### INDEX

#### BENEFITS OF VISs

- beneficial for courts, 189-192
- • benefits of appropriate VIS, 190-191
- • community awareness, 190
- cautions in usage, 191
- • Crown Attorneys finding VISs useful for court, 192
- • judges finding VISs as useful source of information, 191–192
- • sentencing judge to consider VIS, 189
- • VISs filling void, 192
- beneficial for victims, 185-189
- • test of how beneficial, 188-189
- • willingness of victims to participate again, 188–189
- • victim frustration, 185
- • victim participation as therapeutic and empowering, 186–187
- • victim satisfaction, 187–188

### CROSS-EXAMINATIONS ON VISs, see ORAL PRESENTATIONS AND CROSS-EXAMINATIONS ON VISs

DISCLOSURE OF VISs/ NEW EVIDENCE IN VISs, 255–258, see also FUTURE OF VISs

# FORMS AND VICTIM SERVICES IN CANADA, see also FUTURE OF VISS and PAROLE BOARD OF CANADA

- Alberta, 51-59
- • definition of "victim of crime", 51
- • direct victims, 51
- request for services, 51
- • indirect victims, 51–52
- • victim compensation, 59
- • Victim Restitution and Compensation Payment Act, 59

- • Victim Services Units, 52
- • information and services provided, 52
- • Victims of Crime Protocol, 51, 52
- VIS form, 53–58
- • instructions, 55–58
- British Columbia, 29-50
- • information not to be provided, 29–30
- • victim compensation, 37–38
- • compensation for immediate family members, 37–38
- • compensation for victims, 37
- • compensation for witnesses, 38
- ••• Crime Victim Assistance Program, 37
- • victim compensation application form, 38–50
- • authorization for further information, 48–49
- • crime information, 41–43
- • employment and benefits, 46–47
- • medical information, 44–45
- • Victim Impact Statement form, 31-36
- • outline, 32
- • property offences, 34–36
- • "victims" defined, 29
- VISs providing information to Crown counsel, 29–30
- • introduction, 29
- Manitoba, 66–98
- • "any victim of crime", 66
- • cross-examining of victim, 66
- • disclosure of VISs, 66
- • filing of VISs with court, 66
- • option to read aloud, 66

### FORMS AND VICTIM SERVICES IN CANADA (cont'd)

- • restrictions on VIS content, 66
- • victim compensation, 72
- • definition of victims, 72
- • reasonable expenses, 72
- • victim compensation forms, 73–93
- • application for compensation, 73–76
- • application for compensation information sheet, 77–78
- • application for family member, 79–98
- • victim compensation forms, 73–98
- • application for compensation, 73–76
- • application for compensation information sheet, 77–78
- • application for family member, 79–98
- • Victim Services assistance, 66-67
- • VIS form, 67–71
- • impact of crime, 69–70
- Ontario, 99-147
- • victim compensation, 111
- • Compensation for Victims of Crime Act, 111
- • Victim/Witness Assistance Program, 111
- • Vulnerable Victims and Family Fund, 111
- • victim compensation forms, 112–147
- • application for compensation for death, 127–137
- • application for compensation for injury, 112–126
- supplementary Vulnerable Victims and Family Fund request, 142–147
- • Vulnerable Victims and Family Fund request, 138–141
- Victim Crisis Assistance and Referral Services, 99
- Victim Quick Response Program, 99

- • VIS forms, 99–110
- • VIS for adults, 100–103
- • VIS for children, 108–110
- • VIS for older children and youth, 104–107
- Quebec, 147-165
- • Act respecting the Quebec Correctional System, 148
- • information regarding offender, 148
- definition of "victim of crime", 148
- • Information Request form, 153
- • victim compensation, 156–165
- • Crime Victims Assistance Centres, 156
- ••• Crime Victims Compensation Act,
- ••• property offences not included, 156
- victim compensation form, 157–165
- • application for benefits, 157–165
- • authorization to forward copy of file, 165
- • close relatives of deceased victim,
- dependants of deceased victim or rescuer, 163
- • information on employee remuneration, 161
- • submitted after deadline, 162
- • VIS form, 148–152
- • Written Representations of the Victim form, 154–155
- Saskatchewan, 59-65
- • definition of victim, 59
- • information provided by victims, 60
- • victim compensation, 64–65
- • application form, 64, 65
- • eligibility for compensation, 64
- • "reasonable expenses" compensated, 64–65
- • VIS form, 61–63
- • VIS Program, goals of, 59

### FORMS AND VICTIM SERVICES IN CANADA (cont'd)

- Yukon, 166-177
- • Department of Justice, 166
- • Victim Services Unit, 166
- • Victims of Crime Strategy, 166
- • Victim of Crimes Act, 166
- • victims' bill of rights, 166
- • VIS form, 167–168
- Yukon Crime Prevention and Victim Services Trust Fund, 169–177
- • application form (C.P.V.S.T.F.), 173–177
- Crime Prevention and Victim Services Trust Fund (CPVSTF), 169–172
- • • purpose of CPVSTF, 169, 171
- • • use of funds, 169, 171–172

