

VICTIM IMPACT STATEMENTS

**JOHN HOWARD SOCIETY OF ALBERTA
1997**

EXECUTIVE SUMMARY

In recent years, increasing attention has been focussed on the needs and concerns of victims of crime. The Victim Impact Statement (VIS) is one attempt to meet the needs and interests of crime victims. The Victim Impact Statement is a written account by the victim which describes the effect that crime has had upon him/her.

Victim Impact Statements were first introduced in the United States in the mid-1970s. At present, 49 American states have legislation allowing input by victims at sentencing, through Victim Impact Statements and oral testimony.

Canadian legislation concerning Victim Impact Statements was proclaimed in force in October, 1988. Under Section 722 of the Criminal Code, a Victim Impact Statement allows victims to describe in writing the harm done to them or the loss suffered as a result of the crime. The court is now required to take statements into consideration for the purpose of determining sentence (Bill C-41). In December, 1995, Bill C-37 was proclaimed in force, allowing VIS to be presented in youth court. All Victim Impact Statements are to be prepared in accordance with procedures established by the Lieutenant Governor in Council of each province.

In Alberta, information about the Victim Impact Statement program is provided to victims of crime by police services and victim assistance programs. In 1996, over 6,400 victims of crime were provided with information about the Victim Impact Statement program (Victims' Programs Assistance Committee, 1997, p. 11). Of these informed victims, 947 chose to complete a statement; 917 of these statements were subsequently filed with the court (Victims' Programs Assistance Committee, 1997, p. 11).

Much of the controversy surrounding the Victim Impact Statement centres on its appropriateness in the criminal justice system. Proponents argue that Victim Impact Statements help prosecutors and judges experience the real impact of crime and often result in sentences which better reflect the harm caused to the victim. However, opponents of Victim Impact Statements argue that their use does little to further the traditional goals of sentencing: deterrence, incapacitation, rehabilitation and retribution. Opponents of Victim Impact Statements also argue that their use makes sentencing an arbitrary process, shifting the focus from the offender to the victim. The use of Victim Impact Statements also creates classes of victims, leading to stiffer sanctions for those who offend against particularly eloquent, loved or upper class victims.

Research into the impact of Victim Impact Statements on sentencing has yielded mixed findings. However, given that the completion of a Victim Impact Statement tends to raise victims' expectations about their ability to influence sentencing which may not be met, VIS programs may actually negatively affect some victims' satisfaction with the justice process.

Victim Impact Statements are believed to be of therapeutic value to victims. Victims' advocates have long argued that the VIS would make the criminal justice system more accountable to victims. However, research has found that completion of a statement does not necessarily result in greater victim satisfaction with the criminal justice system. Ultimately, Victim Impact Statement programs

may not address the true needs of victims. Many victims choose not to complete Victim Impact Statements. In Alberta, less than 15% of informed victims choose to complete a Victim Impact Statement. Similarly, in the United States, “less than 18 percent of victims or families attend sentencing, only 15 percent submit written statements, and only 9 percent present oral statements where permitted” (Finn-DeLuca, 1994, p. 423; McLeod, 1987, cited in Ashworth, 1993). Thus, it may be more appropriate and effective to introduce measures designed to provide information to victims and increase their understanding of the criminal justice process.

The John Howard Society of Alberta believes that Victim Impact Statements are not the best means to involve victims in the process or to meet their needs. We must continue to look for alternative methods for meeting victims’ needs.

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	1
VICTIM IMPACT STATEMENTS IN CANADA	1
ISSUES SURROUNDING VICTIM IMPACT STATEMENTS	2
Appropriateness	2
Impact on Sentencing	3
Victim Satisfaction	3
DISCUSSION	4
REFERENCES	6

INTRODUCTION

In recent years, increasing attention has been focused on the needs and concerns of victims of crime. The Victim Impact Statement (VIS) is one attempt to meet the needs and interests of crime victims. The Victim Impact Statement is a written account by the victim which describes the effect that crime has had upon him/her. This paper discusses the history and evolution of the use of Victim Impact Statements in North America. Issues surrounding the use of Victim Impact Statements is discussed. The paper concludes with a discussion of the effectiveness of Victim Impact Statements in meeting the needs of victims of crime.

