011 MBCA 11, 2011 CarswellMan40, [2011] 6 W.W.R. 31, 267 C.C.C. (3d) 548.

R. v. Johnny (2011), 2011 BCCA 25, 2011 CarswellBC 636, [2011] B.C.W.L. 3642, 300 B.C.A.C. 307, 509 W.A.C. 307.

R. v. Lonegren (2011), 2011 BCCA 329, 2011 CarswellBC 2006.

R. v. M.(W.) (2010), 2010 BCCA 370, 2010 CarswellBC 2410, [2010] B.C.W.L.D. 7617, 290 B.C.A.C. 154, 491 W.A.C. 154.

R. v. Penny (2010), 2010 NBCA 49, 2010 CarswellNB 350, 257 C.C.C. (3d) 372, 934 A.P. R. 255, 362 N.B.R. (2d) 255.

R. v. Revet (2011), 2010 SKCA 71, 2010 CarswellSask 327, [2010] 8 W.W.R. 580, 256 C.C.C. (3d) 159, 350 Sask. R. 292, 487 W.A.C. 292 (Sask. C.A.).

R. v. Steeves (2010), 2010 NBCA 57, 2010 CarswellNB 378, 258 C.C.C. (3d) 506, 77 C.R. (6th) 341, 360 N.B.R. (2d) 88, 930 A.P.R. 88 (N.B. C.A.).

R. v. Tejada-Rosario (2010), 2010 ONCA 367, 2010 CarswellOnt 3373, 262 O.A.C. 228.

R. v. Woodward, 2011 ONCA 610.

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Identity-Related Crime: WHAT IT IS AND HOW IT IMPACTS VICTIMS¹

Melissa Northcott

Many of us have heard of at least some of the different types of identity-related crime: credit card fraud, medical fraud, real-estate fraud and loan fraud. In the United States, identity-related crime has been referred to as one of the fastest growing crimes (Identity Theft Resource Center n.d; Office for Victims of Crime 2010). In Canada, it certainly exists, but we know less about its prevalence. Police services started officially tracking these offences only in 2010.

If you have been a victim of identity-related crime, the impacts are real and often devastating. The Government of Canada takes identity-related crime seriously and has undertaken several initiatives to educate Canadians on the issue. These initiatives include: Web sites to inform Canadians about identity-related crime, such as the Web site of the Privacy Commissioner of Canada;² special reports on identity-

related crime, such as the Criminal Intelligence Service Canada report;³ and public awareness campaigns, such as Public Safety Canada's national cyber security public awareness campaign,⁴ which was launched in the fall of 2011 as part of its Canadian Cyber Security Strategy.⁵

The Research and Statistics Division of the Department of Justice Canada has undertaken a review of literature to examine the needs of victims more closely as well as a review of services provided to victims of identity-related crime and how well the services respond to the needs of these victims.

Social sciences databases were used to conduct the literature review in combination with Internet searches. An additional Internet search was conducted on services provided to victims of identity-related crime in Canada, the United States, Australia,

New Zealand, the United Kingdom, and the European Union as well as the services provided by the United Nations. Individuals working within the area of identity-related crime (e.g., victim services providers, law enforcement, and government officials) were also contacted to clarify information gathered from Web sites and to request program evaluations where appropriate. In the absence of program evaluations, the stated mandate and activities of organizations/programs were examined to determine whether they could meet the documented needs of victims of identity-related crime.

What Is Identity-Related Crime?

Identity-related crime includes both identity theft and identity fraud. Identity theft is defined as the

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¹ This article has been adapted from a longer report written by the author.

² http://www.priv.gc.ca/resource/ii_4_01_e.cfm#contenttop

³ http://www.cisc.gc.ca/annual_reports/annual_report_2008/feature_focus_2008_e.html

⁴ <http://www.getcybersafe.ca/abt/abt-eng.aspx>

⁵ <http://www.publicsafety.gc.ca/prg/ns/cbr/ccss-sec-eng.aspx>



“unauthorized possession, trafficking or use of personal information,” while identity fraud is “the fraudulent use of another person’s personal identification to gain advantage, obtain property, disadvantage another person, avoid arrest or defeat or obstruct the course of justice” (Cross Border Crime Forum 2010, 2).

In January 2010, Bill S-4: *An Act to amend the Criminal Code (identity theft and related misconduct)*, came into force. Bill S-4 created three new offences relating to the early stages of identity-related crime, all subject to a maximum five-year imprisonment (Department of Justice Canada 2010). In addition, the restitution provisions in the *Criminal Code* were amended to cover reasonable expenses necessary to re-establish the identity, including expenses to replace identity documents, and to correct credit history and credit ratings (Parliament of Canada 2009).

It is difficult to determine the exact prevalence of identity-related crime in Western countries for several reasons. First, several months often pass between the commission of the offence and the realization that one has been a victim. Also, for many reasons, including shame and embarrassment, many individuals do not report their victimization (Deem et al. 2000; Office for Victims of Crime 2010). In Canada, official statistics have only recently begun to be gathered on these offences.⁶

In January 2010, the Uniform Crime Reporting Survey (UCR2) began collecting police-reported data on identity theft. These data reveal that in 2010, there were 796 police-reported incidents of identity theft and 6,141 police-reported incidents of identity fraud in Canada.

In addition to police-reported data, there are several other sources of information on the nature and prevalence of identity-related crime. Data are available through the Canadian Anti-Fraud Centre (CAFC), “Canada’s central agency [that] collects information and criminal intelligence on identity-related crime and fraud” (Cross Border Crime Forum 2010, 14). In 2010, the CAFC received 18,146 calls from victims of identity fraud. This is an increase from 14,797 calls in 2009 and 12,309 calls in 2008 (Canadian Anti-Fraud Centre 2010). Academic studies have also been done on identity-related crime. Sproule and Archer (2008), for example, estimated that 1.7 million Canadians were the victims of identity fraud in the year prior to their study. In a 2009 public opinion survey, 16% of respondents in Canada said that they had been the victim of identity theft in their lifetime (EKOS Research Associated 2009). Additionally, results from the 2009 General Social Survey (GSS) on Victimization found that 4% of Canadians were the victims of Internet bank fraud in the year prior to the survey (Perreault 2011). Moreover, 39% of Canadians reported being the victims of a phishing attempt during

the same time period.⁷ One of the key limitations of these different data sources is that each of the studies uses different definitions of identity-related crime and, as a result, may be measuring different activities.

There is, in addition to these sources of data on prevalence, other research that has explored the reactions to victimization and the needs of victims of identity-related crime.

What Impact Does Identity-Related Crime Have on Victims?

Although every victim has a different victimization experience, there are reactions that are common to many victims. These common reactions can include mood/emotional reactions, such as anger, guilt and anxiety; social reactions, such as avoidance and alienation; thinking/memory-related reactions, such as flashbacks and confusion; and physical reactions, such as nausea and headaches (Hill 2009).

Through research, program evaluations and consultations, victims of crime have also expressed a number of needs: the need for help with emotional/psychological recovery, which can include emotional support and professional therapy; concrete/tangible needs, such as information on how to avoid re-victimization and on safety planning; and information about the system or advocacy, including information on, and help with, the police

⁶ It is important to note that other work on identity-related crime has been conducted in Canada. Two important examples include a manual produced by the International Centre for Criminal Law Reform and Criminal Justice Policy entitled “Responding to Victims of Identity Crime: A Manual for Law Enforcement Agents, Prosecutors and Policy-Makers.” Also, Susan Sproule and Norm Archer of McMaster University have conducted a large amount of work on this topic and maintain a Web site that provides much information and publications on identity-related crime (see <http://www.business.mcmaster.ca/IDTDefinition/index.htm>).

⁷ Phishing is defined as “receiving fraudulent e-mails that represent the sender as a reputable and legitimate organization requesting personal information” (Perreault 2011, 15).



or a court case and assistance in dealing with agencies (Newmark 2004).

Research shows that victims of identity-related crime often experience many of the same emotional, social, cognitive and physical reactions as victims of other types of crime. In addition to these reactions, there are other specific impacts, including the following:

- direct financial losses, such as money owed to companies and banks, as well as out-of-pocket expenses from clearing one's credit rating;
- indirect financial losses, such as damage to one's credit rating and denials of credit;
- time spent trying to clear one's credit rating and name;
- impacts on physical health, such as sleep difficulties, weight loss or gain, and strokes;
- emotional impacts, such as anger, isolation, helplessness and loss of trust; and
- negative impacts on relationships, such as family stress and divorce.

(Bi-national Working Group on Cross-Border Mass Marketing Fraud 2004; Cross Border Crime Forum 2010; Deem 2000; Deem et al. 2007; Fraud Advisory Panel 2006; Identity Theft Resource Center 2009; Lawson 2009; National Crime Victim Law Institute 2011).

