

# **COMPENSATING CRIME VICTIMS**

**Report prepared for the Office of the Federal Ombudsman for  
Victims of Crime**

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## SUMMARY

*Compensation is a critical first step on victims' road to recovery. While the state may not have a legal responsibility to compensate victims, it has a moral obligation to protect its citizens from crime and in particular from the adverse effects of crime. More than a question of solidarity with victims, it is a question of ensuring the victims have effective access to their rights. Currently, Canada does not meet its obligation to victims under international law. Under the United Nations Declaration of Basic Principles of Justice for Victims, Canada has a responsibility to ensure that victims across the country, regardless of where they live, have equal access to compensation programs. In the absence of guidance from the Canadian government, not all provinces and territories have victim compensation programs and the existing compensation programs are incomplete and disjointed. If compensation programs aim to help victims heal, then they should distribute resources to victims based their needs. A needs-based distribution prioritizes victims' basic human needs, starting with their physiological needs and their need for safety and protection. Existing programs appear to adhere more to criminal justice goals than advancing the recovery of victims. Compensation programs have the potential to help victims heal and can provide victims with a sense of justice even when the criminal justice system cannot. Most victims understand that the money comes from public funds and not the offender, and yet they view compensation as a form of justice. State compensation programs can help victims recover from crime and restore their confidence in the state. However, this requires that Canada implement the UN Declaration and honour its responsibility to victims by promoting access to fair and appropriate compensation.*

## I INTRODUCTION

As early as 1955, victim advocates argued that civil tribunals, which permit victims to obtain compensation from their offenders, are not adequate remedy for victims of crime and that the state should offer financial compensation to victims. The first country to introduce its program was New Zealand, which introduced its nationwide criminal injuries compensation program in 1963. Over the years, many industrialized nations introduced victim compensation programs, including Canada. In 1985, the General Assembly of the United Nations adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. Canada played a key role in the adoption of the *Declaration* and was a world leader for the advancement of victims' rights (Waller 2011). The UN Declaration devotes an entire section on victim compensation, which reflects the importance placed on state compensation for victims. According to the UN Declaration, **"States should endeavor to provide financial compensation"** to injured victims and the family members, in particular the dependents of deceased or injured victims **"through the establishment, strengthening and expansion of national funds for compensation"** (Art 12 & 13).

Following the adoption of the UN Declaration, the Canadian government introduced various initiatives to secure justice and assistance for victims. In 1988, the federal, provincial and territorial governments endorsed the *Canadian Statement of Basic Principles of Justice for Victims of Crime*, and, in 2003, they came out with an updated Statement. More recently, in 2015, the federal government introduced the *Crime Victims Bill of Rights*. While the Victims Bill of Rights includes many of the same topics addressed in the UN Declaration, such as information, participation and restitution, it fails to mention state compensation programs. This is a noteworthy omission given the importance of compensation programs for victims.

In this paper we will examine the objectives of compensation and present research on victims' experiences. We analyze and compare compensation programs across Canada and consider international developments and best practices. The paper closes with recommendations for victim compensation in Canada.

## II THE OBJECTIVE OF COMPENSATION

Compensation can serve many different objectives. One objective is to help victims recover from crime. The British penal reformer and magistrate, Margery Fry was an early advocate of victim compensation. According to Fry (1959), the state, could not disown all responsibility for its failure to protect, and therefore, it had an obligation to help victims. The responsibility of the state to protect its citizens from crime and in particular from the adverse effects of crime, is echoed by Victim Support Europe (2019b). However, the obligation of the state to help victims is not accepted by everyone. In Canada, for example, while offenders are considered to have a legal obligation to provide compensation to their victims and victims can pursue their offender for reparation of damages, the state does not have the same obligation.

While the state may not have a legal responsibility to help victims, it does have a moral one. Left with no income and many expenses, a civilized society cannot leave victims helpless in their misery. This is the position of social welfare theory, which posits that the state has a humanitarian obligation to victims of crime (Goldsheid 2004). Hence, publicly funded compensation programs are developed to provide humanitarian relief and to help victims recover and heal from the devastating effects of victimization. This perspective is reflected in the European Union's *Strategy on victims' rights (2020 -2025)*, according to which "(t)he overall objective of compensation is to recognise victims of violent intentional crime and to add to the healing process" (p 17).

A second objective is social cohesion. Emphasizing the importance of solidarity with victims and maintaining good social relations within society, Margery Fry promoted the creation of a state compensation scheme. She believed that modern societies should share the risks resulting from crime, much like it shares in other risks, such as medical costs and unemployment. Victims can suffer numerous financial consequences, such as a loss of income caused by an inability to work, medical fees for expenses not covered by insurance, and material losses for the repair and replacement of stolen or damaged property. While financial compensation can never fully repair the pain and suffering caused by victimization, it can provide victims with essential support. Referencing the British philosopher Jeremy Bentham, Fry claims, "satisfaction ought to be drawn from the public treasury because it is an object of public good and the security of all it interested in it" (1959, p192). In this approach, the primary goal of compensation is to foster social cohesion or harmony.

Yet another objective for compensation is to support the criminal justice system (Elias, 1993; Goldscheid 2004). The rationale behind this approach is that the possibility of receiving compensation would encourage victim collaboration with police and consequently increase reporting, which in turn would enable the punishment of the offender. Victims are seen as a stakeholder in criminal justice. States impose strict criteria for eligibility, including reporting to police and cooperation with prosecution, thereby withholding compensation except for the most "worthy" of victims (Kirchengast 2016). Nonreporting is an important concern, as it curtails the ability of the state to punish crime. However, victims may have good reasons for not wanting to report their victimization to the police, and these victims are penalized under this rationale.

The above arguments reveal three different goals of state compensation programs: 1) to help victims heal, 2) to promote social cohesion 3) to punish offenders. Each goal is associated with different values with respect to fair and appropriate compensation for victims. Research on the fair distribution of resources (i.e. distributive justice) reveals that three essential values can be used as a basis of fairness: *need*, *equality* and *equity*.

