

Table of Contents

<i>Statement of Currency</i>	i
<i>Dedication</i>	iii
<i>Prologue</i>	xxiii

Part I INTRODUCTION

<i>Chapter 1</i> Introduction	1
1. What is Victim Law?	4
2. Milestones in the Modern Development of Victim Law.....	11
3. Constitutional Division of Powers and Victim Law.....	13
4. <i>Canadian Charter of Rights and Freedoms</i> and Victim Law	14
5. Overview.....	18
6. Conclusion	20

Part II FEDERAL VICTIM LAW

<i>Chapter 2</i> <i>Canadian Victims Bill of Rights</i>	23
1. Legislative History of the <i>Canadian Victims</i> <i>Bill of Rights</i>	24
2. Guiding Principles, Definitions and Applicability.....	26
2.1. Preamble	26
2.2. Definition of “victim” in <i>Canadian</i> <i>Victims Bill of Rights</i>	27
2.3. Applicability	29
3. Interpretative Guidance and Primacy over General Legislation	30
3.1. Interpretation guidance	31
3.2. Quasi-constitutional status.....	31
4. Right to Information	33
5. Right to Protection	34

6.	Right to Participation	35
7.	Right to Restitution	38
8.	Remedies for Victims	38
8.1.	Federal administrative complaint process ...	39
8.2.	Provincial/territorial administrative complaint process	41
8.3.	Unpaid restitution orders as civil judgments	41
8.4.	Judicial review in the Federal Court	41
8.5.	Implementation of victims' rights by justice system participants	42
9.	Methodology for Assessing Rights under the <i>Canadian Victims Bill of Rights</i>	44
10.	Early Judicial Treatment of the <i>Canadian Victims Bill of Rights</i>	42
11.	Conclusion	47
<i>Chapter 3</i>	Criminal Justice and Victims	49
1.	Guiding Principles and Approaches	49
2.	Definition of "Victim" in the <i>Criminal Code</i> ...	53
3.	Conclusion	59
<i>Chapter 4</i>	Pre-Trial and Victims	61
1.	Information for Victims	62
1.1.	Judicial interim release (bail)	62
1.2.	Plea agreements	63
2.	Protection for Victims	64
2.1.	Immediate interception of private communications	64
2.2.	Release from custody or detention in custody	64
2.3.	Judicial interim release (bail)	66
2.4.	Security of witnesses	70
2.5.	Restrictions on production of complainant records	70
2.6.	Peace bonds	75
3.	Participation of Victims	77
3.1.	Alternative measures	77
3.2.	Plea agreements	78
4.	Restitution and Compensation for Victims	80

5. Conclusion	80
<i>Chapter 5</i> Criminal Trials and Victims	83
1. Information for Victims	84
2. Protection for Victims	84
2.1. Non-disclosure of witness' identity	84
2.2. Publication bans	85
2.3. "Rape shield" provisions in sexual offence cases	94
3. Participation of Victims in Criminal Trials	97
3.1. Competence to testify	98
3.1.1. Persons under fourteen years of age	98
3.1.2. Persons over fourteen years of age whose mental capacity is challenged	102
3.2. Testimonial aids	106
3.2.1. Exclusion of public from court proceedings or testifying behind a screen	107
3.2.2. Support person and support animals for witnesses	110
3.2.3. Testimony outside courtroom by closed-circuit television or behind a screen	113
3.2.4. Videotaped evidence	117
3.2.5. Accused not to cross-examine	125
3.3. Testifying with face covered based on sincerely held religious belief	128
4. Restitution and Compensation for Victims	129
5. Conclusion	129
<i>Chapter 6</i> Sentencing and Victims	131
1. Sentencing Purposes, Aggravating Circum- stances and Victims	132
1.1. Sentencing purposes	132
1.2. Aggravating circumstances	135
2. Information for Victims	135
2.1. Sentencing orders	136
2.2. "Faint hope clause" proceedings	136

