

*Jo-Anne Wemmers, Ph.D.*

### **Victim Advocacy:**

#### **Meeting victims' needs or using victims to advance the conservative agenda?**

In recent months the Conservative government, led by Stephen Harper, has developed several elements of its tough on crime, law and order agenda. These include the proposed introduction of a three-strikes policy as well as reversal of the onus of proof with respect to dangerous offenders. These proposals have been presented by some politicians as well as the media as pro-victim policies. But this is a fallacy.

Law and order does not provide rights to victims. It limits the rights of the accused. But this does not automatically translate into more rights for victims. Mandatory sentencing does not give victims a voice. It does not ensure that victims will be informed of the developments in their case or that they will be consulted throughout key stages of the criminal justice process. It does not mean that victims, including parents and siblings, will receive financial assistance in order to help them make ends meet when they are unable to work due to the trauma of their loss or pay for professional, clinical support in order to deal with the aftermath of their victimization. It does mean more money spent on prisons, which inevitably means less money to spend on other things such as services for victims.

What can a government that sincerely wants to help victims do ?

1) Re-institute cost-sharing with the provinces for provincial victim compensation programs. In 1993 the federal government ended twenty years of cost-sharing that had enabled the provinces and territories to develop financial compensation programs for victims of violence. When the federal funding stopped, the poorer regions of Canada, namely the territories and Newfoundland, were unable to continue their compensation programs. Elsewhere, most provinces revised their programs in order to cut costs.

In Quebec, there have been several efforts to modify the existing *Indemnisation des victimes d'actes criminels* (IVAC) program. Various initiatives have tried to reduce costs while enlarging the definition of victims eligible for compensation. Since 1989 and the tragedy of the École Polytechnique, Québec society has known that a major short-coming of the IVAC program is its failure to recognize the parents and siblings of murder victims. Despite repeated attempts to modify the existing legislation, these efforts have failed due to budget limitations. Consequently, today indirect victims are still excluded from the IVAC program. A fact that leaves many families of murder victims with thousands of dollars of debt.

The absence of government-run compensation programs for crime victims across the country means that Canada, a developed nation, fails to meet the basic standards of service for victims, set out in the UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. This UN document, which Canada helped create, sets out minimum standards for Member States with regard to the treatment of crime victims. While the *Declaration* is a non-binding document, Member States do have a moral obligation to respect the norms set out in it.

2) Give victims enforceable rights. The federal government as well as the provinces have all developed basic principles or rights for victims. For example, Quebec adopted its *Loi sur l'aide aux victimes d'actes criminels* in 1988 and Ontario adopted its Victims Bill of Rights in 1996. Common rights found in these documents include the right to information, restitution, and support. However, across Canada these rights are non-enforceable. In other words, a victim who feels that his/her rights were violated has no recourse. In all provinces, with the exception of Manitoba, there is not even a complaints procedure in place. Failure by a police officer or a Crown prosecutor to respect victims' rights is without consequences. As the Honorable Gerald Day, an Ontario Court judge concluded, "the Legislator did not intend for the Victims Bill of Rights to provide rights to the victims of crime".

To what extent are victims' rights to information, reparation and support respected? According to a 2004 study published by the Department of Justice Canada,

" Victim service providers, advocacy groups, Crown Attorneys, and police who were surveyed generally agreed that victims usually receive adequate information about court

dates, conditions of release and case outcomes. The victims supported this view" (Prairie Research Associates, p. 4)

However, my own research in Québec presents a very different picture. While almost all victims in my study felt that information was VERY important, most victims were dissatisfied with the information that they received (slides 4,5,6,7). Moreover, victim dissatisfaction grew as time progressed and their case proceeded through the criminal justice system. The data show significant decreases in victim satisfaction on numerous measures (Slide 8). (Anyone interested in the report can download it from the ICCJ website / Slide 9)

How can the amazing differences between the Justice study and my own study be explained? Is Québec society so distinct? (Slides 10, 11).

Assuming the Quebec data provide a more accurate representation of victims before the courts, how are victims affected by the failure by authorities to respect victims' rights? Most victims in our study felt left out and forgotten (slide 12). This was reflected in increasing dissatisfaction with authorities (as we have seen) and the system as well as with increased PTSD symptoms and low self-esteem. Secondary victimization due to failure by authorities to recognize the rights of crime victims highlights just why it is important that victims' rights are respected.

How to establish enforceable rights:

Throughout the years various methods to give victims real rights have been proposed. One is to modify the Canadian Charter of Rights and Freedoms to include victims' rights (Slide 13). In the USA a similar effort to modify the constitution to include the rights of victims of violence failed. After years of lobbying, the project was terminated after a water-downed bill was rejected by the US Congress in the spring of 2004. If adopted, the amendment would have given victims the right to go up to the Supreme Court to get their rights enforced.

An alternative approach would be to modify the Criminal Code to include victim rights (Slide 14). This route was followed in 1988 when *victim impact statements* were added to the Criminal

Code. Historically, many continental European criminal justice systems have included procedural rights for victims. For example, the *partie civile*, found in countries such as France, the Netherlands, Belgium and Germany, provides formal rights to crime victims. If these rights are denied, the State can be held accountable and in some cases may be required to compensate the victim. The Canadian Criminal Code contains procedural law pertaining to the treatment of the accused. Thus, the Criminal Code could potentially include procedural law pertaining to the treatment of victims. For example, it could specify when victims should be informed of the status of their case and what kinds of information victims should have a right to. It would subsequently be up to the provinces to decide how to organize these rights but the legal right would be undeniable and thus provide victims with recourse if their rights were denied.

To summarize, there exist a variety of ways in which a federal government that cares about victims could make things better for victims. All of them focus on better serving victims' needs rather than law and order issues (Slide 15). If the government is serious about its commitment to do justice for victims then it should start by promoting services for victims.

CAVA is a national, non-governmental organization, whose purpose is to enhance services and promote justice for all victims. The Association has a key role to play in reminding the federal government of its responsibility to crime victims. With its national network of service providers, CAVA should monitor victim rights across the country. As a national victim advocate, it must be vigilant of false promises for victims and should engage in constructive dialogue with the federal government on how it can effectively meet victims' needs.