The goal of the distribution determines which values will be employed as the basis of justice (Deutsch, 1985). When the moral or ethical standard for a fair distribution is violated, injustice occurs (Byrnes & Cropanzano, 2001; Deutsch 2011).

How resources are distributed impacts victims' sense of fairness as well as their well-being. It is therefore important to identify the goal of a program and assess whether resources are distributed in accordance with the moral standard for a fair distribution. If the aim of compensation is to help the victim heal, then a fair distribution of public compensation resources is one that is based on *need* (Deutsch 1975). If the goal is social harmony and positive social relations, then a fair distribution is one based on *equality*, which treats people equally. An *equitable* distribution is proportional to one's input, costs, or losses. Applying this rationale to victims, an equitable distribution is one that pays more compensation to those victims who suffered greater losses, irrespective of needs. Proportionality is also a key principle in punishment. Equitable distributions promote economic productivity within society. However, over the long run, this equity principle is likely to be dysfunctional for the wellbeing of the group as equitable distributions tend to foster the introduction of economic values in all aspects of social life, which results in a diminished quality of life (Deutsch, 1975). A proportional distribution may be equitable, however, it may not promote collective or individual healing and instead foster competitiveness, selfishness and possibly lead to clashes. In contrast, distributive systems based on equality and need are associated with more cooperative feelings (Deutsch, 1975; 1983).

According to Kirchengast (2016), over the years the aim of state compensation programs has shifted from welfare or helping victims heal, to service provision, while at the same time emphasizing the responsibility of the offender to pay restitution to the victim. Compensation programs are costly and budgetary constraints have put pressure on traditional models of state-based compensation, prompting governments to stop financial payments to victims and instead shift responsibility for compensation on the offender. Kirchengast gives the examples of Australia and the United Kingdom, where

sentencing courts have been given increased power to order the offender to pay compensation to their victim.

A similar trend is visible in Canada, where the 2015 *Crime Victims Bill of Rights*, included a simplified form, which victims could use to request that a restitution order be imposed by the court at sentencing. While much has changed since Margery Fry's early calls for state compensation for victims, one thing that hasn't changed is that offenders are often unknown to authorities, and if they are known they often poor and do not have the money to pay compensation to their victims, making state compensation a vital resource for victims. Hence, restitution from the offender is not an option for most victims and if the offender is not able to compensate the victim, the state has an obligation to help victims.

### III VICTIMS' NEEDS, COMPENSATION AND HEALING

#### **A victim-centred approach**

Victims are persons and all persons have human rights, which are fundamental to our ability to thrive as individuals. Criminal victimization constitutes a violation of the victim's human rights as well as a wrong against society. This is a significant distinction from criminal law, which tends to treat crime exclusively as violations against the public order or the state. Recognizing victims as persons means that they are to be treated with dignity and respect (Wemmers 2012; Milquet 2019). Furthermore, as rights-bearers, victims can reasonably expect the state to defend their rights (Holder 2017).

A victim-centred approach focuses on the effects of crime on victims and, as a result, it recognizes that the consequences of crime are far reaching. Using this approach, four categories of victims can be identified based on the one's emotional or psychological proximity to the victimization: 1) direct victims 2) indirect victims 3) secondary victims and 4) tertiary victims. The *direct victim* is the person who is unlawfully killed,



disappeared, injured, assaulted, robbed, tortured, et cetera. *Indirect victims* are those who are linked to direct victims in such a way that they too suffer as a result of that relationship, such as family members of the direct victim. *Secondary victims* are persons who have suffered harm in intervening to assist victims in distress or witnessed the victimization. *Tertiary victims* refer to community members. All of these different groups of victims can suffer trauma and many other consequences as a result of the victimization (Wemmers 2017). As a result, if programs aim to promote healing, then they should be open to other categories of victims as well as direct victims.

Focusing on the effects of crime on victims, it is evident that victims can be impacted in many different ways. While the consequences of victimization depend in part on the type of crime experienced, research shows that the psychological effects of victimization, such as trauma and fear, are not only experienced by victims of violent crimes. Victims of property crimes, such as burglary, not only experience material losses and are often psychologically impacted by the crime as well (Waller & Okihiro 1978; Maguire, 1984). Similarly, crimes like fraud and identity theft can cause tremendous stress and anxiety for victims, impacting not only their mental health but even their physical health (Golladay & Holtfreter 2017). As a result, programs should not be limited to violent crimes.

Importantly, one possible consequence of victimization is that it increases one's risk of victimization in the future. Victimization surveys have repeatedly shown that a small portion of the population experience a lot of crime. This phenomenon is labelled multiple victimization. In Canada, 2% of citizens (15 years of age or older) who reported having been the victim of more than one violent crime in the previous 12 months, had experienced 60% of all violent crimes. Moreover, among those persons who reported victimization during the 12 months preceding the victimization survey, 38% said that

they had been victimized more than once: Half were victimized twice while the other half were victimized three or more times (Perreault, Sauv , Burns 2010).

Victimization during childhood, such as child maltreatment, is also associated with several other risk factors for violent victimization in adulthood, including alcohol and drug use (Perreault 2015). Research on the victimization of children and youth indicates that not only direct victimization but also witnessing violence is traumatic for children and constitutes a form of victimization (Finkelhor et al 2011). A high prevalence of physical or sexual violence in childhood is related to a higher level of physical violence against women in adulthood (European Agency for Fundamental Rights, 2014). In Canada, children and youth between 2 and 17 who experienced victimization reported experiencing 3.3 different types of victimization during their lifetime. As age increases, lifetime victimization increases as well and on average older youth (15-17) reported experiencing 4.3 different types of victimization (Cyr, Cl ment & Chamberland 2014). The research on multiple or polyvictimization of children and youth and victimization across life course highlights the importance of a trauma-informed approach. Victimization increases one's risk of victimization in the future, which makes persons who experienced victimization, and in particular multiple victimizations, a key target for intervention and crime prevention measures.

### **Victims' needs**

What are victims' needs and what are the consequences, both for the individual victim and society, of not addressing victims' needs? Victims' needs, are a function of the consequences of their victimization and their resources (Parmentier & Weitekamp 2007). In general, victims' needs fall under six categories: 1) support; 2) protection; 3) information; 4) reparation; 5) practical needs and 6) need for recognition (Wemmers, 2003; Herman 2005; Ten Boom & Kuijpers 2012).