2.3.	Not criminally responsible on account of mental disorder and unfit to stand trial	136
3.	Protection for Victims	137
3.1.	Peace bonds	137
3.2.	Prohibition orders for child sexual offences	138
3.3.	Non-communication orders as part of sentencing	138
3.4.	Dispositions for accused found not criminally responsible on account of mental disorder or unfit to stand trial	140
4.	Participation of Victims	140
4.1.	Victim impact statements	141
4.1.1.	Legislative history of victim impact statements	142
4.1.2.	Who can file a victim impact statement?	146
4.1.3.	Substantive aspects of victim impact statements	147
4.1.4.	Procedural aspects of victim impact statements	158
4.1.5.	Cross-examination of a victim on a victim impact statement	160
4.1.6.	Absence of a victim impact statement	161
4.1.7.	Empirical studies on victim impact statements	163
4.2.	Community impact statements	166
4.3.	<i>Gladue</i> reports and victims	169
4.4.	Sentencing circles	169
4.5.	Court-supervised programs	173
4.6.	Disposition hearings for accused found not criminally responsible on account of mental disorder or unfit to stand trial	173
4.7.	Dangerous offender applications	174
4.8.	Appeals	174
4.9.	“Faint hope clause” proceedings	174
5.	Restitution and Compensation for Victims	175
5.1.	Restitution	175

5.1.1.	Restitution orders as part of a sentence	177
5.1.2.	Opportunity for victims to seek restitution	180
5.1.3.	Court to consider restitution order in every case	181
5.1.4.	Losses and damages eligible for restitution	183
5.1.5.	Ability of offender to pay restitution	184
5.1.6.	Priority to restitution	184
5.1.7.	Enforcement of restitution orders	184
5.1.8.	Summary of statutory requirements for restitution	186
5.2.	Compensation for victims of terrorist activities	186
5.3.	Victim surcharge	187
6.	Conclusion	187
<i>Chapter 7</i>	Federal Corrections Law and Victims	191
1.	Background	191
2.	Principles and Definitions	193
3.	Information for Victims	194
3.1.	Institutional and community corrections	194
3.2.	Conditional release, detention and long-term supervision	195
4.	Protection for Victims	197
5.	Participation of Victims in Federal Corrections Processes	197
5.1.	Institutional and community corrections	198
5.2.	Conditional release, detention and long-term supervision	198
6.	Restitution for Victims	199
7.	Remedies for Victims	200
8.	Conclusion	200
<i>Chapter 8</i>	Youth Criminal Justice and Victims	203
1.	Guiding Principles and Approaches	204
1.1.	Preamble	204
1.2.	Declaration of Principle	205

1.3.	Definition of “victim”	206
1.4.	Extrajudicial measures	206
2.	Information for Victims	207
3.	Protection for Victims	208
3.1.	Detention of young person before sentencing	208
3.2.	Statutory publication bans on children or young persons who are victims	208
3.3.	Exclusion from hearing	211
4.	Participation of Victims in the Youth Criminal Justice Process	212
4.1.	Youth justice committees	213
4.2.	Conferencing	213
4.3.	Extrajudicial measures	214
4.4.	Sentencing	215
4.5.	Community-based programs	218
5.	Restitution and Reparations for Victims	218
6.	Remedies for Victims	218
7.	Conclusion	219

Part III PROVINCIAL VICTIM LAW

<i>Chapter 9</i>	British Columbia	223
1.	Guiding Principles and Approaches	224
2.	Information for Victims	226
3.	Protection for Victims	227
3.1.	<i>Victims of Crime Act</i>	227
3.2.	Protection orders under the <i>Family Law Act</i>	227
3.3.	Privacy for victims	231
4.	Participation of Victims in the Criminal Justice Process and Restorative Justice	233
5.	Compensation and Restitution for Victims	235
5.1.	<i>Crime Victims Assistance Act</i>	235
5.2.	<i>Civil Forfeiture Act</i>	239
6.	Remedies for Victims	239
7.	Victim Services	240
8.	Vulnerable Victims	242
8.1.	Missing and murdered Aboriginal women	242