BACKGROUND

Victim participation in the criminal justice system has been the subject of much discussion and debate in recent years. In the past, the sentencing process of the criminal trial afforded little opportunity for the victim's views to be made known. As a result, crime victims have often felt abandoned by the very agencies from which they expect support, compassion and assistance (Dugger, 1996; Finn-DeLuca, 1994; Daubney, 1988).

By virtue of their victimization, crime victims set the judicial process in motion, but have no further role to play unless the prosecutor calls them as a witness for the state. The victim seems forgotten by the police who are concerned with apprehending and charging the offender, by the prosecutor who is concerned with representing the state, by defence counsel who is concerned with due process for the offender and by corrections personnel who are concerned with custody, supervision and rehabilitation of the offender.

The Victim Impact Statement is one attempt in recent years to meet the needs and interests of crime victims. Victim Impact Statements were first introduced in the United States in the mid-1970s. They provide a written account of the damages caused by the offender, whether those be medical, financial or emotional. Originally, the statement was prepared by a probation officer; however, most jurisdictions now permit the statement to be prepared by the victim. In addition, in the case of deceased, incapacitated or young victims, impact statements from family, friends or legal professionals are allowed in 98% of jurisdictions (Finn-DeLuca, 1994). At present, 49 American states have legislation allowing input by victims at sentencing, through Victim Impact Statements and oral testimony (Mulholland, 1995; Black, 1994).

VICTIM IMPACT STATEMENTS IN CANADA

Canadian legislation concerning Victim Impact Statements was proclaimed in force in October, 1988. Under Section 722 of the Criminal Code, a Victim Impact Statement allows victims to describe in writing the harm done to them or the loss suffered as a result of the crime. Originally, the statement could be *considered* by the court for the purpose of determining sentence; the court was not *required*

to do so. Bill C-41 was proclaimed in force in September, 1996, requiring Victim Impact Statements to be considered by the court in sentencing. Initially, Victim Impact Statements were not admissible in youth court. In December, 1995, Bill C-37 was proclaimed in force, allowing VIS to be presented in youth court. All Victim Impact Statements are to be prepared in accordance with procedures established by the Lieutenant Governor in Council of each province.

In Alberta, information about the Victim Impact Statement program is provided to victims of crime by police services and victim assistance programs. "The Victim Impact Statement program provides victims in Alberta an opportunity to have input into sentencing by describing in writing to the courts how they have been affected by the crime" (Victims' Programs Assistance Committee, 1997, p. 11). Victim Impact Statements are to be completed on the form prepared by Alberta Justice (See Appendix A for a sample form). In 1996, over 6,400 victims of crime were provided with information about the Victim Impact Statement program (Victims' Programs Assistance Committee, 1997, p. 11). Of these informed victims, 947 chose to complete a statement; 917 of these statements were subsequently filed with the court (Victims' Programs Assistance Committee, 1997, p. 11). The 30 completed statements not filed with the court were cases in which charges were dropped (Personal communication, Edmonton Victims' Assistance Program staff member, July, 1997).

ISSUES SURROUNDING VICTIM IMPACT STATEMENTS

Appropriateness

Much of the controversy surrounding the Victim Impact Statement centres on its appropriateness in the criminal justice system. Those in support of the VIS point out that it gives victims an opportunity to tell the court directly about the harm done by the crime, to ask for restitution and to express concerns about the release of offenders (Daubney, 1988). The Victim Impact Statement is also viewed as a sensible and useful way of ensuring that prosecutors and judges have all the relevant information available to them (Solicitor General, 1987). Proponents also argue that properly prepared and presented statements help prosecutors and judges experience the real impact of crime and often result in sentences which better reflect the harm caused to the victim (Mulholland, 1995; Wells, 1991).