Several authors have pointed out the similarities between victims' needs and basic human needs (Wemmers & De Brouwer 2011; Ten Boom & Kuijpers 2012; Wemmers & Manirabona 2014). The human needs framework helps us understand the relative importance of these needs and highlights their significance for victims' well-being and recovery from crime. This approach prioritizes certain needs, which means that specific needs come first and only when a person's lower, more basic needs are satisfied will higher level needs manifest themselves (Maslow 1968; Staub 2004).

At the most fundamental level, people first have to satisfy their basic physiological needs, such as the need for food and shelter as well as medical care. Injuries suffered as a result of the victimization, may require specialized assistance from professionals such as medical specialists. However, equally important is their access to food and shelter. The financial support offered by compensation programs can give victims access to essential services and ensure that they are able to meet their most basic needs.

Once victims' basic physiological needs are met, the next priority is their need for safety and security or protection. If these basic needs are not met, then the individual cannot advance in their recovery. Following victimization, victims may feel fearful: One in ten victims in Canada reported that their victimization made them fearful (Perreault & Brennan 2010). Victims may be concerned about their own safety as well as that of their loved ones. Fear may keep victims from reporting to the police or, conversely, it may motivate them to contact authorities. When the victimizer is a family member or intimate relation of the victim, victims often feel a greater need for protection and safety (Ten Boom 2016). One of the reasons why victims report their victimization to the police is because they seek protection from the offender (Gannon & Mihorean 2005; Dichter et al 2011). If victims' basic needs are met, then they can move on address other, higher-level needs. Hence, the needs experienced by any one victim can change over time.

The need for information is one of the most common needs expressed by victims (Maguire 1985; Wemmers & Cyr 2006; Davis & Mulford 2008; Ten Boom & Kuipers 2012). Information can strengthen and empower victims, as it provides them with a sense of control over their affairs and can reduce their feelings of uncertainty (Morissette & Wemmers 2016). Information is essential because without it victims may not be able access services to satisfy their other needs. For example, without information about available compensation programs, a victim who is in need of financial support may not be able to access the program. Providing victims with information also shows recognition of their victimization and this acceptance can provide victims with validation and confirmation, which are important for their self-esteem.

Victims' need for reparation can take many different forms including restitution of stolen property, financial compensation for the victim or the victim's family members; an apology by the offender; recognition of guilt and acknowledgement of responsibility for the victim's suffering (Wemmers 2014). Besides the obvious financial support, reparation has a powerful symbolic value, providing victims with validation and sending a message about their social value. Compensation is a key aspect of reparation and its effects reach far beyond material benefit (Milquet 2019).

Practical needs include a wide variety of applied tasks that victims may require help with, such as repairing a broken lock, cleaning up a crime scene, replacing stolen documents, etc. Financial support provided by compensation programs can help pay for these services.

Victims' need for recognition from others includes recognition by authorities, such as police, as well as state run compensation programs. Victims will often not receive validation from the criminal justice system, either because the police are unable to identify a suspect or because there is insufficient evidence to warrant a criminal

conviction. In the absence of a criminal conviction, recognition from a state run compensation program can very important for victims. Victims want and need authorities to be respectful, positive and supportive, particularly in their initial contacts with them (Shapland, et al 1985; Wemmers & Cyr 2006). Done correctly, compensation can have a restorative and healing impact. When done badly however, it can augment victims' suffering and constitute secondary victimization (Feldthusen, Hankivsky & Greaves 2000; Milquet 2019).

Meeting victims' needs is not about the generosity of a benevolent state towards its less fortunate citizens. Rather, by recognizing victims as persons the state becomes a duty-bearer, indebted to the citizens as rights-holders (Holder 2017; Milquet 2019). Thus, recognizing the human rights of victims has important implications for the relationship between victims and the state, and as a result, state compensation. As Milquet (2019) points out, compensation is more than a question of solidarity with victims, it is a question of ensuring that victims have effective access to their rights.

### **The meaning of compensation for victims**

Compensation is an essential first step on victims' road to recovery. The funding provided to victims by compensation programs, may offer access to vital services, which they otherwise would not be able to afford. According to victims, receiving compensation offers emotional support, softens the pain and helps them recover from their victimization (Mulder 2010).

Compensation is more than a financial payment and has an important symbolic function for victims. The main reasons why victims apply for compensation are because they seek recognition of their status as a victim and want to receive compensation (Kunst et al 2017). When victims are awarded compensation, it sends a message that they are recognized as innocent victims and acknowledges their suffering (Mulder 2010). Compensation can have therapeutic consequences for victims, who feel validated and

accepted. In contrast, when victims are refused compensation, this can be experienced as rejection, which further adds to the victim's suffering (Feldthusen, Hankivsky & Greaves 2000). However, victims' satisfaction with state programs is more strongly influenced by how they were treated by program workers than whether or not their application was approved (Kunst et al 2017).

Ironically, while we know that victimization can impact victims' mental health, victims diagnosed with a mental health condition may be less likely to receive an award (Daigle et al 2016). Victims who apply for compensation are often diagnosed with multiple mental health problems. Research on multiple victimisation indicates that prior victimization increases the individual's vulnerability and as a result, boosts their risk of becoming victim of a new crime (Cyr et al 2014; Wemmers 2020). Moreover, poly-victimization or multiple crime-type victimization as it is sometimes also referred to, in which an individual experiences multiple victimizations each involving different types of crime, is a better predictor of trauma and depression among victims than any one particular type of crime, including sexual assault (Cyr et al 2014). In other words, the more often a person is victimized, the more likely they are to suffer psychological trauma, but the less likely they may be to be awarded compensation.

