

The Federal Victims Bill of Rights (C-32) – Updated Concerns

Update/Relevancy of Previous Concerns

St. Leonard's Society of Canada (SLSC) submitted to the Justice Department in August 2013 a brief in response to the Discussion Document on *Enhancing Criminal Law Responses to Better Meet the Needs of Victims of Crime in Canada*. As a result of intermediate consultations with many stakeholders, many of the previous proposals that concerned SLSC were not included in the final legislation. This update is in response to the Act as presented in the House of Commons.

- **The definition of a victim.**

The Victim's Bill of Rights (VBR) states that a victim is, "a person whom an offence has been committed, or is alleged to have been committed, who has suffered, or is alleged to have suffered, physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of the offence and includes, for the purposes of Sections 672.5, 722 and 745.63, a person who has suffered physical or emotional harm, property damage or economic loss as the result of the commission of an offence against any other person."¹ This definition is very exclusive and leaves out a variety of people who could also be considered victims. Relatives of accused persons and victims of war (i.e. victims of circumstance) are examples of people who may experience immense pain and yet they will not receive the same rights as victims who qualify under the VBR definition. This is of significant concern.

- **The right to give views on the prosecution, including decisions whether to lay or stay charges, the position of the crown in relation to sentencing, and decisions on whether to appeal.**

The above concern is related to victim impact statements. However, it is important to note that the right to present a victim impact statement already exists in the criminal code (Section 722) and these statements have been used for many years. This right is no longer a concern for SLSC since it was not included in the final Act. Victims do have the right to make a victim impact statement and if the court approves it, they can make recommendations about a sentence.² This right has existed for a number of years and it does not seem to be presenting any issues. As long as victims are not enabled to determine sentencing, the act of making their opinion known is but one of many relevant factors. Sentencing should remain within the court's discretion in order to maintain the neutrality/impartiality of the law.

- **Victims with standing have a right to legal representation to enforce their rights, and resources should be specifically allocated to ensure this.**

No resources are being specifically allocated to this area and there is nothing written in the bill that gives victims with standing the right to legal representation to enforce their rights, therefore this right is no longer a concern.

¹ Bill C-32: An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts. (2014). 1st Reading April 3, 2014, 41st Parliament, 2nd session. Retrieved from:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6510370&Language=E&Mode=1>

² Bill C-32: An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts. (2014).

- **Victims should have a right to restitution from offenders who harm them, and those who have received restitution orders should have the right to enforcement through the courts.**

Although this right is a concern in theory, the ability to make a restitution order already exists in the criminal code (Section 740). The issue is that most people who come into contact with the criminal justice system are already marginalized and may be unable to pay the restitution order. However, it has been demonstrated in the past that judges often choose to not impose restitution when it is patently unrealistic. Since the capacity already exists, it seems unnecessary for it to be included in the Act.

- **Remedies available for victims following a breach of their rights under the Act.**

This right is no longer a concern for SLSC as no new remedies have been provided for victims when a breach occurs. The Act states that all victims have the right to file a complaint for an infringement or denial of any of their rights.³ This is nothing new as there are already federal and provincial complaint mechanisms in place to deal with victims complaints.

- **Economic concerns.**

This aspect of the VBR is still a concern for SLSC. This bill contains a lot of existing laws and there is still questions around whether or not this bill was necessary and where the cost of establishment, implementation, and enforcement are going to come from. It is a concern that resources may be taken from an already strained correctional budget to implement this bill, instead of being put towards availability and quality of victim programs and services which are seriously lacking. It is important to discuss if this bill holds any important progress for victims of crime or if there are better ways to use the limited resources available.

- **Judicial Discretion**

This concern was based on the fact that some parties were calling for the removal of judicial discretion in the consideration of a convicted person's sentence when determining a victim's access to restitution. This is no longer a concern as this was not part of the final Act.

- **Balancing rights**

SLSC understands the need to ensure that one group does not have more rights in comparison to another group. However, it is concerning that resources may be taken away from programs, reintegration strategies, and basic care of incarcerated populations in order to pay for the implementation of this Act. It is important to decide whether this Act is even necessary and if it could potentially upset the balance of rights between victims and accused/convicted persons.

³ Bill C-32: An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts. (2014).

New Concerns That Amend the Criminal Code

- **Community Impact Statement – S. 722.(1)**

This section is concerning as it states that any individual can write an impact statement on the community's behalf.⁴ It is important to discuss the implications of who prepares the community impact statement and if it is reasonable that one person can accurately represent the whole community.

- **Purpose of Sentencing - 718(a)**

The concern in this section is the statement that the fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and maintenance of a just, peaceful and safe society by imposing just sanctions which includes the following objective:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct⁵

This small change to the purpose of sentencing is concerning because of the implication that the fundamental purpose of sentencing is to protect society. This could potentially encourage and legitimize the overuse of incarceration as a sentence – despite its known ineffectiveness for long term protection of society. The second change highlighted above is a concern because denouncing the harm done to victims/the community is unnecessary and could further punish and disadvantage the accused. Denunciation has not been shown to result in decreased levels of criminality nor of recidivism.

The following is a list of rights previously proposed by the government and which SLSC was concerned with in the August 2013 brief, but which are not included in the draft legislation:

- **The right to reasonably confer with the crown regarding pre-disposition**
- **The right to have a decision not to prosecute reviewed**
- **The right to legal counsel**
- **The right to provide input to the plea bargaining process**
- **The right to give opinions on alternative measures and release**
- **The right to discuss release conditions**

Conclusion

SLSC understands that victims and victims' advocacy groups have their own concerns about this Act and acknowledges these concerns. Many of the requests from victim advocacy groups were simply not met with this Act and SLSC believes it is still important to ensure adequate resources are allocated to address the needs and concerns of these groups.

⁴ Bill C-32: An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts. (2014).

⁵ Bill C-32: An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts. (2014).