Research further shows that victims of identity-related crime will have needs that are unique to their situation, such as the following:

- service providers who are knowledgeable about identity-related crime;

- advice on how to avoid being re-victimized;
- help with creditors and banks; and
- help repairing their identity, their credit and getting fraudulent accounts cleared.

(Button et al. 2009a; Button et al. 2009b; Deem et al. 2007; Pascoe et al. 2006).

PROMISING PRACTICES

Professionals working in the field of victim assistance and other researchers recommend several best practices that victim services providers and other professionals can apply when assisting victims of identity-related crime. These include:

- managing the expectations of victims, including the likelihood that they will be reimbursed for any lost money;
- easing the process for victims by creating a standard complaint form and providing an official police report when requested;
- establishing a one-stop centre where victims can obtain all of the help they require in one place, including legal assistance and counselling services;
- ensuring that the victim's privacy is protected at all times; and
- ensuring that detailed information is kept on the case and that victims are contacted regularly.

(Button et al. 2009a; Deem et al. 2007; Lawson 2009; Office for Victims of Crime 2010).

Services Available for Victims of Identity-Related Crime

As a result of the increasing recognition of identity-related crime in Canada, the United States and other Western countries, today there is more information and help available to victims of identity-related crime than in the past. As an Internet search indicates, this assistance is provided through Web sites, call centres, and victim services organizations. The following is a brief description of the services they provide to victims as well as an assessment of the extent to which they meet victims' needs.

WEB SITES

There are a number of Web sites that provide information on identity-related crime. The organizations that provide this information are often organizations dedicated to the elimination of fraud in general, joint initiatives between government organizations, and general organizations whose focus is on criminal justice or financial matters. There are also Web sites that are dedicated solely to sharing information about identity-related crime. The information provided on these Web sites may be helpful, as some provide information about identity-related crime in general as well as ways to prevent re-victimization. Only basic information, however, is provided on the majority of these Web sites.

INSURANCE COMPANIES AND CREDIT BUREAUS

Several insurance companies offer clients identity theft insurance that helps cover costs incurred by victims. There



are also a number of credit bureaus that provide services to victims of identity-related crime, such as providing credit reports and applying fraud warnings to credit files (Royal Canadian Mounted Police 2010).⁸ Some of these services help to address victims' needs by intervening with creditors, requesting/providing credit reports, getting fraudulent credit cards and bank accounts cleared, and repairing credit. These organizations do not provide other types of support to victims, such as emotional support or help with the criminal justice system.

ORGANIZATIONS PROVIDING DIRECT SERVICES

There are also organizations that provide direct services to victims. They include reporting agencies, support centres, and general victim services providers. Reporting agencies allow victims to report identity-related crime and will pass on the information to police and other important organizations. Many reporting agencies provide some services to victims beyond the initial reporting, such as facilitating victim self-help by providing a hotline and providing forms that can be used when communicating with the necessary agencies. These centres do not provide one-on-one help to victims.

There are also support centres that provide direct services to victims. These centres often provide help from

trained professionals who are knowledgeable about the specific crime and who are supportive and understanding. Many also have a very strict privacy policy and facilitate victim self-help through information provided on their Web sites or on-site. These centres do not provide help with criminal justice proceedings, and some do not help victims with the financial challenges associated with victimization.

General victim services providers also provide assistance to victims of identity-related crime. These victim services providers are able to provide general services such as working with other organizations, providing referrals for victims and assistance in court proceedings. There are a few organizations that have been established to specifically address the needs of victims of identity-related crime. These organizations provide assistance with the criminal justice system, emotional support, free counselling, and help with the financial challenges. Many also provide continuous follow-up with victims, have strict privacy policies, and inform victims of their rights. These organizations specializing in addressing the needs of victims of identity-related crime are rare, and although they will refer calls to the police, they do not act as reporting centres.

Conclusion

While research shows that victims of identity-related crime share many of the same reactions to victimization and the same needs as victims of other crimes, they also have unique reactions and needs. Many of the countries examined now provide services specifically to this group. In the absence of rigorous program evaluations, no conclusive statements can be made as to whether these services are meeting victims' needs. Based on the review conducted, however, it does appear that the mandate and activities of many of these services meet at least some, if not many, of the needs of their clients. In order to determine whether available services are truly meeting victims' needs, methodologically rigorous program evaluations should be conducted.

Despite gaps in the data on the prevalence and nature of identity-related crime, we do know that the needs of victims are real. Given that each year, more and more of our personal, professional and commercial interactions occur electronically, it is important to understand identity-related crime, its impacts and how to best respond to the unique needs of victims of that type of crime.

⁸ A fraud warning is an alert that is placed on an individual's credit files which instructs creditors to contact an individual personally prior to opening an account in that person's name (Royal Canadian Mounted Police 2010).



References

- Bi-national Working Group on Cross-Border Mass Marketing Fraud. 2004. *Report on identity theft: A report to the Minister of Public Safety Canada and the Attorney General of the United States*. Accessed May 13, 2011, from <http://www.publicsafety.gc.ca/prg/le/bs/report-eng.aspx#a01>.
- Button, Mark, Chris Lewis, and Jacki Tapley. 2009a. *A better deal for fraud victims: Research into victims' needs and experiences*. National Fraud Authority. Accessed April 29, 2011, from http://www.attorneygeneral.gov.uk/nfa/GuidetoInformation/Documents/NFA_Report%201_15.12.09.pdf.
- Button, Mark, Chris Lewis, and Jacki Tapley. 2009b. *Fraud typologies and victims of fraud: Literature review*. National Fraud Authority. Accessed March 16, 2011, from http://www.attorneygeneral.gov.uk/nfa/GuidetoInformation/Documents/NFA_report3_16.12.09.pdf.
- Canadian Anti-Fraud Centre. 2010. *Annual Statistical Report 2010*. Accessed May 13, 2011, from <http://www.antifraudcentre.ca/english/documents/Annual%202010%20CAFC.pdf>.
- Cross Border Crime Forum. 2010. *Identity-related crime: A threat assessment*. Accessed June 2, 2011, from <http://www.justice.gov/criminal/fraud/documents/reports/2010/11-01-10mass-market-fraud.pdf>.
- Deem, Deborah. 2000. Notes from the field: Observations in working with the forgotten victims of personal financial crimes. *Journal of Elder Abuse and Neglect* 12:33–48.
- Deem, Deborah, Lisa Nerenberg, and Richard Titus. 2007. Victims of financial crime. In *Victims of crime*, 3rd ed., ed. Robert C. Davis, Arthur J. Lurigio, and Susan Herman, 125–145. Thousand Oaks, CA: Sage.
- Department of Justice Canada. 2010. *Background – Identity theft*. Accessed May 13, 2011, from http://www.justice.gc.ca/eng/news-nouv/nr-cp/2010/doc_32471.html.
- EKOS Research Associates Inc. 2009. *Canadians and privacy. Final report*. Accessed May 10, 2011, from http://www.priv.gc.ca/information/survey/2009/ekos_2009_01_e.pdf.
- Fraud Advisory Panel. 2006. *Victims of fraud*. Accessed September 9, 2011, from http://www.fraudadvisorypanel.org/new/pdf_show.php?id=74&PHPSESSID=bc518baff3366c7d95fd87e46db07073.
- Hill, James K. 2009. *Working with victims of crime: A manual applying research to clinical practice*. 2nd ed. Ottawa: Department of Justice Canada. Accessed May 4, 2011, from <http://canada.justice.gc.ca/eng/pi/pcvi-cpcv/pub/res-rech/pdf/hill.pdf>.
- Identity Theft Resource Centre. 2009. *Identity theft: The aftermath 2009*. Accessed April 29, 2011, from http://www.idtheftcenter.org/artman2/uploads/1/Aftermath_2009_20100520.pdf.
- Identity Theft Resource Center. n.d. *Identity Theft Resource Center Corporate Overview*. Accessed September 26, 2011, from http://www.idtheftcenter.org/artman2/uploads/1/ITRC_Corp_Overview_20110908.pdf.
- Lawson, Philippa. 2009. *Identity-related crime victim issues: A discussion paper*. Commission on Crime Prevention and Criminal Justice, 18th session. Accessed May 13, 2011, from <http://www.icclr.law.ubc.ca/files/2010/Identity-Related%20Crime%20Victim%20Issues.pdf>.
- National Crime Victim Law Institute. 2011. *Online fraud and identity theft: The hurdles victims face to protecting their rights and the tools available to overcome them, Part 1*. Part 1 of a three-part webinar series, January 6, 2011.
- Newmark, Lisa C. 2004. *Crime victims' needs and VOCA-funded services: Findings and recommendations from two national studies*. United States Department of Justice. Accessed May 4, 2011, from <http://www.ncjrs.gov/pdffiles1/nij/grants/214263.pdf>.
- Office for Victims of Crime. 2010. *Expanding services to reach victims of identity theft and financial fraud*. United States Department of Justice. Accessed May 13, 2011, from http://www.ojp.usdoj.gov/ovc/pubs/ID_theft/welcome.html.
- Parliament of Canada. 2009. *Bill S-4: An Act to amend the Criminal Code (identity theft and related misconduct)*. Accessed September 26, 2011, from http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?Language=E&ls=S4&Mode=1&Parl=40&Ses=2&source=library_prb.