### **FUTURE OF VISs**

- communication between victim and offender, fostering, 258–260
- • communication beneficial for offender in three ways, 259
- • communication continuing to be encouraged, 259–260
- • words of offender educating offender as to effect of behaviour, 258–259
- · conclusion, 265
- educating judiciary to alleviate victim concerns with VISs, 251–255
- communication as key interaction between victim and judiciary, 251–252
- • concerns raised by victims involving their communication, 252
- • listening/interacting with victims in courtroom, 253–255
- • appellate courts forgiving of not following subsec. 722.2(1), 254
- • definition of "victim" meant to include everyone, 253
- inappropriate use of VISs also of concern with victims, 254

- • practice of orally reading VISs, 253
- • sentencing judge to be more proactive in informing victim, 253
- • work needing to be done to address concerns, 254–255
- educating victims, 233-243
- • generally, 233–234
- • inappropriate content, alleviating, 233–243
- dangerous for court to measure gravity of offence by VIS contents, 239–240
- • editing of VISs, 242–243
- • other inappropriate information, 241–242
- proper education alleviating vetting process, 242, 243
- • public interest to be served by sentencing process, 240–241
- • sentencing circle model, speaking to sentence in, 241
- victims not to speak to sentence, 240, 241
- VISs not created to allow victims to get some sort of revenge, 238–239
- • VISs not to contain recommendations as to sentence, 239
- participation numbers, improving, 234–238
- • better education of victims, 237
- "criminal justice professionals" as educators, 237–238
- Crown Counsel, police and VWAP currently assisting victims, 238
- ••• Crowns suggesting understanding of role of VISs, 237
- • instances where people more likely to submit VISs, 236–237
- • low participation rates, 234–235
- • reasons for smaller submission numbers, 235–236

#### FUTURE OF VISs (cont'd)

- victim education program alleviating many concerns, 238
- introduction, 215-216
- • improving current VIS process, 215
- • maximizing benefits for all involved parties, 215
- victims identifying concerns with VIS system, 216
- new evidence in VISs/disclosure of VISs, 255–258
- accused arguing mistrial as VIS contained relevant information for defence, 255
- application for disclosure of VIS prior to trial denied, 258
- breach of obligation to disclose VIS not impairing ability to make defence, 255–256
- • Crown Counsel Policy on Disclosure re VISs, 257–258
- • judge not persuaded that new lines of inquiry pursued if VIS disclosed, 255
- • limited confidentiality interest of victim, 257
- nothing in VIS catching defence by surprise, 256
- sentencing procedure not contemplating new factual background in VIS, 256
- • timing of VIS disclosure, 257, 258
- • late disclosure affecting how counsel running trial, 257, 258
- VIS disclosing prior incident but defence not exercising due diligence, 256–257
- • VIS including new facts breaching obligation to disclose, 257
- • where VIS containing new evidence not at trial, 255
- redefining "victim", 216–233
- • amendments of 1999 expanding definition of "victim", 219–220

- • assumption that judge's discretion being enough is misleading, 225
- • current definition in subs. 722(4) of Code, 217, 218–219
- • definition of "victim" too expansive, 218
- • failure to narrow definition, 218
- • judges choosing not to vet VISs, 219
- restrictive approach by judges remedying many issues, 218–219
- • section 772(1) of Code not viewed as remedy to problem, 219
- • support for restrictive definition,
- • current definition needing to be improved, 224–225
- • increase in use of VISs, 223
- number of VISs varying greatly, 217–218
- onus to limit VISs falling on judiciary, 221–222
- post-1999 amendments: case law commentary on definition, 229–233
- ••• expansive definition, 230–231
- • narrow interpretation, 230
- non-restrictive definition, 229–230,
   231, 232, 233
- restrictive definition, 229
- restrictive vs. non-restrictive approach, 231–232
- • • reasons for non-restrictive approach, 232
- • proposing narrower definition, 223–224
- • unnecessary to include everyone remotely connected to victim, 224
- Recommendations of Standing Committee, 220, 224–225
- • advising clarification of definition, 220, 225
- Standing Committee's concerns about expansiveness of definition, 221, 223