8.2. Domestic violence	243
9. Conclusion	244
<i>Chapter 10 Alberta</i>	247
1. Guiding Principles and Approaches	248
1.1. Principles for the treatment of victims	248
1.2. Role of the Director under the <i>Victims of Crime Act</i>	250
2. Information for Victims	251
2.1. <i>Victims of Crime Act</i>	251
2.2. <i>Freedom of Information and Protection of Privacy Act</i>	251
2.3. <i>Corrections Act</i>	252
3. Protection for Victims	253
3.1. <i>Victims of Crime Act</i>	253
3.2. Emergency protection orders and protection orders under the <i>Protection Against Family Violence Act</i>	253
4. Participation of Victims in the Criminal Justice Process and Restorative Justice	255
5. Compensation and Restitution for Victims	255
5.1. Financial benefits	255
5.1.1. Definition of “victim” for financial benefits	256
5.1.2. Eligibility requirements for financial benefits	257
5.2. Death benefits	258
5.3. Limitations periods for financial and death benefits	259
5.4. Reduction of amount or dismissal of a financial or death benefits application	261
5.5. Review of a financial or death benefits decision by the Review Board	264
5.6. Appeal of a Review Board decision on financial or death benefits	265
5.7. Judicial review of a Review Board decision or Chair’s decision on financial or death benefits	265
5.8. Restitution under the <i>Victims Restitution and Compensation Payment Act</i>	266
6. Remedies for Victims	266

7. Victim Services.....	267
8. Conclusion	269
Chapter 11 Saskatchewan	271
1. Guiding Principles and Approaches	272
2. Information for Victims.....	273
2.1. <i>The Victims of Crime Act, 1995</i>	273
2.2. <i>The Mandatory Testing and Disclosure (Bodily Substances) Act</i>	273
3. Protection for Victims.....	275
3.1. <i>The Victims of Crime Act, 1995</i>	275
3.2. <i>The Victims of Interpersonal Violence Act</i>	275
3.2.1. Emergency intervention orders.....	277
3.2.2. Victims' assistance orders	279
3.3. <i>The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act</i>	280
3.4. <i>The Public Guardian and Trustee Act</i> ...	281
3.5. Privacy of victims.....	281
4. Participation of Victims in the Criminal Justice Process and Restorative Justice.....	282
4.1. Alternative measures and extrajudicial sanctions	282
4.2. Victim representatives and surrogate victims.....	283
4.3. <i>The Correctional Services Act, 2012</i>	284
5. Compensation and Restitution for Victims	284
5.1. Victims and dependants	284
5.2. Secondary victims	285
5.3. Grounds for denying or reducing compensation.....	286
5.4. Reconsideration and appeals.....	286
5.5. Preventing double-recovery.....	287
6. Remedies for Victims	287
7. Victims' Fund.....	287
8. Conclusion	289
Chapter 12 Manitoba	291
1. Guiding Principles and Approaches	292