Pascoe, Tim, Katy Owen, Gemma Keats, and Martin Gill. 2006. *Identity fraud: What about the victim? Research findings*. Leicester, United Kingdom: Perpetuity Research and Consultancy International Ltd.

Perreault, Samuel. 2011. *Self-reported internet victimization in Canada, 2009*. Ottawa: Statistics Canada. Accessed September 27, 2011, from <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11530-eng.pdf>.

Royal Canadian Mounted Police. 2010. *Identity theft and identity fraud victim assistance guide*. Accessed May 13, 2011, from <http://www.rcmp-grc.gc.ca/scams-fraudes/victims-guide-victimes-eng.htm>.

Sroule, Susan, and Norm Archer. 2008. *Measuring identity theft in Canada: 2008 consumer survey. Working Paper No. 23*. McMaster eBusiness Research Centre (MeRC) DeGroot School of Business. MeRC. Hamilton, ON: McMaster University.

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The Darker Side of Technology:

REFLECTIONS FROM THE FIELD ON RESPONDING TO VICTIMS' NEEDS

Susan McDonald

Today, technology, and in particular, social networking, is integrated into just about every aspect of the lives of young people. Simple conversations take place through texting, and every incident is digitally documented and immediately posted online for the world to see. Even for people who have yet to fully embrace the digital age, technology is gaining ground in both their public and private interactions, whether it be reading the news, making travel reservations, or watching events unfold in real time in a country on the other side of the globe.

It is not surprising then that technology is also being used to facilitate crimes of all types, including identity-related crimes such as credit card fraud and violent crimes such as sexual assault. Kowalski et al. (2002) provide a useful definition of “cyber-crime” as “a criminal offence involving a computer as

the object of the crime, or the tool used to commit a material component of the offence.” What might come immediately to mind is Internet child sexual abuse, but technology is also being used in situations of criminal harassment and intimate partner violence to spy on, keep track of or locate, and threaten individuals.

This article summarizes the findings from a research study that involved speaking with front-line victim services providers and other experts¹ in the field to gather their reflections on how best to respond to the needs of victims of technology-facilitated violent crime. The study included a wide range of different offences to ensure the myriad ways technology is being used were captured as well as both adult and young victims to ensure the focus was on the use of technology.

What We Know

We know that the Internet is used regularly by most Canadians. The 2007 Canadian Internet Use Survey showed that slightly more than two-thirds of home Internet users, aged 18 and older, went online at least once a day and just under half were online for five or more hours a week (Middleton et al. 2010). We also know that amongst young people (under the age of 18), almost everyone is online. Research completed by Media Awareness Network showed that 94% of young people in 2005 said they went online from home, compared with 79% in 2001 (ERIN Research 2005).

In Canada, while national police-reported and self-reported data on violent crime are available, less is known about the use of technology in committing these offences, with a few

¹ Experts included persons who have developed expertise in technology-facilitated violent crime through research, writing, and/or front-line work with victims of crime; front-line victim services providers who are currently providing services directly to victims and their families; and other experts who may not be working directly with victims but who share their expertise through training, advocacy, authoring reports for international committees, etc. The aim was to have these different types of expertise reflected in the study.



exceptions. In 2002, changes were made to the *Criminal Code* to include the use of the Internet for the purpose of committing child pornography offences and “luring” as criminal offences.² Since that time, as police have become more skilled in the complicated forensic investigations into cyber crimes and as the public has become more aware of these crimes, incidents reported to the police have increased.³ In 2010, there were 2,190 incidents of child pornography and 494 incidents of luring reported to the police.

Data on criminal harassment through the means of technology, however, are less accessible, since police-reported data, self-reported data, and criminal court data on criminal harassment do not capture the use of technology in committing this offence. As a result, we do not know how many of the 21,108 incidents of criminal harassment reported to police in 2010 were committed using some form of technology (Brennan and Dauvergne 2011).

In 2009, the General Social Survey on Victimization (GSS) included for the first time questions about luring and cyberbullying (see Perreault 2011). There were also questions about non-violent Internet victimization such as bank fraud and Internet scams (phishing, etc). Results from the GSS showed that about 7% of adult Internet users were cyberbullied.⁴ This proportion was similar

among males and females. Certain people were more at risk of being bullied, including younger adults (those aged 18 to 24 years) (17%), those who were single (15%), and those who accessed social networking sites (11%). Slightly less than 1 in 10 adults (9%) reported cyberbullying against at least one child in their household and 2% reported a case of child luring. Most adults (71%) indicated that the child who had been cyberbullied was female. Relatively few incidents of cyberbullying were reported to police. However, those incidents that targeted children were more commonly reported than those that targeted adults (14% versus 7%).

Numerous reports and studies have been commissioned to document the incidence and nature of these crimes as well as ways to prevent them. There is, for instance, the work of the Safety Net Project at the National Network to End Domestic Violence Fund in the US (Southworth et al. 2005) and, in Canada, the work of the Canadian Centre for Child Protection.⁵ The area of Internet child sexual abuse is well documented with excellent resources, including the United Nations’ Study on Violence Against Children (see, for example, Muir 2005; Quayle et al. 2008; EPCAT 2009). In Canada, the Office of the Federal Ombudsman for Victims of Crime also discusses the issues and calls for action in its

report *Every Image, Every Child* (2009), as does the Standing Senate Committee on Human Rights in its 2011 report *The Sexual Exploitation of Children in Canada: The Need for National Action*.

Talking with the Experts

In the fall of 2010, the Research and Statistics Division of the Department of Justice Canada undertook a total of 31 semi-structured telephone interviews with a range of professionals working in the area, including one group interview with five participants and one with two participants. The sample was obtained by using the snowball technique and asking Directors of Victim Services from the provinces and territories to help identify front-line victim services providers who had direct experience working with victims of technology-facilitated violent crimes. Those interviewed were from most parts of Canada. Other professionals interviewed were from law enforcement and health services. Also interviewed were experts in the area of technology-facilitated violent crimes (research, advocacy, and policy) in Canada, the US, and the UK. All those who participated received a letter of information and signed a letter of consent. The interviews ranged in length from

² In June 2002, Bill C-15A received royal assent and amended the Canadian *Criminal Code* to include new offences that would help combat the sexual exploitation of children on the Internet including the luring of individuals under the age of 18, by making it “illegal to communicate with children over the Internet for the purpose of committing a sexual offence.”

³ On March 3, 2011, Bill C-22, *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service* was passed and makes it mandatory for Internet Service Providers to report online child pornography. See http://www.justice.gc.ca/eng/news-nouv/nr-cp/2011/doc_32592.html.

⁴ Cyberbullying was defined as having “... previously received threatening or aggressive messages; been the target of hate comments spread through e-mails, instant messages or posting on Internet sites; or threatening e-mails sent using the victim’s identity.” Some forms of bullying are not criminal offences, while other forms, such as criminal harassment or assault, will meet the requirements of specific offences under the *Criminal Code*.

⁵ For more information, see <http://www.protectchildren.ca/app/en/>.



40 to 90 minutes. The interviews were taped and notes were taken.

What the Experts Said

“As sad as it is to say this, there has always been sexual and physical abuse of children, and it has most often been committed by family members. What is different now is how those pictures are being shared.”

WORKING WITH VICTIMS

The quotation above is from someone who works directly with young victims and shares her expertise with as many professionals as she can. It was the key message from all those working with victims: that regardless of the tool used to commit the offence, sexual abuse is still sexual abuse; criminal harassment is still criminal harassment. In addition, the *motive* for the offences, whether it is control of or power over a victim, is not affected by the technology. As technology advances, these advances will be incorporated into the commission of offences.

The technology used may complicate or prolong the investigation and it may result in additional responses to victims, but the reactions and needs of victims are fundamentally the same as those of victims of violent crimes that

do not involve technology. Experts gave some examples to keep in mind when working with victims. For example, during a forensic investigation, any computer or cell phone involved (likely the victim's) may be seized for the investigation, and the investigation can take a long time. This can be extremely hard for a “child of the digital generation” to understand and just as hard to explain to his or her peers. Several experts suggested lending another cell phone or computer to the victim during this period.