When awarded, the validation and recognition provided by compensation can help restore victims' faith and confidence in the justice system and the state, regardless of its ability to secure a conviction (Victim Support Europe 2019a). Among victims who were awarded compensation, 80% felt receiving compensation was a form of justice, regardless of whether or not the offender was known (Mulder, 2009). When compensation programs do not rely on a conviction, they are able to provide justice to victims when criminal justice cannot. Most victims understand that the money comes from public funds and not the offender, and yet they view compensation as a form of justice. However, state compensation does not absolve offenders' responsibility and victims are in favour of the state going after the offender for any compensation that it paid to the victim (subrogation) (Mulder 2009).

#### IV VICTIM COMPENSATION IN CANADA

In Canada, the first compensation program for victims of crime was introduced in Saskatchewan in 1967 (Burns 1992). In the years that followed, other provinces followed suit, but there was not nationwide coverage. In 1973, the federal government introduced a system of transfer payments, much like it has done for public health care and legal aid, in order to ensure that across the country citizens have access to certain social programs. This cost sharing agreement on compensation with the provinces and territories was effective and by 1990 all provinces and territories in Canada had established compensation programs (Burns 1992).

The widespread presence of victim compensation programs across the country was an important part of the federal government's effort to ensure that Canada met international standards and norms for victims of crime established by the United Nations. While initially, the Federal government endeavored to implement the UN Declaration on Victims of Crime, including the creation of victim compensation programs across the country, that changed in 1992 when it ended its cost-sharing program. This meant that Canadian provinces and territories had to shoulder all of the costs of these expensive programs and, as a result, they subsequently introduced major cutbacks to their programs. In some cases, such as Newfoundland and the Territories, they completely abolished their program. The Northwest Territories and Yukon now offer only restricted, short-term, emergency financial relief, and Nunavut has a travel support program for victims (Allen 2014). The remaining compensation programs vary from each other quite substantially, their goal is not clearly defined and the application of victims' rights across the country is inconsistent. The lack of clear guidance and obligations for programs has resulted in large differences in provincial systems.

Canadian standards or norms for victim compensation do not exist and state compensation is not included in the Crime Victims Bill of Rights. However, the federal

government has introduced two limited programs for certain victims: 1) Canadians victimized abroad and 2) parents of murdered and missing children. Since 2007, the government offers up to \$10,000 in financial assistance to the victims or family members of certain victims of violence (homicide, sexual assault, aggravated assault, assault with serious person violence) committed abroad. The fund does not provide criminal injuries compensation for victims, but if the victim has no other source of financial assistance, it can help cover medical expenses abroad, replacing stolen documents, counselling, and in the case of death, funeral expenses. Since 2013, the federal government offers the *Canadian Benefit for Parents of Young Victims of Crime*<sup>1</sup>. This program offers income support to working parents and legal guardians who have suffered a loss of income from taking time off work to cope with the death or disappearance of their underage child or children as a result of a probable Criminal Code offence. Under the program, parents can receive \$450 a week (before taxes) for up to 35 weeks. In the absence of federal standards, these programs further add to the disjointed patchwork of available services for victims.

In the following we will examine provincial victim compensation programs across Canada. Nine of Canada's ten provinces have compensation programs. Rather than present each province individually<sup>2</sup>, we will follow a victims' journey as they make their way through the compensation process. This journey is broken down into six key stages: 1) crime; 2) reporting; 3) support; 4) application; 5) awards 6) execution.

### **Crime**

All programs in Canada require that a crime occurred in the province. Out of province visitors who fall victim to a crime, are therefore required to apply for compensation in the province where the crime occurred. However, in Quebec, the government recently

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<sup>1</sup> <https://www.canada.ca/en/employment-social-development/services/parents-young-victims-crime.html>

<sup>2</sup> For a province-by-province breakdown and comparison see Wemmers, J. (2017). *Victimology: A Canadian Perspective*, pp. 231-253, PUQ.



introduced Bill 84, which, if adopted, will replace the existing compensation program and the proposal includes the provisions for Quebec residents who are victimized outside of Quebec (Chapter XII). Specifically, if the crime occurred elsewhere *in Canada*, the victim must use the other province's program but Quebec can top up their services to equal that which they would receive here. If the crime occurred in another country and that country has a compensation program, then the victim must choose which program they want to use (one or the other).

However, not all crimes are eligible and all provinces limit compensation to violent crimes. Property crimes are categorically excluded from all programs in Canada. From the beginning, state compensation programs have tended to focus exclusively on violent crimes. According to Fry (1959), property crimes could be excluded from state compensation because of their risk for fraud. Violent crimes were less susceptible to fraud according to Fry as it was unlikely that someone would "voluntarily wound themselves to obtain a modest compensation" (Fry 1959, p 193) and, therefore, she believed that state compensation should be available for victims of violent crime. In other words, Fry was concerned that property crime victims would fraud the system in order gain financial advantage. However, if compensation is based on states' responsibility to victims, then all victims who suffered harm from crime should be included.

The United Nations Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), specifies that states should provide financial compensation to "victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes"<sup>3</sup>. While this definition certainly includes victims of violence, it is not limited to violent crimes. Non-violent crime like identity theft and burglary target property, however, they can have tremendous impact on victims', causing considerable

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<sup>3</sup> Article 12a.

stress and anxiety. A victim suffering mental harm as a result of a crime, including property crimes such as identity theft, should, according to the UN be eligible for state compensation.

While there is just one criminal code for all of Canada, not all violent crimes are eligible for compensation and there is no consistency across provinces regarding which crimes are included and which are not. For example, robbery is not included in the list of proscribed offences in Ontario, while it is included in many provinces such as Manitoba and Alberta. Six of the nine programs in Canada limit program eligibility to a list of proscribed offences, and each province uses a different list.

In Quebec, the existing program, *Indemnisation victims d'actes criminels* (IVAC), is available only to victims who experienced a crime that is listed in the appendix to the law. However, the law was created in 1971, which means that new crimes, such as trafficking, which entered into the Criminal Code in 2005, are not included in the appendix and victims are therefore not eligible for aide. The province recently proposed Bill 84, which, if adopted, will replace the existing compensation program. Bill 84 does not include a list of eligible offences and instead is limited to 'criminal infractions, which violate a person's physical or psychological integrity; hence not crimes against property'<sup>4</sup>. However, strictly speaking, this is not a legal category of crimes and, therefore, there remains some ambiguity regarding which crimes are included and which are not.