2.	Information for Victims	293
3.	Protection for Victims	295
3.1.	<i>The Victims' Bill of Rights</i>	295
3.2.	<i>The Domestic Violence and Stalking Act</i>	295
3.2.1.	Protection orders	296
3.2.2.	Prevention orders	298
3.2.3.	Reviews and appeals	299
3.2.4.	Constitutional considerations	299
3.3.	<i>The Child Sexual Exploitation and Human Trafficking Act</i>	300
4.	Participation of Victims in the Criminal Justice Process and Restorative Justice	301
4.1.	Criminal justice process	301
4.2.	Restorative justice	303
5.	Compensation and Restitution for Victims	304
5.1.	Compensation for victims	304
5.2.	Refusal or reduction of compensation	306
5.3.	Compensation for witnesses	307
5.4.	Limitation period	307
5.5.	Reconsideration	308
5.6.	Compensation limitations	308
5.7.	<i>The Justice for Victims of Child Pornography Act</i>	309
5.8.	Restitution	309
5.9.	<i>The Criminal Property Forfeiture Act</i>	310
5.10.	Torts	310
6.	Remedies for Victims	310
7.	Victim Services	311
7.1.	Child Victim Support Service	311
7.1.	Cellphone Emergency Limited Link-up Program	312
7.3.	Domestic Violence Support Service	312
7.4.	Victim Rights Support Service	312
7.5.	Victim Witness Assistance Program	313
8.	Conclusion	313
	<i>Chapter 13 Ontario</i>	315
1.	Guiding Principles and Approaches	316
1.1.	Definition of "victim"	316
1.2.	Principles for the treatment of victims	317

1.3.	Office for Victims of Crime	318
2.	Information for Victims.	319
2.1.	<i>Victims' Bill of Rights, 1995</i>	319
2.2.	<i>Ministry of Correctional Services Act</i> . . .	320
2.3.	<i>Police Services Act</i>	321
2.4.	<i>Mandatory Blood Testing Act, 2006</i>	321
3.	Protection for Victims	321
3.1.	Orders for exclusive possession of family home under the <i>Family Law Act</i>	322
3.2.	Restraining orders under the <i>Family Law Act</i>	324
4.	Participation of Victims in the Criminal Justice Process and Restorative Justice	326
5.	Compensation for Victims.	326
5.1.	<i>Compensation for Victims of Crime Act</i>	326
5.1.1.	Compensation awards.	327
5.1.2.	Time limitations	331
5.1.3.	Variation of award by the Board and appeals to Divisional Court	332
5.1.4.	Privacy in compensation hear- ings.	333
5.1.5.	Victim compensation and civil proceedings	333
5.2.	<i>Prohibiting Profiting from Recounting Crimes Act, 2002</i>	334
6.	Remedies for Victims	334
7.	Victim Services.	335
8.	Conclusion	336
 <i>Chapter 14 Québec</i>		339
1.	Guiding Principles and Approaches	340
1.1.	<i>An Act respecting assistance for victims of crime</i>	340
1.2.	Definition of "victim"	341
1.3.	Crime Victims Assistance Office	341
1.4.	<i>Police Act</i>	342
2.	Information for Victims.	342

2.1.	<i>An Act respecting assistance for victims of crime</i>	342
2.2.	<i>An Act respecting the Québec correctional system.</i>	342
3.	Protection for Victims	344
3.1.	<i>An Act respecting assistance for victims of crime</i>	344
3.2.	<i>An Act respecting access to documents held by public bodies and the protection of personal information</i>	344
4.	Participation of Victims in the Criminal Justice Process and Restorative Justice	346
4.1.	Victim participation in criminal proceedings	346
4.2.	Victim participation in corrections decisions	347
4.3.	Victim participation in restorative justice programs	347
5.	Compensation and Restitution for Victims	347
5.1.	<i>An Act respecting assistance for victims of crime</i>	347
5.2.	<i>Crime Victims Compensation Act</i>	347
5.2.1.	Compensation eligibility.	348
5.2.2.	Limitation period	350
5.2.3.	Applications for compensation	350
5.2.4.	Compensation awards.	351
5.2.5.	Review, reconsideration, appeal and judicial review	352
5.2.6.	Compensation and civil proceedings	352
5.3.	<i>An Act respecting the forfeiture, administration and appropriation of proceeds and instruments of unlawful activity</i>	353
6.	Remedies for Victims	353
7.	Victim Services	353
7.1.	Crime Victims Assistance Fund	354
7.2.	Crime Victims Assistance Centres	354
7.3.	Centers for Relief of Sexual Assaults	355
8.	Vulnerable Victims	355
9.	Conclusion	356