One issue that was raised in numerous interviews was the best timing for telling a victim that photos of him or her exist on the Internet. There was agreement across experts that, if a child is very young (under the age of 6), it is better not to tell the child immediately that photos on the Internet exist. There was less agreement regarding children in the middle years (7–9 years of age). It was agreed that older children would likely know or suspect that photos exist, and if they did not know, they would probably find out from peers, which could be devastating. Therefore, such information should be shared with them at the earliest appropriate moment in a safe environment with support persons present (e.g., parents).

How do you explain to someone that these photos will exist forever? There are no easy answers to this question. Just as there are no easy answers to the question “How do you explain to a child that her mother has been killed

by her father?” Victim services providers have grappled with communicating such tragedies for as long as they have worked. They have also had to learn how to deal with the vicarious trauma that occurs in such circumstances. Perhaps one of the most difficult feelings for a victim is that of feeling out of control. Indeed, the proliferation of images on the Internet or being criminally harassed online would provoke this kind of feeling.

Several interviewees noted that in cases of criminal harassment and/or intimate partner violence, victims will likely already be using strategies for safety before they reach out for help. It is important to respect those strategies and build on them.

All interviewees noted the importance of providing clear, consistent support to the victim and his or her family throughout all stages of the criminal justice system, from investigation through sentencing. Over the past few years, several jurisdictions in Canada have implemented coordinated approaches. For example, in Ontario the Internet Child Exploitation strategy ensures that police and Crown are trained across the province to investigate and prosecute such cases and that there is specialized counselling available for victims.⁶ Prosecutors use all available tools in the *Criminal Code* to facilitate testimony for young victims.⁷ The Child Advocacy Centre⁸ (CAC) model developed in the United States and also found in Canada can provide this support. Based on a

⁶ For more information, see the Ontario Attorney General's website at http://www.attorneygeneral.jus.gov.on.ca/english/ovss/internet_child_exploitation_brochure.asp (accessed September 14, 2010).

⁷ For a discussion on the use of testimonial aids to facilitate testimony, see Northcott 2009.

⁸ For more information about Child Advocacy Centres, see the US National Children's Alliance at www.nationalchildrensalliance.org.



multi-disciplinary team approach, CACs provide seamless services and support both to victims and to non-offending family members. The Zebra Centre for Child Protection in Edmonton is an example of such a model.⁹ Currently, the Government of Canada is supporting the implementation of new centres or enhancing existing ones in several parts of the country.¹⁰

Overall, as one international advocate noted, victim services providers need to remember that

“we are good at what we do and that remains; so there is no need to feel overwhelmed by Internet crime. The treatment methods will largely be the same.”

WORKING WITH FAMILIES

Many of the interviewees stressed that responding to the needs of victims’ families is critical because how well victims cope is directly related to the support they receive from caregivers. For younger children, these caregivers will be the immediate family and school. For youth and adults, family members remain critical, but the role of peers becomes more and more important. In cases with youth, there may be situations where it would be appropriate to also work with the victim’s peer group.

In cases of luring, particularly where no physical harm has occurred, parents or guardians are often angry at the victim. Comments such as “She

knew better! We taught her!” or “I can’t believe this happened. After all he learned about what *not* to do!” may surface at the outset. Even if not said out loud, those feelings may be there. The frustration and anger parents feel may be compounded as many of the victims, who are most often young girls aged 13 to 15, view their activities as legitimate. While such anger is understandable, blaming the victim is not helpful and does not provide the victim with the supportive home environment he or she needs.

This is where education for families is extremely important. While victim services providers must be supportive, they must also show the parents how to move from anger to support. Educational materials are very useful in all situations but particularly where there are intense emotions initially. It can be very difficult to absorb a lot of new information, whether it is technical or about the criminal justice system, when one is overwhelmed by strong emotions. Materials such as pamphlets written in simple language (especially in the first language of victims and parents) can be sent home to be read at another time.

There are excellent Web sites as well, although family members may not want to engage with technology for some time. It is possible, however, that families will embrace it in order to empower themselves by learning everything they can to prevent any further victimization via the Internet.

Overall, interviewees noted that it is very important to understand the family’s perspective, to help them work through their feelings and help them

with other needs, but it is critical that the family be able to foster a supportive, caring environment for the victim. Information, on a range of issues and in multiple formats, can play a critical role when working with families.

WORKING WITH PROFESSIONALS

All those interviewed work with other professionals in the criminal justice system and in other services as well, such as health and education. In order to provide the best service possible, the interviewees all do their best to work collaboratively and share what they know about working with victims of technology-facilitated crime. With Child Advocacy Centres, there is a multi-disciplinary team and protocols with partner organizations to facilitate this collaboration and sharing of information.

In Alberta, police from around the province are able to call the 1-800 number for the Zebra Centre for Child Protection for assistance before they begin a forensic interview with a victim or witness. They are advised to ask anyone making a statement whether a camera of any kind, for example, on a cell phone, was used. If so, then a whole set of additional questions and additional investigations need to occur. Police are also advised that the presence of a camera during the commission of the offence can make the filming of a police statement or testifying via closed-circuit television in court difficult.

At least one centre of expertise recognized that it would not be feasible to establish multiple centres of expertise (whether a CAC or other type of organization) to provide services to victims of technology-facilitated

⁹ <http://www.zebracentre.ca>

¹⁰ <http://canada.justice.gc.ca/eng/pi/pcvi-cpcv/index.html>



crime throughout a jurisdiction. A great deal, however, could be accomplished by ensuring that there are sufficient resources to provide training and outreach to all professionals who need it. This would need to include training for those involved in forensic interviewing (police and often child protection) and forensic medical examinations (the medical professions) as well as for Crown prosecutors and those working with victims and family members.

All professionals must have a strong understanding of the role everyone plays at the different stages in the criminal justice system and of the technology that was used to facilitate the alleged crime. As noted above, victim services providers will already have a strong understanding of the criminal justice system. Training that is provided to all professionals can go a long way to demystifying technology. For example, experts from SafetyNet in the United States (and they have come to Canada!)¹¹ regularly train shelter workers, law enforcement, and prosecutors on the intricate details of spyware and other devices used to spy on, locate, and threaten victims of domestic violence and criminal harassment.

This is not to suggest that *all* victim services providers should have the skills required to undertake a forensic investigation on a computer; rather, they must be able to explain in simple but comprehensive language why the victim's computer was seized. When victim services providers understand the complexities of these investigations, it is much easier for them to explain it to their clients.

At the end of the interviews, experts emphasized the need to ensure criminal justice system professionals receive regular training on technology-facilitated crime and, wherever possible, ensure that they know who to call for expert assistance.

WORKING WITH THE PUBLIC

In the past couple of years, there have been several cases in the media that highlighted the considerable damage that can be inflicted in a very short time through the use of technology. And painfully, that damage cannot be erased. Every participant in this study provided similar examples from their work: a Facebook site denouncing the victim and supporting the convicted offender; a woman tracked by her spouse using a GPS as she attempted to flee from a violent home to a shelter; a child Internet sexual abuse case going through the courts with thousands of images found of young boys under the age of 8.

The victim services providers who were interviewed emphasized that their role is to respond to the victims and their families and their immediate needs in front-line service, and public education to raise awareness and promote prevention is all too often a luxury rarely attended to. We spoke with two victim services providers from small, rural communities where there are no other resources to undertake prevention and awareness raising. Yet, there may be times when there has been a high profile crime that has been facilitated by technology, where some public education sessions can be helpful for the broader community—for adults and children and youth. One

expert noted that victim services providers can play a role in these sessions to talk about the services provided.

Awareness and prevention are considered critical for the public, especially for families with children and youth online. Several of the experts highlighted the numerous organizations in Canada and in other countries that focus on Internet awareness for children and youth. Prevention programs and curricula for all grade levels are readily available for use by teachers in the classrooms and are regularly updated to reflect rapidly changing technology.

Experts play a key role in providing accurate, yet easy to understand information about how to stay informed and vigilant to prevent technology-facilitated violent crime. The public and, in particular, parents with young children and youth have a key role to play as well.

Final Thoughts

It is not hard to imagine a day when everyone will be communicating through social networking sites and when youth will be texting more than they talk. As access to technology increases and more and more of our daily activities occur online, it is realistic to assume that more and more crimes will be committed using computers and other emerging technology.

Overall, the experts interviewed unanimously stressed the importance of remembering the fundamentals of working with victims of crime. Regardless of the tool or conduit used to facilitate the crime, the approach

¹¹ For more information, see <http://nnedv.org/projects/safetynet.html>.



to use with a victim should be suited to the age and circumstances of that victim. Some victims may have specific needs because of a disability or other vulnerability. All will need information about *everything* that is happening to them, and all will need support throughout the criminal justice system process as well as beyond.