In addition, there is some disparity across Canada regarding the meaning of the word "victim", and whether indirect victims should be considered victims. As we saw, the impact of crime reaches far beyond the direct victims of crime. The UN Declaration specifies that in addition to direct victims of crime, compensation should be available to indirect victims of crime. According to article 12b, "The family, in particular dependents

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<sup>4</sup> Section I, Article 13. Translated by the author from French to English.

of persons who have died or become physically or mentally incapacitated as a result of such victimization". While all of the existing programs in Canada offer some compensation to family members in case of death, only two provinces, British Columbia and Quebec, offer services for family members of direct victims when the direct victim is not deceased. Yet, we know that the trauma and stress experienced by a loved one following violent victimization can also impact the lives of their family and friends.

While all programs exclude victims who are deemed responsible for their victimization, such as the criminal who was injured while committing an offence, there is considerable variance across provinces regarding the limits of this criterion. In particular, whether the individual had to be actively engaged in crime at the time of the offence or whether simply having a criminal history is reason enough to exclude them. Two provinces, Alberta and Manitoba, have specific rules regarding victims with criminal records. Under Manitoba's Victims' Bill of Rights, compensation for funeral expenses may be reduced or even denied if the victim was convicted of a proscribed offence in the past 10 years. In Alberta, the victim is penalized if, in the five years prior to the victimization they were convicted of a proscribed offence. Alberta's Victims' of Crime Act includes a list of a proscribed offences (Schedule 2) and what is striking is the types of offences listed: It includes minor offences such as vagrancy, and fails to include serious offences such as sexual assault and homicide.

Most provinces do not exclude a victim simply because they have a criminal record. However, even when prior convictions are not formally a reason for exclusion, programs may refuse victims if they think that their criminal history may be related to their victimization. For example, in Quebec, a former gang member was refused compensation when a drive-by shooting left him permanently disabled, even though he had no longer been involved in gang activity for 10 years (Wemmers 2017). The

exclusion of victims with a criminal history from programs suggests a strong criminal justice focus and a lack of interest in victims' recovery.

## **Reporting**

Most programs require that the victim report the crime to police in order to be eligible. The police report is considered to be evidence that a crime occurred. The one province that does not oblige victims to report their victimization to police is Quebec. The newly proposed Bill 84, does not oblige victims to report the victimization to police either. However, in practice, authorities in Quebec will use the police report as evidence of a criminal offence and if the victim fails to report the crime to police, they may have their application refused on the basis that there is insufficient evidence that a crime occurred (Lippel & Doyen 2000). Hence, while victims are not formally obliged to report to police, this may occur in practice.

While compensation programs typically require victims to report to police, victimization surveys reveal that two out of every three victims in Canada do not report their victimization to police (Perreault 2015). Reporting rates vary across types of crimes. Sexual violence is notoriously underreported and as few as 5% of sexual assaults are reported to police (Perreault 2015). It is important to consider why victims often chose not to report their victimization. Victims of sexual violence report that they chose not contact police because of fear of reprisal (68%) or they did not want others (57%) and in particular their family members to know (59%) (Wolitzky-Taylor, et al. 2011). In Canada, some 12% of sexual assault victims claimed that they did not report because they did not want to bring shame or dishonour to their family (Perreault 2015). Hence, forcing victims to report their victimization to police may add to their suffering.

Vulnerable groups, such as undocumented immigrants who fear deportation if they go to the police, as well as those who are dependent on others such as children and the elderly, are also unlikely to report their victimization to police. These victims often find

themselves in an abusive relationship of power, in which the perpetrator holds coercive control over them (Aronowitz 2009).

Underreporting can also be due to macrovariables such as perceptions of the police, and fear of victim blaming and stigmatization. Failure to address these obstacles leaves victims vulnerable and without help. If programs aim to help victims heal, then requiring that they report their victimization to police seems illogical. However, if programs are meant to encourage collaboration with criminal justice authorities, then this requirement makes sense.

Before a victim can apply for compensation, they first need to know that the program exists. The UN Declaration requires that Member States provide victims with information about available services. This is reiterated in the Canadian Victims Bill of Rights, which specifies that victims have a right to information about available support services. However, victims are not always informed about available services, including compensation. For example, one study in Quebec by Wemmers and Cyr (2006) found that only 38% of victims who reported their crime to police, said that the police told them about victim support services, while 64% said that they would have liked to receive information about available support. Although victim compensation has existed in Quebec since 1971 and victims have a right to information, 44% of victims of violent crime claimed that they had indeed been informed about the program, while 47% claimed that they had not been informed and 9% were uncertain.

Information about compensation should be provided to victims from multiple sources, and victims need access to information as soon as possible after their victimization. In the forementioned study by Wemmers and Cyr (2006), among victims who were informed only 8% said that they received information from the police and 13% from victim support service. The one source that was named most frequently by victims was the court, and even this was only mentioned by 23% of the respondents. By the time the victim's case reaches the courts, it may be too late for them to apply for compensation.

If victims are obliged to report to police, then police should be obliged to inform them about available services. Police are often the first to respond to a crime, and should therefore be tasked with providing basic information to victims about the availability of compensation (Davis et al 2021).

### **Support**

Access to support services is important for all victims, however, it is especially important for victims applying for compensation as the consequences of trauma can impact their ability to prepare and submit a successful application. The consequences of trauma can impact one's ability to process information and conduct administrative tasks. Following trauma victims may have difficulty understanding and retaining information as well as difficulty concentrating, which can negatively impact their ability to apply for compensation.

According to federal data, in 2011-12, there were 760 victim service providers across Canada, which served 460,000 direct and indirect victims. On a given day, these 760 services provided assistance to 10,000 victims (Allen 2014). However, if we keep in mind that annually some 5.6 million Canadians 15 years and older experience victimization (Perreault 2015), it is apparent that most victims are not in contact with support services.