However, opponents point out that the use of a Victim Impact Statement does little to further the traditional goals of sentencing: deterrence, incapacitation, rehabilitation and retribution (Dugger, 1996; Black, 1994). In short:

Victim impact evidence is simply not consistent with the traditional goals of sentencing. It furthers none of the historically considered ambitions of punishment. The best that can be said for victim impact evidence is that it is somewhat conducive to the retribution goal. (Dugger, 1996, p. 403)

Opponents of Victim Impact Statements also argue that their use makes sentencing an arbitrary process, shifting the focus from the offender to the victim (Mulholland, 1995). The use of Victim Impact Statements also creates classes of victims, leading to stiffer sanctions for those who offend against particularly eloquent, loved or upper class victims (Abramovsky, 1992; Dugger, 1996; McCarthy, 1994; Mulholland, 1995; Vital, 1994). "VIS's potentially create a situation in which sentencing length may be determined by the eloquence and social standing of the victim rather than the severity of the offense and the specific underlying facts of the crime" (Abramovsky, 1992, pp. 21-22). A proposed solution to the legal problems associated with Victim Impact Statements is to allow a VIS to be presented at the time of sentencing:

If victim impact statements are read after the sentencing stage of the trial, both defendants' and victims' rights remain intact. Accordingly, the risk of arbitrary sentencing would be eliminated, and victims would still be a part of the criminal proceedings by having voiced their feelings to the defendant, the court and the public. Victim impact statements should be a part of the defendant's sentence, not a factor in deciding an appropriate sentence. (Mulholland, 1995, p. 747)

Impact on Sentencing

Some research has been conducted regarding the influence that Victim Impact Statements have on sentencing. Research has shown that some victims expect that a Victim Impact Statement will impact sentencing (Hinton, 1995; Erez & Tontodonato, 1992). An American study which surveyed judges found that "some four-fifths stated that a VIS had some effect on the sentence, and that what they found most useful was objective information on financial loss, physical harm and psychological effects" (Hillenbrand & Smith, 1989, as cited in Ashworth, 1993, p. 502). However, an evaluation of VIS conducted in South Australia found no change in sentencing patterns after the introduction of Victim Impact Statements (Hinton, 1995). This same study found that 34% of victims who prepared a Victim Impact Statement felt that their statement did not have the impact on sentencing that they had expected. Given that the completion of a Victim Impact Statement tends to raise victims' expectations about their ability to influence sentencing which may not be met, VIS programs may actually negatively affect some victims' satisfaction with the justice process (Hinton, 1995; Erez & Tontodonato, 1992).

Victim Satisfaction

Victim Impact Statements are believed to be of therapeutic value to victims. Wells (1991) believes that the greatest benefit of the statement is that it promotes the psychological recovery of victims. Talking and writing about the impact of the crime is proving to be helpful to victims (Hinton, 1995; Wells, 1991). An evaluation of Victim Impact Statement demonstration projects in six Canadian cities found that an overwhelming majority of the victims found the experience of completing the statements to be positive and would participate again (Giliberti, 1990).

Victims' advocates have long argued that the VIS would make the criminal justice system more accountable to victims. Involving victims in the judicial process helps reduce their feelings of estrangement and powerlessness before a seemingly insensitive system. VIS programs which allow victims a role in sentencing may give victims a sense of dignity (Mulholland, 1995).

However, opponents of Victim Impact Statements point out that evidence regarding VIS impact on victims' satisfaction with the justice process is inconclusive (Finn-DeLuca, 1994; Corns, 1994). As Finn-DeLuca (1994, p. 424) points out:

Proponents of victim participation may be dismayed to learn that court attendance, in and of itself, seems to improve victim evaluation of sentencing decisions as much as direct involvement with the prosecutor, police and defense counsel, if not more so.

Similarly, an evaluation of Canadian Victim Impact Statement demonstration projects found that completion of a statement does not necessarily result in greater victim satisfaction with the system (Giliberti, 1990). In itself, completing a statement does not make a victim feel better about the handling of their case by the system. Victims want to be informed about the progress of their case and the operation of the criminal justice system. In fact, Victim Impact Statements may actually result in victims being *less* satisfied with the justice process, "because they give victims in general a belief that their views will influence sentencing practices" which may not be the case (Corns, 1994, p. 1055; Ashworth, 1993).