So, in the end, the experts' advice was to seek out specific training in order to better understand technology and social networking and how it can be used to victimize and to find out how to put in place safety mechanisms which may be necessary for safety planning, particularly in cases of criminal harassment or intimate partner violence. This training should be obtained before the need for it arises, and knowledge and experience should be shared. By building a community of knowledge and support, all criminal justice system professionals share the challenges of this essential but difficult work. And it is important that all remember to take care of themselves in the process.

References

Brennan, Shannon, and Mia Dauvergne. 2011. Police-reported crime statistics in Canada, 2010. *Juristat*. Ottawa: Statistics Canada. Catalogue No. 85-002-X.

ERIN Research. 2005. *Young Canadians in a wired world – Phase II*. Media Awareness Network. Accessed June 12, 2011, from http://www.media-awareness.ca/english/research/YCWW/phaseII/upload/YCWWII_trends_recomm.pdf.

Kowalski, Melanie. 2002. *Cyber-crime: Issues, data sources, and feasibility of collecting police-reported statistics*. Ottawa: Statistics Canada. Catalogue No. 85-558-XIE. Accessed June 12, 2011, from <http://www.statcan.gc.ca/pub/85-558-x/85-558-x2002001-eng.pdf>.

Loughlin, Jennifer, and Andrea Taylor-Butts. 2009. Child luring through the Internet. *Juristat*. Ottawa: Statistics Canada. Catalogue No. 85-002-X. Accessed June 12, 2011, from <http://www.statcan.gc.ca/pub/85-002-x/2009001/article/10783-eng.pdf>.

Middleton, Catherine, Ben Veenhof, and Jordan Leith. 2010. *Intensity of Internet use in Canada: Understanding different types of users*. Business Special Surveys and Technology Statistics Division Working Papers. No. 2. Ottawa: Statistics Canada. Catalogue No. 88F0006, no.2. Accessed June 12, 2011, from <http://www.statcan.gc.ca/pub/88f0006x/88f0006x2010002-eng.pdf>.

Muir, Deborah. 2005. *Violence against children in cyberspace*. ECPAT International. A contribution to the United Nations Study on Violence against Children. Accessed June 12, 2011, from http://www.ecpat.net/ei/Publications/ICT/Cyberspace_ENG.pdf.

Northcott, Melissa. Facilitating testimony for child witnesses. *Victims of Crime Research Digest* 2:18–23. Accessed June 12, 2011, from http://canada.justice.gc.ca/eng/pi/rs/rep-rap/rd-rr/rd09_2-rr09_2/rd09_2.pdf.

Office of the Federal Ombudsman for Victims of Crime. 2009. *Every image, every child*. Ottawa: Office of the Federal Ombudsman for Victims of Crime. Accessed August 9, 2011, from <http://www.victimfirst.gc.ca/pdf/childp/pjuvenile.pdf>.

Perreault, Samuel. 2011. Self-reported Internet victimization in Canada, 2009. *Juristat*. Ottawa: Statistics Canada. Catalogue No. 85-002-X. Accessed on September 15, 2011, from <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11530-eng.pdf>.

Quayle, Ethel, Lars Loof and Tink Palmer. 2008. *Child pornography and sexual exploitation of children online*. Submitted by EPCAT International to the World Congress III against Sexual Exploitation of Children and Adolescents, Brazil.

Standing Senate Committee on Human Rights. 2011. *The sexual exploitation of children in Canada: The need for national action*. Ottawa: Standing Senate Committee on Human Rights. Accessed November 21, 2011, from <http://www.parl.gc.ca/Content/SEN/Committee/411/ridr/rep/rep03nov11-e.pdf>.

Southwark, Cindy, Shawndell Dawson, Cynthia Fraser, and Sarah Tucker. 2005. *A high-tech twist on abuse: Technology, intimate partner stalking and advocacy*. Violence Against Women Online Resources. Accessed June 12, 2011, from <http://www.nnedv.org/resources/safetynetdocs/94-a-high-tech-twist-on-abuse.html>.

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Understanding the Experiences of YOUTH VICTIMIZATION

Melissa Northcott

Adolescence can be a tumultuous time—new schools, new peers, and ever-changing hormones and feelings. For some youth, these new experiences are sometimes also accompanied by other challenges, like victimization.

In Canada, information on the criminal victimization experiences of youth is available through national self-report and police-report surveys. The 2009 General Social Survey (GSS) on Victimization¹ found that young Canadians aged 15 to 24 were more likely to experience violent victimization and theft of personal property in the year preceding the survey compared to older Canadians. Individuals in this age group reported a rate of violent victimization that was almost 15 times higher than those 65 years

and older (Perreault and Brennan 2010). Furthermore, according to the 2010 Incident-Based Uniform Crime Reporting (UCR2) Survey,² the rate of police-reported violent victimization was higher among youth aged 15 to 17 years old (2,732 per 100,000) compared to young adults aged 18 to 24 years old (2,631 per 100,000).

These statistics provide some insight into the nature and prevalence of youth victimization in Canada. But do the definitions of criminal victimization captured in these national data sources reflect the whole picture of youth victimization? Many types of victimization can be captured on a continuum from non-violent to violent; for example, bullying may begin with excluding someone from a group and making derogatory comments,

then may escalate to pushing and shoving and more hateful comments, and then move to more serious assaults. Because of the damaging impact of the less violent activities and the potential for the activities to escalate to more violence, it is important to understand the range of activities that youth experience. While a continuum may include activities that are captured in the common definitions of criminal victimization, there may be other activities that youth define as victimization that are not captured in the national surveys such as the GSS.

In order to gain a better understanding of the broad spectrum of youth victimization, the Department of Justice Canada contracted with two organizations to conduct research in this

¹ The General Social Survey (GSS) on Victimization “is conducted every 5 years on a sample of Canadians [aged 15 years of age and older] and collects information on their personal accounts of criminal victimization” (Perreault and Brennan 2010). Violent victimization includes sexual assault, robbery, and physical assault.

² The Incident-Based Uniform Crime Reporting (UCR2) Survey is conducted yearly and collects information from police services across Canada, representing 99% of the Canadian population. Violent victimization includes offences such as homicide, attempted murder, sexual assault, physical assault, robbery, use of firearms, kidnapping/forcible confinement, abduction, extortion, criminal harassment, uttering threats, and “other” violent violations.



important area. In the spring of 2011, the McCreary Centre Society³ and the Ontario Justice Education Network⁴ (OJEN) each completed research on this topic and produced a report. In addition to asking questions about criminal victimization, both organizations explored a broader range of experiences, such as different types of bullying behaviour and discrimination. The results of both studies also provide valuable insight into the effects of victimization on youth and information on the help-seeking behaviours and support needs of youth. What follows are some highlights from these two reports.

Study 1:

Smith, Annie, Elizabeth Saewyc, Colleen Poon, Duncan Stewart, and McCreary Centre Society.

**FROM SEA TO SKY:
PERSPECTIVES ON PATTERNS
OF VIOLENT VICTIMIZATION
AMONG YOUTH ACROSS BC.
VANCOUVER: MCCREARY
CENTRE SOCIETY, 2010.**

This report examined the victimization experiences of youth aged 12 to 19 across British Columbia. The report focuses on several forms of violent victimization:⁵ sexual abuse, forced sex, sexual exploitation, physical abuse, sexual harassment, discrimination, school violence (bullying), relationship violence, and cyberbullying. The

report also examines multiple victimization experiences.

The study employed a unique methodology. Researchers took the findings of three different youth surveys the McCreary Centre Society conducted between 2006 and 2008 and used them as the basis for focus group discussions with 52 youth aged 12 to 19 who had experienced victimization. The focus groups were held between December 2010 and February 2011 in the five regions of BC: North, Interior, Fraser, Vancouver Island, and Vancouver. The youth were presented with the findings from the three surveys and were asked to provide their comments and recommendations on how to address youth victimization. The surveys included:

- 1) the 2006 Street Youth Survey, a survey of 762 homeless, street-involved and marginalized youth in nine communities across BC;
- 2) the 2007 Alternative Education Survey, a survey of 339 youth from 34 different alternative education programs in seven communities across BC; and
- 3) the 2008 Adolescent Health Survey (AHS), a survey of 29,900 main stream school students in grades 7 to 12 in nine communities across BC.

FINDINGS

The study found that the majority of youth in the three surveys had experienced at least one form of

victimization based on the survey categories in their lifetime and that many youth experienced more than one type of victimization. Youth who participated in the focus groups corroborated these findings, stating that most youth in BC grow up experiencing some type of victimization.