<i>Chapter 15</i> Nova Scotia	359
1. Guiding Principles and Approaches	360
1.1. Definition of “victim”	360
1.2. Victims’ rights	361
1.3. Director of Victim Services and Advisory Committee	362
1.4. Victims’ Assistance Fund	362
1.5. Forfeiture Account	363
2. Information for Victims	363
2.1. <i>Victims’ Rights and Services Act</i>	363
2.2. <i>Correctional Services Act</i>	364
2.3. <i>Youth Justice Act</i>	364
2.4. <i>Mandatory Testing and Disclosure Act</i>	365
3. Protection for Victims	365
2.1. <i>Domestic Violence Intervention Act</i>	365
3.2. <i>Residential Tenancies Act</i>	369
3.3. <i>Youth Justice Act</i>	369
4. Participation of Victims in the Criminal Justice Process and Restorative Justice	370
5. Compensation and Restitution for Victims	371
5.1. Compensation under the <i>Victims’ Rights and Services Act</i>	371
5.2. Restitution	376
6. Remedies for Victims	376
7. Victim Services	377
8. Vulnerable Victims	377
8.1. Domestic violence	377
8.2. Cyber bullying and the <i>Cyber-safety Act</i>	377
9. Conclusion	378
 <i>Chapter 16</i> New Brunswick	 381
1. Guiding Principles and Approaches	382
1.1. Declaration of Principles	382
1.2. Definitions	383
2. Information for Victims	384
3. Protection for Victims	385
3.1. Protection services for abused adults under the <i>Family Services Act</i>	386

3.2. Protection services for abused and at-risk children under the <i>Family Services Act</i>	387
4. Participation of Victims in the Criminal Justice Process and Restorative Justice	388
5. Compensation and Restitution for Victims	388
5.1. Compensation from the Victims Services Fund	389
5.2. Restitution from the Proceeds of Crime Trust Fund	390
6. Remedies for Victims	391
7. Victim Services	391
8. Conclusion	392
 <i>Chapter 17 Prince Edward Island</i>	 393
1. Guiding Principles and Approaches	394
1.1. Definition of “victim”	394
1.2. Statement of principles	395
1.3. Victim Services Advisory Committee	395
1.4. Annual reports	397
2. Information for Victims	397
3. Protection for Victims	397
3.1. <i>Victims of Family Violence Act</i>	397
3.1.1. Emergency protection orders	399
3.1.2. Victim assistance orders	403
3.2. <i>Adult Protection Act</i>	403
3.3. Privacy	405
4. Participation of Victims in the Criminal Justice Process	406
5. Compensation and Restitution for Victims	406
6. Remedies for Victims	410
7. Victim Services	410
8. Vulnerable Victims	411
9. Conclusion	412
 <i>Chapter 18 Newfoundland & Labrador</i>	 415
1. Guiding Principles and Approach	416
2. Information for Victims	417
2.1. <i>Victims of Crime Services Act</i>	417

2.2.	<i>Correctional Services Act</i>	418
3.	Protection for Victims	419
3.1.	<i>Victims of Crime Services Act</i>	419
3.2.	Privacy of victim services records.	419
3.3.	Emergency protection orders under the <i>Family Violence Protection Act</i>	420
4.	Participation of Victims in the Criminal Justice Process	423
5.	Compensation and Restitution for Victims	424
6.	Remedies for Victims	424
7.	Victim Services.	425
8.	Vulnerable Victims	426
9.	Conclusion	427