Ultimately, Victim Impact Statement programs may not address the true needs of victims (Finn-DeLuca, 1994; Ashworth, 1993). Many victims choose not to complete Victim Impact Statements. In Alberta, less than 15% of informed victims choose to complete a Victim Impact Statement (Victims' Programs Assistance Committee, 1997). Similarly, in the United States, "less than 18 percent of victims or families attend sentencing, only 15 percent submit written statements, and only 9 percent present oral statements where permitted" (Finn-DeLuca, 1994, p. 423; McLeod, 1987, cited in Ashworth, 1993). Thus, it may be more appropriate and effective to introduce measures designed to provide information to victims and increase their understanding of the criminal justice process (Finn-DeLuca, 1994).

DISCUSSION

The John Howard Society believes that all crime results in harm to both individuals and communities. All victims have needs and aspirations and all too often these needs are left unmet and these aspirations are shattered in the aftermath of crime. Victims of crime must be able to access the services and information they need to carry on with peace of mind. The John Howard Society believes that services to victims are essential and urgent. However, we believe that such services should be located outside of the provisions of the Criminal Code and related legislation.

The structure of the Canadian criminal justice process is such that crime is seen as an offence against the state. Within this framework, offenders are sentenced somewhat objectively according to the harm caused to society. There is clearly a need to involve victims and communities in this process. The Society feels that Victim Impact Statements are not the best means for doing this. Victim Impact Statements are likely to contain emotionally charged issues which may not be suited to the objectivity and rationality of the current system. We need to search for alternative methods of recognizing the harm to victims and communities and to facilitate reparation of this harm.

The goal of increased victim participation in the criminal justice process is worthy and is one which should be pursued further. The harm caused by crime should not be ignored. Victims of crime have legitimate needs arising from the harm caused to them; as a society, we need to recognize and meet those needs. The John Howard Society of Alberta believes that Victim Impact Statements are not the best means to involve victims in the process or to meet their needs. We must continue to look for alternative methods for meeting victims' needs.

REFERENCES

- Abramovsky, A. (1992). Victim impact statements: Adversely impacting upon judicial fairness. St. John's Journal of Legal Commentary, 21-33.
- Ashworth, A. (1993). Victim impact statements and sentencing. Criminal Law Review, 498-509.
- Black, R. (1994). Forgotten penological purposes: A critique of victim participation in sentencing. American Journal of Jurisprudence, 225-240.
- Corns, C. (1994, November). The Sentencing (Victim Impact Statement) Act 1994. Law Institute Journal, 68, 1054-1055.
- Daubney, D. (1988). Taking responsibility - Report of the standing committee on justice and Solicitor General on its review of sentencing, conditional release and related aspects of corrections. Ottawa: Ministry of Supply and Services.
- Dugger, A. (1996). Victim impact evidence in capital sentencing: A history of incompatibility. American Journal of Criminal Law, 23, 375-404.
- Erez, E., & Tontodonato, P. (1992). Victim participation in sentencing and satisfaction with justice. Justice Quarterly, 9(3), 393-417.
- Finn-DeLuca, V. (1994). Victim participation at sentencing. Criminal Law Bulletin, 403-428.
- Giliberti, C. (1990, November). Study probes effectiveness of victim impact statements. Justice Research Notes No. 1.
- Hinton, M. (1995). Expectations dashed: Victim impact statements and the common law approach to sentencing in South Australia. University of Tasmania Law Review, 81-99.
- McCarthy, T. (1994, November). A just process for victims? Law Institute Journal, 68, 1056-1057.
- Mulholland, C. (1995). Sentencing criminals: The constitutionality of victim impact statements. Missouri Law Review, 60, 731-748.
- Solicitor General. (1987, October). Victims and corrections: Working paper No. 4. Canada: Correctional Law Review.
- Victims' Programs Assistance Committee. (1997). Annual Report 1996-97. Edmonton: Alberta Justice.

Vital, V. (1994). Payne v. Tennessee: The use of victim impact evidence at capital sentencing trials. Thurgood Marshall Law Review, 497-534.

Wells, R. (1991, February). Victim impact: How much consideration is it really given? The Police Chief.

APPENDIX A