Effects of Victimization

The surveys also revealed that experiencing victimization, such as bullying, can have a negative effect on mental health. Victimization was generally associated with a number of different negative health effects and risk factors, such as drug and alcohol use, suicidal thoughts and suicide attempts. The risk factors associated with victimization differed depending on the type of victimization that youth experienced. Additionally, the more forms of victimization youth experienced, the greater the likelihood that they engaged in risky behaviours. Bullying (including cyberbullying) increased the risk of attempting suicide and carrying a weapon to school more than any other type of victimization.

Help Seeking

Youth who participated in the surveys were also asked about their help-seeking behaviour. Although victimized youth were more likely to seek help from adults such as teachers and social workers than non-victimized youth, they were less likely to find these individuals helpful. Youth in the focus groups confirmed this finding,

³ “The McCreary Centre Society is a non-government not-for-profit organization committed to improving the health of [British Columbia] youth through research, education and community-based projects.” (<http://www.mcs.bc.ca/>)

⁴ The Ontario Justice Education Network (OJEN) is a not-for-profit organization that “develops and delivers justice education in collaboration with educators, judges and justices of the peace, lawyers, court staff, community members and other justice sector volunteers around Ontario.” (<http://www.ojen.ca/>)

⁵ Note that what encompasses violent victimization in this study differs from the offences measured in the GSS and the UCR2. See notes 1 and 2.



describing several instances in which they had sought help from an adult but found the adult to be unhelpful. They also offered a number of recommendations to address youth victimization and to provide victimized youth with helpful resources. For example, peer support and mentors are among the most important sources of support for youth. Youth should therefore learn how to support one another.

In addition, youth in the focus groups indicated that longer-term programs that build community connections and provide alternatives to violence are more helpful to youth than short-term programs. Youth also provided a number of suggestions to address specific types of victimization, such as bullying. For example, interventions should incorporate more engaging and dynamic forms of communication, such as small discussion groups, because they are more effective for difficult issues like bullying than speakers or presentations that do not involve interaction with the youth.

Study 2:

Brooks, Mike.

YOUTH EXPERIENCES OF VICTIMIZATION: A CONTEXTUAL ANALYSIS. TORONTO: ONTARIO JUSTICE EDUCATION NETWORK, 2011.

The Ontario Justice Education Network conducted surveys with 153 adolescents in Ontario. The majority of the youth in this study were in Grades 10 to 12 and were between the ages of 16 and 19. Four groups of youth participated in the study: students from a Grade 11 law class (14 students); students in Grades 10 to 12 who were recruited

from a conference for visible minority youth (24 students); Francophone students in Grades 11 and 12 (52 students); and a group of adolescent females participating in a legal education program (63 students).

The survey consisted of questions pertaining to general and specific victimization experiences and to the impacts of victimization. Six forms of specific victimization experiences were studied: violent victimization (e.g., assault); non-violent victimization (e.g., destruction of property); online victimization (e.g., harassment through social networking sites); anti-social victimization (e.g., bullying); intimate partner victimization (e.g., verbal abuse by a romantic partner); and dating victimization (e.g., unwanted sexual touching).

FINDINGS

The survey participants were initially asked if they had ever been a victim of a crime. This was a general question with no qualifiers. To this question, 41% of the participants stated that they had been victimized. The participants were then presented with a list of specific events that encompass the six types of victimization described above and were asked if they had experienced one of these events in the last year. Eighty-six percent of the youth indicated that they had experienced at least one of these events in the last year. Thus, the percentage of youth who had experienced this broader definition of victimization more than doubled when they were prompted by interviewers.

The most common form of victimization experienced by the participants in the twelve months preceding the survey was anti-social victimization

(41%), followed by non-violent victimization (17%), online victimization (15%), and violent victimization (9%). Fewer youth reported dating violence (8%), intimate partner violence (7%), and other types of violence (3%). The study also revealed that victimization is likely to occur in a number of different contexts such as at school, in other social situations, and online. Many youth had also experienced multiple types of victimization in the preceding year.

Effects of Victimization

As with the youth in BC, the Ontario youth experienced negative impacts as a result of their victimization. Those who had experienced victimization were more likely to change their behaviour in order to prevent victimization than those who had not been victimized. Almost half of the victims had made some type of behavioural change as a result of the victimization, such as warning friends and avoiding certain places. Furthermore, a higher level of anti-social victimization was related to lower self-esteem among female youth in this study.

Help Seeking

Youth were also asked about their reporting/help-seeking behaviour. Youth most often reported their victimization experiences to informal supports, such as friends and family. Very few youth reported their victimization to the police. A greater percentage of youth who experienced non-violent forms of victimization reported their victimization to both informal sources and to the police than youth who experienced violent forms of victimization. Non-violent victimizations were also reported to a wider range of supports than violent



victimizations. These findings may be a reflection of the fact that non-violent victimizations were more often committed by someone not known to the victim, allowing the victim to feel more comfortable to report their victimization (perhaps due to a decreased fear of reprisal or fall-out of the relationship).

Conclusion

These studies highlight a number of issues concerning youth victimization. Youth in both studies clearly indicated that their experiences of victimization are much broader than experiences captured under the common definition of criminal victimization. Findings from both studies also demonstrate that when victimization is broadly defined to reflect a continuum of victimization experiences, it is common among Canadian youth. Many Canadian youth also experience multiple forms of victimization.

The studies also showed that victimization can have many negative consequences, ranging from effects on self-esteem to drug and alcohol use and other forms of self-harm. Finding ways to reach and educate youth is therefore essential in mitigating these negative outcomes.

These studies also demonstrate that youth are more likely to seek support from friends and family rather than from more formal supports, such as the police or counsellors. Previous findings using the GSS have found that most people seek natural supports.⁶ As the McCreary Centre Society report indicates, when victimized youth did seek help from a formal support, the youth often found these individuals to be unhelpful. Future research with youth could be conducted to determine how adults could better support these youth. This research could use a dynamic approach to engage youth, such as participatory action research or, at minimum, focus groups, as this was one of the recommendations of the focus groups from the McCreary Centre Society study.

Youth in the McCreary Centre Society study also provided a number of other important recommendations on how to best address youth victimization. As one youth who participated in the focus groups indicated,

“ No one thing will fix [violent victimization], but there are lots of things that would help it to change.”

By listening to youth, both organizations have gained invaluable information that can and will be used to inform and improve programming for youth in the future. More research from the other provinces and territories will help to move forward our understanding of the experiences of youth victimization.

References

Brennan, Shannon. 2011. Self-reported spousal violence, 2009. In *Family violence in Canada: A statistical profile*, Statistics Canada, 8–19. Ottawa: Statistics Canada. Accessed October 4, 2011, from <http://www.statcan.gc.ca/pub/85-224-x/85-224-x2010000-eng.pdf>.

Perreault, Samuel. 2011. *Violent victimization of Aboriginal people in the Canadian provinces, 2009*. Ottawa: Statistics Canada. Accessed October 4, 2011, from <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11415-eng.pdf>.

Perreault, Samuel, and Shannon Brennan. 2010. *Criminal victimization in Canada, 2009*. Ottawa: Statistics Canada. Accessed September 27, 2011, from <http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11340-eng.pdf>.

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Victims before the International Criminal Court:

A NEW MODEL OF CRIMINAL JUSTICE?

Frédéric Mégret

The International Criminal Court (ICC or the “Court”) was created in 1998 following a diplomatic conference and started functioning in 2001. It is the first permanent and, potentially at least, universal international criminal tribunal. It has over 100 members, including Canada. As such, it is closely watched for developments that might be of relevance for criminal justice. Its jurisdiction extends over genocide, crimes against humanity and war crimes: all crimes that typically make victims in the thousands, often in very traumatic and life-altering ways. Based in The Hague, the ICC has begun investigating and prosecuting cases in the Congo, Uganda, Sudan, and Kenya, creating much expectation among victims and their relatives.

One of the striking features of the ICC is the role it purports to give to victims, in a context where victim rights and victim-centered approaches to criminal justice have become stronger. This article examines the role of victims at the ICC and discusses the challenges that their presence before the Court

creates. The ICC may choose to see victims in three different ways, that is, merely as witnesses, as participants of some sort, or as potential beneficiaries of assistance and reparations.

The Rise of the Victim in International Criminal Justice

International criminal tribunals traditionally paid little attention to victims. At Nuremberg post World War II, where much of the procedure relied on written sources, victims appeared only occasionally as witnesses. The 1990s ad hoc international criminal tribunals (former-Yugoslavia and Rwanda) relied more extensively on witness testimony and, as a result, were more open to the idea that, as a minimum, victims should not be further victimized by the international criminal justice system. The ad hoc tribunals thus saw the development of significant efforts to better protect at least those victims who testify. Two things were nonetheless clearly excluded: first, victims were in no

way parties to the criminal procedure; and second, very few provisions were made for reparations (in the best of cases, victims were supposed to go before domestic courts with an authoritative international judgment against their tormentor, but in practice, this almost never happened).