In Canada, victim services are offered through police departments (36%), community based, not-for-profit organizations (24%), sexual assault or rape crisis centres (14%), the courts (10%), or other system-based organizations (7%) (Allen 2014). Together, system-based services, including police and court-based services make up more than half of the available services in Canada. However, because they are system-based, they are not open to victims who chose not to engage in the criminal justice system and do not report their victimization to police. Hence, while most victims do not report their victimization to police, most support services require that the victim engage in the

criminal justice system in order to access services. In other words, the majority of resources target a minority of victims.

Furthermore, access to support is unequal across the country. Especially in rural areas in Canada, there are often gaps in the access to health services, including mental health service (Hay et al 2006). This means that people will either have to do without help, which may worsen their condition, or travel long distances at their own expense in order to access help. Access to culturally appropriate (e.g. Indigenous) or linguistically appropriate (e.g. English and French) services is a further challenge, made all the more difficult in rural areas. Victims who are unable to access support are at a considerable disadvantage when applying for compensation, which may negatively impact their likelihood to receive compensation. The impact of trauma on victims' concentration and memory can make it difficult for victims to submit a successful application. Structural obstacles to support create systematic disadvantages for vulnerable victims. Failure to provide support to victims can have a long-lasting impact on their health, employment and much more.

Perhaps the most important challenge blocking access to services is funding. Across the country, community-based victim services are typically not funded by the public resources and instead they rely on the victim fine surcharge for funding. Much like a fine, a victim fine surcharge is an amount of money imposed on offenders, which they are required to pay to the state. However, unlike a fine, monies from the victim fine surcharge are meant to be spent on victim services. As a result, available funding for victims' services is dependent upon the rate of conviction, as well as the relative wealth of those convicted rather than the needs of victims (Wemmers 2017). In order to keep costs down, many victim services work with volunteers, who are offered a short, basic training before engaging with victims (Allen 2014). Professional victim support services are available in Quebec, however, victims may face delays in accessing a support worker

due to a shortage of resources. Budgetary constraints seem to determine services rather than victims' needs and the state's responsibility for victims.

### **Application**

Before victims can access benefits, they must first apply for compensation. It is important that the compensation programs offer easy access to clear and comprehensive information about the program. Ultimately, the quality of the information available can impact victims' ability to submit a successful application. However, the information on government websites is often incomplete. For example, a study Quebec's *Protecteur du Citoyen* (2016) found that the information available for victims from the province's program, IVAC, to be incomplete and not comprehensive. The study recommends that the province improve its website and forms as well as create a guide for victims.

Another important limitation is the absence of information in multiple languages on many government websites. Although Canada is officially bilingual, compensation programs are provincial and not all provinces have bilingual websites. For example, Alberta, British Columbia, do not have bilingual websites, Saskatchewan offers only limited information in French, and while Prince Edward Island has a bilingual government website, information about its victim compensation program is only available in English<sup>5</sup>. Access to program information in one of Canada's many Indigenous languages or minority languages is not available on any of the provincial websites. While programs clearly fall under provincial jurisdiction and are limited to crimes that occurred within their territory, victims are not just local residents and may include tourists as well as temporary workers, who may not have mastered the local language and who would be better able to prepare and submit a successful application if information were available in their own language. If victim compensation aims to help victims, then it should accommodate the needs of victims and offer information in multiple languages.

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<sup>5</sup> These provincial websites were verified on February 3<sup>rd</sup> 2021.



Victims and victim support organizations often complain that application procedures for compensation are complex and demanding. Victims who have endured the application process complain that the process itself can be traumatizing and is sometimes experienced as a secondary victimization. In the forementioned 2016 study by the *Protecteur du Citoyen* in Quebec, the civil servants working for the program were described as formalistic and lacking empathy. Victims experienced long delays, received little information, and had little personal contact with the civil servant handling their application. Victims felt as though they were victimized all over again.

Recognizing the challenges facing victims who are suffering from trauma due to violent victimization, it is important that those serving victims are trained professionals who understand the impact of trauma. In Ontario, designated victim support services are mandated to assess victims' program eligibility and assist them with their application to the program. This shifts some of the burden of completing the application from victims, who may have difficulty concentrating and focusing on complex administrative tasks, to the victim support worker.

#### *Application deadlines*

Another important consideration for victims applying for compensation is how long after the victimization, they can still apply for compensation. While victims may require assistance immediately following victimization, the impact of trauma, such as dissociation, can make it difficult for victims to take action. Most programs in Canada require that the victim apply for compensation within one or two years following the victimization. However, three provinces (BC, NS, Qc) offer some flexibility regarding deadlines for specific crimes, such as sex crimes, thus recognizing that in certain circumstances it may take more time before the victim is able to act.

The allotted time for victims to apply for compensation is relatively short compared to the delays used in civil law. In Quebec, the province's civil law offers litigants a three-

year period of limitation to make a claim, while crime victims only have two years to apply for compensation. The obvious question is why should this be different for crime victims? The province's new Bill 84, proposes to bring the application deadline in line with civil law, allowing victims three years to submit an application. In addition, certain cases such as victims of sex crimes and victims of conjugal violence, may be granted a longer period<sup>6</sup>.

In contrast, when Ontario introduced its *Victim Quick Response Program* in 2019, it eliminated the previous deadline of 2 years and introduced shorter deadlines. The application process is further complicated as the program uses different deadlines depending on the services requested and type of crime experienced. For example, in order to access supports for immediate needs, victims must have reported the incident to police and apply to the program within 45 days from the date of the crime. For counselling services, victims must apply within 6 months following the date of the crime. However, adult victims of historical sexual abuse have 90 days from the date of disclosure to apply for counseling. Compared with other types of victims, human trafficking victims have the most flexibility in this program: They can apply to the program up to one year from the date of the crime, unless they are under 18 years of age, in which case they can apply at any time, until they turn 18. The short window of time offered to victims is surprising considering the province maintains a basic time limitation of 2 years for initiating civil action. More importantly, short deadlines pose a serious disadvantage for victims: Victims who did not know about the program in time to file an application because police failed to inform them, are automatically disqualified for support.