Part IV TERRITORIAL VICTIM LAW

<i>Chapter 19</i>	Yukon	429
1.	Guiding Principles and Approach	430
1.1.	Definition of “victim”	430
1.2.	Victims’ Bill of Rights	431
1.3.	Role of the Director of Victim Services	432
1.4.	Yukon Victims of Crime Strategy.	432
2.	Information for Victims.	433
3.	Protection for Victims	434
3.1.	<i>Victims of Crime Act</i>	434
3.2.	<i>Family Violence Prevention Act</i>	434
3.2.1.	Emergency intervention order.	435
3.2.2.	Victim’s assistance order	437
3.3.	Domestic Violence Treatment Option Court.	439
3.4.	Privacy for victims	439
4.	Participation of Victims in the Criminal Justice Process and Restorative Justice	440
4.1.	<i>Victims of Crime Act</i>	440
4.2.	Judicial recognition of the importance of victim participation	441
4.3.	Restorative justice	442
5.	Compensation and Restitution for Victims	443
5.1.	Victims of Crime Emergency Fund.	443
5.2.	Corrections Revolving Fund	444

5.3. Return of property to victim	444
5.4. Restitution from offenders	445
6. Remedies for Victims	445
7. Victim Services	446
8. Vulnerable Victims	447
9. Conclusion	448
<i>Chapter 20 Northwest Territories</i>	451
1. Guiding Principles and Approaches	452
1.1. Definition of “victim”	452
1.2. Mandate of the Victims Assistance Committee and Victims Assistance Fund	453
2. Information for Victims	453
2.1. <i>Victims of Crime Act</i>	454
2.2. Victim Notification Program	454
2.3. <i>Access to Information and Protection of Privacy Act</i>	455
2.4. <i>Youth Justice Act</i>	455
3. Protection for Victims	455
3.1. <i>Victims of Crime Act</i>	455
3.2. <i>Protection Against Family Violence Act</i>	456
3.2.1. Emergency protection order	457
3.2.2. Protection order	459
3.2.3. Reviews, appeals, confidentiality, tenancy relief and enforcement	460
3.3. Privacy for victims	460
4. Participation of Victims in the Criminal Justice Process and Restorative Justice	461
5. Compensation for Victims	461
6. Remedies for Victims	462
7. Victim Services	462
8. Vulnerable Victims	463
9. Conclusion	464
<i>Chapter 21 Nunavut</i>	467
1. Guiding Principles and Approaches	469
1.1. Definition of “victim”	469

1.2. Mandate of the Victims Assistance Committee and Victims Assistance Fund	469
2. Information for Victims	470
2.1. <i>Victims of Crime Act</i>	470
2.2. <i>Access to Information and Protection of Privacy Act</i>	470
3. Protection for Victims	471
3.1. <i>Victims of Crime Act</i>	471
3.2. <i>Family Abuse Intervention Act</i>	471
3.2.1. Emergency protection order	473
3.2.2. Assistance order	475
3.2.3. Community intervention order	476
3.3. Privacy for victims	477
4. Participation of Victims in the Criminal Justice Process and Restorative Justice	478
5. Compensation and Restitution for Victims	479
5.1. <i>Victims of Crime Act</i>	479
5.2. Compensation orders under the <i>Family Abuse Intervention Act</i>	479
5.3. Tort of stalking under the <i>Family Abuse Intervention Act</i>	480
6. Remedies for Victims	480
7. Victim Services	480
8. Vulnerable Victims	481
9. Conclusion	482

Part V CONCLUSION

<i>Chapter 22</i> Conclusion	485
1. Pillars of Victim Law	486
2. Strengths and Areas for Improvement in Victim Law	489
3. Limitations of Research	494
4. Areas for Future Research	494
5. Conclusion	496

APPENDICES

<i>Appendix A - United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)</i>	499
<i>Appendix B - Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003</i>	507
<i>Appendix C - Canadian Victims Bill of Rights (2015)</i>	509
<i>Appendix D - Victim Impact Statement (Form 34.2, Criminal Code)</i>	519
<i>Appendix E - Statement on Restitution (Form 34.1, Criminal Code)</i>	523
<i>Table of Cases</i>	525
<i>Index</i>	549
<i>Author Biography</i>	565