MADD Canada Analysis of “Bill C-32: An Act to Enact the Canadian Victims Bill of Rights and to Amend Certain Acts”

INTRODUCTION

The proposed federal Victims Bill of Rights supplements the current provincial and territorial victims’ legislation and the rights granted to victims under the Criminal Code. Consequently, before turning to the new federal legislation, a brief description of the current federal and provincial law is provided.

Most jurisdictions have enacted a “Victims Bill of Rights” or “Victims of Crime Act.” The specifics of the legislation vary significantly from province to province. The legislation may give victims a right to receive general information about the criminal justice system and the victim services that are available in the jurisdiction. Victims may also be given the right to apply for specific information about their respective cases. Many of these “rights” are granted at the discretion of the police, prosecutor and other justice officials. Moreover, the legislation is often framed in terms of how victims should, rather than must, be treated. Consequently, victims may have very limited recourse if their “rights” are violated.

Almost all of the provinces have enacted victims’ compensation legislation of some kind, which provides limited compensation to victims of specified violent crimes. However, the legislation typically excludes victims of impaired driving.

The Criminal Code is the most important federal statute that addresses victims’ rights. Among other things, it imposes a victim surcharge on all offenders. In October, 2013, victim surcharges were doubled to 30% of the fine imposed and made mandatory. If no fine is imposed, the surcharge is $100 for summary conviction offences and $200 for indictable offences. The proceeds are used to fund the provincial victim assistance programs.

The Criminal Code authorizes judges to issue restitution orders requiring offenders to compensate the victim for his or her direct financial losses, arising from the property damage, and psychological and bodily harm caused by the crime. They are further limited to losses incurred prior to trial which are readily ascertainable. Restitution orders are rarely issued in impaired driving cases.
Finally, and perhaps most importantly, the *Criminal Code* gives victims the right to present a victim impact statement prior to the offender’s sentencing. The statement is limited to describing the crime’s physical, emotional and financial impact, and must generally be prepared in writing. The statement must be filed with the court and copies are made available to both the prosecutor and the defence prior to its presentation. The judge must consider the statement, but may impose whatever sentence he or she believes to be appropriate in the circumstances.

**BILL C-32: THE VICTIMS BILL OF RIGHTS**

While the substantive elements of the Bill are relatively straightforward, it includes complex provisions amending the *Criminal Code* and, to a lesser extent, the *Corrections and Conditional Release Act* and *Canada Evidence Act*. The key provisions of the Bill are summarized below.

(a) **Right to Information**

“Building on the existing federal and provincial laws and policies,” the Bill would give victims the right to receive the following information upon request.

(i) General information on: the criminal justice system and the role of victims; available victim services and programs; and their right to make a complaint if their rights have been infringed.

(ii) Case specific information on: the status and outcome of the criminal investigation; and the scheduling, progress and final outcome of the criminal proceedings against the accused. Victims would also be entitled to case specific information about an accused who has been found unfit to stand trial or not criminally responsible by virtue of a mental disorder.

Proposed amendments to the *Criminal Code* would require judges to ask the prosecutor if reasonable steps have been taken to inform the victim in murder or other serious bodily injury cases of any plea agreement. A similar provision would apply to victims of other serious crimes who had requested that they be kept informed. However, neither a judge’s failure to ask the prosecutor, nor a prosecutor’s failure to take reasonable steps to inform the victim, will affect the validity of the plea agreement. The *Criminal Code* amendments would also allow victims to request copies of bail, conditional sentence and probation orders.

Amendments to the *Corrections and Conditional Release Act* would increase the right of “registered” victims to information about the person who harmed them. This would include information about the offender’s status and progress, and related Parole Board decisions. Victims would also be entitled to information about the offender’s release date, destination and parole conditions, unless such disclosures would undermine public safety.
(b) Victim Surcharges

The Bill would amend the *Criminal Code*, requiring offenders to pay the victim surcharges within the time periods set by the province. If no such periods were established, the surcharge would have to be paid within a “reasonable” time.

(b) Restitution Orders

*Criminal Code* amendments would require the courts to consider a restitution order for all offences in which the victim suffered “easy-to-calculate” financial losses, and victims would be allowed to describe these losses at the time of sentencing. The *Criminal Code* would provide a standard form to assist victims in claiming restitution for their losses.

(c) Right to Participation

The Bill would increase the right of victims to convey their views at various stages in the criminal proceedings and to have their views considered. Judges would be required to include in the record of bail proceedings a statement that they had “considered” the safety and security of the victim in reaching their decision. A standard Victim Impact Statement and Community Impact Statement would be provided to assist victims. Victims would be allowed to bring a photograph to court and have a support person close by when presenting their Victim Impact Statement. Victims who were unable to attend a parole hearing would be able to obtain an audio recording of the hearing.

(d) Right to Protection

The Bill better protects the security and privacy interests of victims. For example, the courts would be required to consider the victim’s security in determining whether to grant the accused access to a third party record. The availability of testimonial aids, such as testifying via closed circuit television, would be broadened. The Parole Board would be required to impose non-contact orders and geographical limits on offenders who were subject to a long-term supervision orders in specified circumstances.

(e) Remedies

Victims who believe that their rights have been breached would be able to file a complaint with the appropriate federal department or agency. In turn, these federal bodies would be required to have internal complaint mechanisms that would review complaints, make recommendations to correct infringements and notify victims of the results of the review. Complaints regarding provincial officials, such as prosecutors, the police and victims services staff, would be governed by the relevant provincial legislation. The federal government would provide funding to the provinces to encourage them to establish or strengthen their respective complaint mechanisms.
(f) Limitations

The Bill contains a limitation clause which requires the proposed rights to be applied in a reasonable manner “so they do not interfere with police or prosecutorial discretion, cause excessive delay, compromise an investigation or prosecution, or cause a stay of proceedings.” Moreover, the rights will not be applied so as to interfere with ministerial discretion or the discretion of any person or body that is authorized to release an offender into the community. The Bill does not grant victims or those acting on their behalf the status of a party, intervener or observer in any criminal proceeding. The violation of a victim’s rights under the Bill would not create a cause of action, a right to damages or a right of appeal from any decision or order.

CONCLUSION

The Bill expands the ability of victims to obtain case specific information and will help ensure that their views are sought at various stages in the criminal proceedings. Offenders will be held more financially accountable in terms of victim surcharges and restitution orders. The security and privacy interests of victims will be given greater protection. While an infringement of the Bill will allow victims to register a complaint, it will not invalidate the related criminal proceeding or create a cause of action against the responsible official. The real world impact of the Bill will depend in large measure on the provinces’ commitment to strengthening victims’ rights.