#### FUTURE OF VISs (cont'd)

- • "true victims" of crime, finding, 220–221, 223
- • unhelpful or unnecessary VISs being accepted, 218
- • where definition of "victim" should go, 233
- • definition in England suggested, 233
- • need to clarify definition, 233
- • proposed definition clarifies current definition, 233
- • whether reliance on judiciary's discretion is efficient, 222–223
- • who accepted as "victim", 225–228
- • inconsistent treatment of victims,
- • judicial discretion used to limit who able to file VIS, 228
- • parents accepted as victims, 225–226
- • unexpected VISs, 226
- • victim's family or those extremely close to victim, 226
- • VISs discussing effect on community, 226–227
- VISs from businesses and corporations in fraud cases, 227–228
- restorative justice, 260-263
- • benefits for victims, 261–262
- • drawbacks to restorative justice, 262
- • restorative justice programs, 261
- • sentencing process being restorative and inclusive of victim, 260
- • victims needing to be told about options, 262–263
- VISs based on restorative terms, 260
- • what restorative justice offering to victims, 261
- uniform VIS system across Canada, 243–250
- • time allotted to VISs, 249–250

- • more proactive measures to gather VISs and updates, 250
- • suggestions to improve VIS process, 216–250
- • suggestions to remedy time restrictions, 249
- time restraints equated to lower victim VIS submissions, 249–250
- • time restrictions causing two problems, 249
- • uniform purpose for VISs, 246–249
- • academic literature identifying "purposes" for VISs, 246–247
- • case law focusing on most important purposes, 248
- • two main objectives identified in Roberts case, 248–249
- • two main purposes identified in the academic literature, 248
- • VIS system requiring clear goal or priority, 249
- uniform system making VIS process more efficient and effective, 243
- • VIS form, 244–246
- • informal VISs, acceptance of, 245
- • joint VISs accepted by courts, 245–246
- • limitations on courts as to acceptable VISs, 246
- • one main VIS form, 245
- • suggested changes to Ontario VIS form, 244
- • suggestion of two forms not supported, 244–245
- • uniform VIS offering formality and clarity, 245, 246

### HISTORY OF VICTIM IMPACT STATEMENTS (VISs)

- post-1988 victim impact statements, 8–10
- • Court Martial proceedings, not used in, 9–10

### HISTORY OF VICTIM IMPACT STATEMENTS (VISs) (cont'd)

- Criminal Code amended to add VIS provisions, 8–9, 10
- • reading of VISs aloud, 8–9
- custody disputes and discipline proceedings, 9
- • mental health review boards, 9
- • parole hearing, 9
- • Standing Committee report, 8
- pre-1988 victim impact statements, 5-8
- • Canadian Criminal Justice Branch, 5–6
- • Canadian Sentencing Commission recommendation, 7–8
- • common law countries allowing victim input, 6
- • Federal-Provincial Task Force, 7
- • President's Task Force on Victims of Crime, 7
- • United Nations Declaration of Basic Principles, 7
- • victim having no standing before 1988, 6–7
- what constitutes VISs, 1-5
- • definition of "victim", 4–5
- • description of harm or loss, 3
- • "inappropriate" content, 3–4
- • judge's discretion, 3-4
- • main guidelines in Criminal Code, 4
- • requirements for admissibility, 2-3
- • updating VISs prior to sentencing hearing, 4
- • VIS received after guilty verdict, 2
- • where victim "suffered harm or physical or emotional loss", 2

### NEW EVIDENCE IN VISs/DISCLOSURE OF VISs,

256-258, see also FUTURE OF VISs

### ORAL PRESENTATIONS AND CROSS-EXAMINATIONS ON VISs

- cross-examination of victims on their VISs, 209–213
- • "cross-examination" defined, 209
- cross-examination seldom occurs, 211
- • Crown counsel having right to have victim testify, 209
- • limited right to cross-examination, 210
- parameters of cross-examining victims needing further clarification, 213
- • possibility of cross-examination, 210–211
- whether appropriate to cross-examine on VISs, 211–212
- • court "air of reality" burden on offender, 212
- • lack of jurisprudence, 212
- • offender not having automatic right to cross-examine victim, 211
- oral presentations, 203–209
- • introduction, 203–204
- ••• Canada allowing victims to read VISs aloud, 203, 204
- • victims benefiting from participation and input, 204
- oral presentation of VISs: beneficial or not, 207–209
- • American commentator critical of Victim Rights Amendment, 208–209
- Canadians not in favour of VISs being read aloud, 208
- • opportunity for offender to respond, 207–208
- • reasons for allowing VISs to be read in courts, 207
- post-1999 amendments: inherent or discretionary, 204–207
- amendments providing victims with right to deliver VISs orally, 204, 205

### ORAL PRESENTATIONS AND CROSS-EXAMINATIONS ON VISs (cont'd)

- • mandatory duty vs. discretionary duty on judiciary, 205, 206
- • • court having "residual discretion", 206
- • Recommendation 9 of Standing Committee, 204–205
- ••• two interpretations given to subs. 722(2.1) of Code, 205–207
- • • conflicting messages having detrimental effect, 206–207
- • • debate over subs. 722(2.1) of Code continuing, 207
- • • judge permitting oral submission or alternative method, 206
- • • victim's right to oral submission or to submit statement, 205–206