The movement to create the ICC almost from the outset took a different view of the role and status of victims. First, the ICC was not to be created by the Security Council and sought alternative forms of legitimacy. Second, the ICC’s creation owed much to the influence of civil society groups (notably Redress, Human Rights Watch) that were more inclined to see international criminal justice as fundamentally a form of justice to victims rather than simply, for example, a means to international peace and security. Third, debates in the 1990s were influenced by the growing frustration and disappointment of victims’ associations with existing international criminal tribunals and by a number of legal developments particularly relating to the human right



to reparation. As a result of these various pressures, the Rome Conference, which created the ICC, granted an unprecedented role to the victim before the Court.

The incorporation of a strong victim component in international criminal justice raises several challenges. Perhaps most importantly, there have been concerns that a significant focus on victims would detract from the attention traditionally bestowed on the accused, and perhaps even have a negative impact on due process and the right to a fair trial. Defense counsel have already been known to appeal the designation of certain victims as victims. There is also a specifically prosecutorial concern involved in granting victims too prominent a role, the fear being that the trial will become side-tracked or even hijacked by victims' agenda. This is a particularly significant concern given the potentially huge numbers of victims in some ICC trials (numbering in the thousands), and the considerable challenges that international criminal justice already faces in terms of expeditiousness. Finally, reparations raise highly complex practical and jurisprudential questions about who should be compensated, for what, and why. These questions have not begun to be answered and may yet leave victims before the ICC frustrated.

Specifically, in addition to a revamped mandate to protect victims insofar as they are witnesses, the ICC is asked to facilitate victim participation before and during the trial. The Rome Statute also anticipates that the ICC has a mandate to provide victims with reparations for harm suffered. These provisions have implications for the

general economy of procedure before international criminal tribunals. Traditionally, that procedure has been largely adversarial and common law inspired, but lately a number of changes have nudged the procedure towards more of an inquisitorial model. An effort to pay more attention to victims is hardly the monopoly of any particular tradition, but might the move to give victims a strong role signal a more distinctly continental-European approach? Victim participation provisions have also been strongly influenced by international human rights law, which provides a justification for attending to victims (e.g., the right to an effective remedy) but also protects the accused's right to a fair trial. The main article concerning victims in the Rome Statute is article 68,¹ which provides only a very broad overview of their status. Much surrounding the place of victims before the ICC therefore remains shrouded in mystery and in need of judicial clarification.

The Victim as Witness: A Mandate to Protect

The victim as witness is not necessarily a rare occurrence; however, not all witnesses have been victimized, and not all victims are called to testify. Nonetheless, when victims appear as witnesses in judicial proceedings, some issues must be addressed, such as their security (individuals may be threatened when it becomes known in their community that they will testify) and the high incidence of psychological trauma and a concomitant risk of re-traumatizing experienced by victims who testify. Accordingly, Article 68.1 states that

“[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.” Among the more common measures employed are closed sessions or the redaction of information that might identify witnesses to the public. Resettlement of witnesses is a possibility as a last resort. The ICC is particularly asked to “have regard to all relevant factors, including age, gender . . . , and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children.” As in many provisions relating to victims, a caveat is included that “[t]hese measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.” A Victims and Witnesses Unit was created within the Registry (the ICC's administrative arm) which conducts vulnerability assessments, helps victims throughout their experience at the ICC and provides medical and psychological assistance. It appears to be similar to a systems-based victim services program in Canada. The Unit has even set up an emergency hotline.

A Party or not a Party?

Nothing prevents victims from forwarding information to the Office of the Prosecutor, which promotes “direct interaction” with them. Such information may lead to investigations, but it does not have any particular status, and victims have no right to register formal complaints. There is, in other words, no way that victims can “refer” a case in the way states parties and the Security Council



can with the Prosecutor, or that the latter's discretion to launch investigations and indictments is in any way determined by information forwarded by victims. Victims' role, rather, seems limited to their ability to "appear" before the ICC. The central provision in terms of victim participation is Article 68(3), according to which "the Court shall permit their views and concerns to be presented ..."

One key preliminary issue for the ICC is defining who is and who is not a victim. If the experience of the Extraordinary Chambers for Cambodia in the last five years is any guide, this is hardly an easy task. Applications for the status of victim are to be made before the Court Registry, which then forwards them to the appropriate chamber. The Registry has already received more than a thousand applications, particularly in the Lubanga case,² but more than 80% of these applications are still awaiting a decision. Article 85 of the Court's Rules of Procedure defines victims as "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court." The crimes must be crimes of which the defendant is accused and not simply crimes that were committed in the same region. Indirect victims (e.g., relatives) fall within the definition, but victims with blood on their hands (e.g., child soldiers) raise difficult issues. The ICC may encounter substantial evidentiary difficulties in ascertaining victim status and has shown a willingness to adapt requirements to local specificities. Victims, who are often indigent, can get legal aid, but in order to ensure that the ICC is not overwhelmed by victim

participation, they may be requested to choose a common legal representative. In addition, for their views to be heard at any particular stage in proceedings, victims must establish that their "personal interest" is affected.

Article 68 anticipates that victims' views may be presented "at stages of the proceedings determined to be appropriate by the Court," a notion that is a matter of evolving case law. Stages have been understood very broadly as the entire stage by some chambers (pre-trial), but much more narrowly by trial and appeal chambers where victims must show their "personal interest" in the particular procedural step involved (for example, the examination of a particular piece of evidence or issue). Presumably, victims will have a keen interest in having their voice heard by the time judgments have been rendered and reparation hearings take place, although no proceeding before the ICC has yet gone this far. The trial itself also provides many opportunities for victims, who may have evidence available, to be heard. But victims have also been allowed to voice their views at much earlier stages than that, notably at the pre-trial stage, and especially at indictment confirmation hearings. It is less clear whether victims can intervene at the stage of investigation of a "situation" given that strictly speaking no judicial proceedings have begun.

It is perhaps understandably at the stage of actual trial proceedings that the tension between the rights of the accused and the rights of victims risk being most pronounced. There may be concerns that defining victims could in itself negatively prejudice

the trial against the accused. Of course, the victims are not victims (yet) of the accused, they are simply victims of "a crime," which the defendant may or may not be found guilty of at trial. But there is a general suspicion from the defense that the participation of victims in proceedings may unfavorably prejudice the accused. Article 68(3) anticipates that victims' views should be heard "in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial." In practice, this means that victims "can only participate actively if their intervention would make a relevant contribution to the determination of the truth." Concerns about the expeditiousness of the trial have also been prominent in judges' minds.

The extent of victims' "procedural rights" under the Statute and the Rules is unclear, as is the extent to which victims are entitled to "present (sic) their views," in accordance with the Statute and Rules. At the minimum, victims should be allowed to access public filings, but confidential filings are more problematic, especially when they involve issues of national security or protection of witnesses. Victim representatives are as a rule entitled to attend hearings, although again concerns may arise with *ex parte* hearings. Strikingly, victims have been allowed to present evidence in Court, albeit under strict conditions, based on the Court's general "authority to request the submission of all evidence that it considers necessary for the determination of the truth." These are all sensitive questions for which the ICC seems determined to retain a certain flexibility.

² The Lubanga case involves a Congolese warlord accused of war crimes, most notably of recruiting child soldiers.



The overall status of victims is the object of much speculation. The Prosecutor has described victims as having an “independent voice” in the Statute’s procedure and as being “actors” rather than “passive subjects” of international justice (ICC Prosecutor’s Office 2010, 5 and 13). Victims are indeed independent from the Prosecutor and appear in their own name. However, their status is not clearly defined, and it would be claiming too much to say that they are parties as such. The procedure does not go noticeably further than instructing the judges to “consider” the views that have been presented by victims. One might say that formally the position of victims is somewhere between a *partie civile*,³ a supplementary source of prosecution, and an amicus or friend of the court. They have a sufficiently vested interest to be heard in court but do not carry the burden of prosecution and can claim reparations even if they have failed to participate in proceedings. The closest analogy domestically might be the auxiliary prosecution institution which exists in Germany and Austria, but the ICC system is really quite unique. In practice, of course, only evolving judicial interpretations will fully define the formal status that victims hold and how much or how little influence they will have over judicial outcomes.

Reparations: Many Unanswered Questions

The reparations regime set out in Article 75 provides for the possibility that the ICC may make orders against convicted persons. The procedure is

entirely separate from Article 68. Reparation orders are made against a particular offender for the benefit of the victims of his crimes. Three types of reparation are envisaged: restitution, compensation, and rehabilitation. Restitution consists in the return of property seized in the course or as a result of the commission of the crime; compensation is for economically assessable damage resulting from physical or psychological harm; and rehabilitation covers medical and psychological care and legal and social services. Traditional forms of reparation like satisfaction (e.g., apologies) and guarantees of non-repetition are not mentioned, perhaps because they are more appropriate in the case of states, but nor are they excluded (the list is non-exhaustive).