If the aim of compensation programs is to promote healing, then deadlines are not logical. However, if the objective of compensation is to promote criminal justice goals, and ensure that police are rapidly informed when crimes occur, then deadlines and

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<sup>6</sup> Article 20

especially short deadlines are logical. At a minimum, deadlines should be harmonized with civil law, in order to enhance coherence and not unreasonably disadvantage victims. In addition, information must be made available to victims in order to ensure that they have an opportunity to apply for compensation.

### **Awards**

Across Canada, there are important differences between provinces with regard to the extent of services offered. Key categories of awards are medical expenses, lost income, mental health services, as well as practical needs, which include a variety of things such as funeral expenses, cleaning up a crime scene, and replacing broken eyeglasses. When examining the various services offered, it is important to bear in mind the social services that are available to all residents in each province. Compensation programs are often considered a safety net, meant to absorb the costs of victimization not covered by other social programs. In addition, it is important to recall victims' needs and consider the extent to which the services offered meet the needs of victims.

### *Medical expenses*

Victims of violence may suffer injuries that require medical treatment. The assistance offered by compensation programs can provide victims with vital access to treatment in order to meet their fundamental physiological needs. While all provinces and territories in Canada have public health care, the available coverage varies across the country. This means that victims may still be required to pay for some medical expenses such as prescription drugs.

There is much diversity across existing programs with respect to the medical expenses. At one end, there are provinces, such as Nova Scotia, that do not offer any compensation for medical expenses outside of what is already available in its provincial health insurance program. Medical expenses that are not covered by provincial health care, such as prescription drugs, have to be carried by the victim. Some programs cover

certain medical expenses, which are not covered in the province's public health insurance. For example, in Ontario, victims must rely on public health insurance for medical expenses, however, eligible victims may obtain compensation for dental costs, prosthetics, and physiotherapy. At the other end of the continuum is Quebec, which fully replaces its public health insurance with its compensation program. Quebec's IVAC program assumes the costs of medical and dental expenses as well as prescription drugs for eligible victims.

Other programs, such as Alberta do not specifically cover the cost of medical services, and instead use a point-based system. Compensation is entirely determined by the severity of the injury. Each type of injury is associated with a certain number of points, which in turn determines the amount of compensation that the victim is eligible to receive. To illustrate, irritation of the airway has a severity rating of 1.408, while amputation of a lower limb above the knee is rated 80.103, and a spinal cord injury with no motor or sensory function preserved is rated 217.299. Psychological injury has a score of 19.23 but this may vary depending on the age of the victim and whether multiple aggressors were involved. A victim with a score between 2.5 and 4.99 is eligible to receive \$500, which is the lowest possible award. The highest possible award is \$110,000 for which the individual must have a score of 210 or higher. Hence awards are based on the consequences of the victimization and not victims' needs.

#### *Lost income benefits*

If a victim is unable to work due to their victimization, they may lose their income. Four of the 9 provincial programs, however do not offer benefits for lost income. If victims do not have private insurance, for example through their employer, then they may have to rely on welfare to survive. As we saw, the need for food and shelter are fundamental human needs and without income, victims' most basic needs may be threatened.

The remaining 5 programs do offer some assistance to help with lost wages, however there is considerable variation with regard to the extent of the benefits offered to

victims. For example, in Quebec, the existing IVAC program offers victims who suffer permanent disabilities, a lifelong income until they reach 65 years of age and can benefit from a public pension. This is costly for the province and it removes this in its newly proposed program, *Bill 84*, which is currently under consideration in the National Assembly. Other programs, such as Manitoba, impose a maximum limit on the amount of compensation that can be paid to cover lost wages.

If the victim is no longer able to continue to do the same type of work, which they did prior to their victimization, some provinces will pay for retraining. Thus, helping the victim to regain their independence.

When an income is lost, it can impact an entire family. The UN Declaration explicitly includes the dependents of victims who have died or are injured as well as the direct victims of violence. Some programs, such as British Columbia and Quebec, offer income support to those who were financially dependent on the deceased as victims. Currently, Quebec's IVAC program offers the spouse of a deceased victim, an income supplement until the age of 65. Children of the deceased victim are eligible to receive an income supplement until the age of 19, or if they pursue post-secondary education, until the age of 25. However, in *Bill 84*, these income supplements are replaced by lump sum payments and, therefore, they will likely cease to be offered to indirect victims in the future if the bill is adopted.

### *Mental health*

The psychological impact of victimization can be significant and the UN Declaration explicitly includes that compensation should be available for those whose mental health was impacted as a result of violence. Mental health is vital for a person's functioning. Poor mental health can leave a victim unable to function, which in turn can impact their ability to work and be a productive member of society. While most provincial programs offer compensation for counseling services, they often impose a limit on the amount of

help a victim may receive, which is independent of the victims' need. For example, in Nova Scotia, the *only* service offered to victims through its provincial program is counseling and this is capped at \$2000 for individual victims.

In addition to direct victims, violent victimization can impact the mental health of those close to the victim. Recognizing the impact of trauma on indirect victims, in 2013, the definition of Post-traumatic stress disorder (PTSD) was revised in order to include individuals who learned that a close relative or close friend was exposed to trauma (DSM-V). In Nova Scotia, the provincial program offers up to \$4000 in counselling services for the family members of a deceased victim. Most programs, however, do not offer benefits to indirect victims unless the direct victim is deceased. One exception is Quebec, where certain family members of victims of sexual assault (e.g. parent or partner) are eligible for access to counseling.

Another important issue is access to mental health services. Violent crime rates are much higher in Canada's rural North than in the rest of the country (De Léséleuc & Brzozowski 2006; Perreault & Simpson 2016). However, in rural areas, especially in the North, access to mental health services can be a challenge. Roughly 30% of Canada's population lives in rural areas (Hay et al 2006).

### *Practical needs*

Victims may experience various practical needs and often these needs arise soon after victimization. For example, cleaning up a crime scene following police investigation. Simply returning to a crime scene may be difficult for victims. However, it is not the job of the police to clean a crime scene and professional cleaning services are expensive. While it is unusually cruel to expect a family member to clean up the blood of their deceased loved one, this job may fall on the family and friends of the victim. Hence, some provinces offer compensation to cover the cost of professional cleaning of a crime scene if someone was injured. However, violent victimization does not always include

physical injuries, for example in the case of home invasion, and when this happens none of the existing programs offer help with cleaning, which leaves it up to the victim.