### PAROLE BOARD OF CANADA, see also FORMS AND VICTIM SERVICES IN CANADA

- access to information about offenders, 178
- • additional information, 178
- • "registered victims", 178
- forms, 181–184
- • request to present victim statement at hearing, 183–184
- • victims request for information, 181–182
- information available to victim, 27-28
- key points for victim to know concerning PBC hearing, 180–181
- VISs presented to Parole Board, 179–180
- • relevant information from victim, 179–180
- • request to present VIS, 179

### **REDEFINING "VICTIM"**, 216–233, see also FUTURE OF VISs

### **RESTORATIVE JUSTICE**, 260–263, see also FUTURE OF VISs

### SENTENCING PATTERNS OF COURTS, see also FUTURE OF VISs, new evidence in VISs/disclosure of VISs

- academic literature advocating that VISs not affecting sentence, 197
- concerns with utilization of VISs, 193–196
- better purpose in assisting in preparation of prosecutor's case, 195
- • courts expressing concern, 195
- • John Howard Society of Alberta, 194–195
- • emotionally charged issues, 195
- VISs appearing here to stay, 195–196
- extent to which VISs affecting sentencing patterns, 199–201
- • informative but not aggravating sentence, 199, 200
- opinion of victim regarding punishment considered, 200
- shorter sentence if creating undue hardship, 200–201
- rationales for supporting existence of VISs, 198
- victim input being influential on sentencing patterns, 198–199
- • international literature, 198–199
- survey of Ontario Crown Attorneys,
- • survey of Ontario judiciary, 199
- VISs having little effect on sentencing patterns, 197–198
- • studies in U.S., U.K. and Canada, 197–198
- whether VISs encouraging stricter penalties for offenders, 196
- • judges not letting inappropriate information influence judgment, 196
- • offenders appealing on basis of inappropriate VIS, 196

### UNIFORM VIS SYSTEM ACROSS CANADA, 243–250, see also FUTURE OF VISs

- time allotted to VISs, 249-250
- uniform purpose for VISs, 246-249
- uniform system making VIS process more efficient and effective, 243
- VIS form, 244-246

### VICTIM COMPENSATION, see FORMS AND VICTIM SERVICES IN CANADA

### VICTIMS RIGHTS IN CANADA

- Alberta, 19-21
- • Victims of Crime Act, 19–20
- • principles, 20
- • role of victim, 20–21
- • ten-year vision, 19
- • victims not provided with extra protection, 21
- • Victims' of Crime Protocol, 20
- British Columbia, 18-19
- • Victims' of Crime Act, 18–19
- • entitlements for victims, 18
- • case law silent respecting "rights" of victims, 18-19
- Canada's treatment of victims generally, 11–12
- Canadian Statement of Basic Principles of Justice for Victims of Crime, 7, 12–14
- • lack of entrenchment, 13
- • symbolic rights, 13–14
- • ten principles, 13
- • United Nations Declaration of Basic Principles, 12–13
- funding and support organizations in Canada, 24–28
- • Correctional Services of Canada, 27
- • information available to victims, 27
- • VIS statements considered, 27
- National Office for Victims, 25

- • information and services provided to victims, 25–26
- • National Victims of Crime Awareness Week in Canada, 26
- • Ombudsman for crime victims, 26
- • role and powers, 26
- • Parole Board of Canada, 26–28
- ••• information available to victim, 27
- • Policy Centre for Victims Issues, 24–25
- • financial assistance for attending hearing, 25
- • limitation to "serious violent crime", 25
- • "victim fund", 25
- • "Victims of Crime Initiative", 24
- • improving experience of victims,
- • raising awareness of victims' role,
- lack of judicial consideration of victim rights legislation, 23–24
- • Criminal Code protection, 23–24
- Manitoba, 17–18
- • The Victims' Bill of Rights, 17, 18
- • actual "rights", 17
- • limited judicial consideration, 17, 18
- • test for compensation, 17–18
- • wide variety of rights, 17
- Ontario, 15–17
- Victims' Bill of Rights, 15–16
- • lack of judicial consideration, 15
- • legislature not intending to provide rights, 15–16
- • private law duty of care relating to police investigations denied, 16
- • protections limited, 16
- • "victim" defined, 15
- Quebec, 22-23
- Act Respecting Assistance for Victims of Crime, 22–23

## VICTIMS RIGHTS IN CANADA (cont'd) ••• rights of victims, 22–23

- · reasons for involving victims in criminal justice system, 11
- Saskatchewan, 21–22
- • Victims of Crime Act, 21–22
- Declaration of Principles, 21-22

no judicial consideration of "rights", 22