One of the great weaknesses of the reparations regime is that it only targets individuals. The ICC does not have the power to order reparations from states, who would have comparatively much deeper pockets, even if the accused was the head of state or involved in the implementation of a state policy. Perhaps partly to remedy that shortcoming, a Victims Trust Fund was created which is independent from the ICC. The VTF has a dual role: it is part implementer of reparation awards ordered by the ICC and which, for example, have an enforcement or collections aspect making it too burdensome for the ICC to manage; but it is also part distributor of moneys received from international donors which it can dedicate to the rehabilitation of victims. It has already started distributing money in areas

where investigations are undertaken, much earlier and entirely separately from reparations that may eventually be obtained. Given the dire situation in which many victims of atrocities find themselves and the sheer difficulty of evaluating the amount of reparations, not to mention finding someone who can pay for them, it may well be that the VTF will end up being the most important dimension of assistance to victims.

Conclusion

The ICC victim regime is the product of very peculiar conditions. The gravity of the crimes and the large number of victims make it very difficult to ignore the fact that international crimes are not just committed against an abstract humanity but also very much against actual individuals. It is still early to evaluate the impact that the inclusion of the victim will impose on the nature of international criminal procedure and justice, but it is worth remembering that domestically some victim-oriented movements have been quite conservative and repressive in orientation. In a context where it is already very difficult to protect the presumption of innocence, facing significant groups of victims in court may yet significantly tilt the balance against the accused. Still, as the ICC struggles to establish its legitimacy, in a context where it has been accused of being manipulated by states or doing the Security Council’s bidding, establishing a strong victim constituency is sure to reinforce its claim that it stands for a particularly necessary form of justice. Moreover, the ICC has been at pains to retain control over

³ A “partie civile” is a mechanism in France and other civil law countries by which victims may join the prosecutorial action and ask for civil reparations as part of the criminal trial. This avoids the need for separate civil proceedings although critics would contend that it mixes two very different rationales.



which victims participate, when, and in what way or how, showing that it is attentive, on a case by case basis, to the many rights and interests involved, including those of the accused, and to the reasonable expediency of justice in general.

It may be remarked that there is certainly no obligation for states parties to have a similar regime in domestic law. For example, simply because Canada is a party to the Rome Statute, does not mean that it needs to introduce legislation allowing victims to voice their concerns in the course of trial (even if only in trials involving international crimes). The ICC regime operates under the principle of complementarity. According to that cardinal principle, states have primary jurisdiction over ICC crimes and are

encouraged to prosecute them according to their own legal and judicial traditions. A case is only admissible before the ICC if the state that has jurisdiction over it has proved either “unwilling” or “unable” to prosecute it, notions that are interpreted strictly to cover states that are either committed to ensuring impunity or too weak to even carry out prosecutions. This will not be the case of states which are effectively engaged in the struggle against impunity for atrocity crimes but may nonetheless be less victim-friendly than the ICC purports to be. Nonetheless, domestic judiciaries should be watching the ICC closely as a laboratory for victim-conscious approaches to criminal justice in the wake of particularly grave crimes, which is sure to yield some original insights.

References

International Criminal Court Office of the Prosecutor. 2010. *Policy Paper on Victims' Participation*. The Hague: International Criminal Court Office of the Prosecutor. Accessed November 21, 2011, from <http://www.icc-cpi.int/NR/rdonlyres/BC21BFDF-88CD-426B-BAC3-D0981E4ABE02/281751/PolicyPaperonVictimsParticipationApril2010.pdf>.

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Victim-Related Conferences in 2012

Men Can Stop Rape: From Theory to Practice Training

January 4–6
Washington, DC, USA
<http://www.mencanstoprape.org/Trainings/from-theory-to-practice.html>

2012 Child Abuse Conference

January 5–6
San Antonio, TX, USA
<http://www.ojjdp.gov/events/EventDetail.asp?ei=20509&p=list>

2nd Utah Sexual Violence Summit: Prevention is the Key to the Future

January 11
Provo, UT, USA
http://www.ncdsv.org/images/USVC_2ndUtahSexualViolenceSummit_1-11-2012.pdf

4th Annual Northwest Conference against Trafficking

January 13–15
Portland, OR, USA
<http://nwcat.org/annual-conference-2012/>

The 26th Annual San Diego International Conference on Child and Family Maltreatment — 2012

January 23–26
San Diego, CA, USA
<http://www.sandiegoconference.org/>

2012 OVC Mass Violence and Emergency National Training Conference

January 31–February 2
Jacksonville, FL, USA
<http://www.ovc.gov/news/index.html>

National Conference on Bullying

February 15–17
Orlando, FL, USA
<http://www.schoolsafety911.org/event05.html>

4th Annual Violence-Free Teens Conference: Cultivating Connections — Empowering Youth and Adult Allies to End Relationship Violence

February 16–17
Los Angeles, CA, USA
http://peaceoverviolence.org/media/downloadables/2011-7-20_saveTheDate-web.pdf



2nd World Conference of Women's Shelters (WCWS)

February 27–March 1
Washington, DC, USA
<http://www.researchraven.com/files/pdfs/conference/2012/2/27/2nd-world-conference-of-women-s-shelters.pdf>

28th National Symposium on Child Abuse

March 19–22
Huntsville, AL, USA
<http://www.nationalcac.org/national-conferences/symposium.html>

7th Annual Conference on Crimes against Women

March 26–28
Dallas, TX, USA
<http://www.conferencecaw.org/>

Crime Prevention and Reduction Conference

March 28–29
Fredericton, NB, Canada
http://acc-cca.org/en/index.php/en/events/crime_prevention_and_reduction_conference/

The Global Summit on Childhood

March 28–31
Washington, DC, USA
<http://www.acei.org/conferences/annual-conferences.html>

18th National Conference on Child Abuse and Neglect

April 16–20
Washington, DC, USA
<http://www.pal-tech.com/web/OCAN/>

2012 International Conference on Sexual Assault, Domestic Violence and Stalking

April 2–4
San Diego, CA, USA
<http://www.evawintl.org/conferencedetail.aspx?confid=11>

6th Annual Every Victim, Every Time Conference

April 24–25
<http://www.evetbv.org/index.html>

2012 PCADV Conference

April 26–27
Harrisburg, PA, USA
<http://www.pcadv.org/Training.asp>

2012 Alberta Provincial Victim Services Conference

April 26–29
Banff, AB, Canada
http://victimservicesalberta.com/?page_id=413

4th Annual Orange County Victims' Rights March and Rally

April 27
Orange County, CA, USA
<http://www.orangecountyda.com/home/index.asp?page=481>

National Victims of Crime Awareness Week 2012 — Moving Forward

April 22–28
Ottawa, ON, Canada
<http://www.victimswweek.gc.ca/home-accueil.html>

2012 Joining Together Conference: Taking Action against Child Abuse

May 6–9
Calgary, AB, Canada
<https://reg.conexsys.ca/jt12/default.htm?SessionCode=224632073>

12th Annual Pathways for Victim Services Conference

May 9–11
Lancaster, PA, USA
<http://www.pathways2012.org/web/index.php>



NCVLI's 11th Annual Crime Victim Law Conference — *Enhancing Justice: Empowerment through Victims' Rights*

June 8–9
Portland, OR, USA
https://law.lclark.edu/centers/national_crime_victim_law_institute/projects/education_and_training/annual_conference/

2012 National Call to Action Institute and Conference

July 9–13
St-Paul, MN, USA
<http://womenofcolornetwork.org/events/index.php>

17th International Conference on Violence, Abuse and Trauma

September 9–12
San Diego, CA, USA
<http://www.ivatcenters.org/>

2012 National Conference — National Centre for Victims of Crime

September 19–21
New Orleans, LA, USA
http://www.ncvc.org/ncvc/main.aspx?dbID=DB_2012NationalConference207

14th Annual Wyoming Victim Services Conference

October 2–4
Jackson, WY, USA
<http://ovc.ncjrs.gov/ovcCalendar/OVCResultsDetail.asp?QryType=Calendar&strConfID=20456>

Male Survivor 13th International Conference

November 15–18
New York, NY, USA
http://www.malesurvivor.org/calendar/view_entry.php?id=4365

****MORE CONFERENCES ARE AVAILABLE ON THE FOLLOWING WEB SITE:**

[HTTP://OVC.NCJRS.GOV/OVCCALENDAR/DEFAULT.ASP](http://OVC.NCJRS.GOV/OVCCALENDAR/DEFAULT.ASP)