If the direct victim dies, then human decency requires that they have a funeral to honour their life and provide closure to their loved ones. However, funerals are expensive and unless the deceased had insurance, the costs may fall on the shoulders of their family, adding financial stress when they are already mourning the death of the victim. Many provinces offer limited compensation to cover the cost of a funeral, which can offer some relief to the victim's loved ones.

### *Need for safety*

As we saw, humans have a fundamental need for safety and security and this is especially important for victims of violence, who may experience fear and insecurity as a result of the crime. Compensation programs are not criminal tribunals and they cannot detain violent offenders. Nevertheless, compensation programs can address victims' need for protection and provide them with some reassurance by recognizing their claim to victim status. Programs can also offer compensation for specific measures that impact victims' sense of safety.

Most compensation programs in Canada do not offer specific services to address victims' safety. This is surprising given the importance of protection for victims of violence (Ten Boom 2016). Nevertheless, some programs do address the safety needs of certain victims. In British Columbia, for example victims who are at risk of revictimization by their offender (e.g. domestic violence), can receive up to \$3000 in additional benefits to cover the cost of security equipment (i.e. an alarm) or to follow self-defence classes. The fear and insecurity caused by violent crime often leads victims to move (Xie & McDowall 2008). In BC, victims can receive benefits to cover moving expenses as well as an allowance to help them get by in the beginning (up to \$7000) if they need to move for safety reasons.

## Execution

The numerous criteria and conditions imposed on compensation mean that in practice, it can take weeks or months before a victim receives a decision regarding their application. As we saw, long delays were among the complaints raised by the Quebec's *Protecteur du citoyen* in 2016. In order to counter the long processing times, some programs offer emergency or interim funding in order to provide victims with quick and easy access to funds for certain immediate costs, such as funeral expenses.

When Ontario, replaced its existing Criminal injuries compensation program, with the *Victim Quick Response Program*, in 2019, it emphasized cutting back delays and offering a rapid reply to victims. While it drastically reduced the funds available for victims, under the new program victims are guaranteed to receive a reply to their application within days after submitting their application to the program.

Compensation programs are expensive to run and as Kirchengast (2016) observes, in recent years governments have shifted emphasis away from the state's responsibility to victims, and instead highlighting the offender's responsibility to pay restitution to the victim. In Canada, the 2015 Crime Victims' Bill of Rights, includes the right to request restitution from the offender. To this end, it created a standardized form, which is used across the country. However, offenders are often poor, which means that it is unlikely that the judge will impose a restitution order (Wemmers 2020). Moreover, if an offender fails to respect a restitution order, then the victim's only recourse is to have the restitution order entered as civil court judgement. Civil litigation is expensive and time consuming and there is no certainty that the victim will actually see their money.

Compensation by the state does not eliminate the offender's responsibility to compensate the victim. As we saw, state compensation is meant to fill gap when compensation from offender is not available. Victims understand that the money comes



from public funds and not the offender, but they view compensation as a form of justice. Victims are in favour of the state going after the offender for any compensation that it paid to the victim (Mulder 2009). The legal term for this is *subrogation* and while programs often include a provision for subrogation, it is rarely executed.

## V INTERNATIONAL STANDARDS AND NORMS

The Council of Europe, where Canada is an official observer, was the first to publish recommendations for states regarding victim compensation. In 1983, it released its *Convention on the Compensation of Victims of Violent Crime*, which stressed states' responsibility to provide compensation to victims of violent crime, when it is not fully available from other sources. The recommendations followed a limited definition of victims and injuries, focusing on the direct victims of violent crimes who have sustained bodily injuries or whose health has been impaired as a result of violent crimes, and in the case of death, their dependents.

As we saw, state compensation was also included in the 1985, UN Declaration in an effort to encourage Member States to develop state compensation for victims. In contrast to the forementioned 1983 Recommendations, the UN Declaration uses a broader definition of victims with respect to state compensation. In addition to direct victims of violence and the family members of deceased victims, the UN Declaration also includes the family members of victims who suffered physical or psychological injuries (Art 12 b). The UN Declaration recognizes that victimization does not only impact family members when their loved one is killed, but also when they are injured.

In 2004, the Council of the European Union adopted *Directive 2004/80/EC relating to compensation to crime victims*. One important focus of the Directive is compensation for cross-border victims, within the European Union. The Directive states that crime victims should be entitled to "fair and appropriate compensation for the injuries they have suffered, regardless of where in the EU the crime was committed" (Par. 6). Hence, the

Directive calls on Member States to have a crime victim compensation program, which is available to victims of violent crimes that occur in their territory (Par. 7).

An important challenge for people who experience violent victimization outside of their own country is language. This topic is particularly interesting for Canada, which has two official national languages, English and French, as well as numerous Indigenous languages. In addition, Canada has many immigrants who do not speak English or French fluently, and for whom language is in issue. The EU Directive requires states develop a system of cooperation between Member States in order to facilitate access to compensation for cross-border victims (Par. 11). To this end, the Directive indicates that victims be able to address their own national compensation program, which in turn communicates on behalf of the victim with their partner organization in the state where the victimization occurred (Art 1). States are requested to keep administrative procedures simple and minimize formalities (Art 3.3). In order facilitate communication, the EU recommends the creation of a standardized the application form (Art 14) and each Member State is required to offer services in at least one language in addition to their own national language (Art 11). For example, in the Netherlands, information is available in English as well as Dutch.

In 2012, the European Union took another important step when it introduced the *Directive establishing minimum standards on the rights, support and protection of victims of crime*. The Directive strengthens the rights of victims by providing binding rules for all victims of crime. Member States were given until 2015 to adhere to the minimum standards. Following a human-rights based approach to victimization, the Directive explicitly recognizes that crime is not only a violation against the state but also a violation of the victims' human rights (Par. 9). Hence, victims are rights-bearers and states are duty-bearers with an obligation to respect the rights of victims.

The Directive recognizes the importance of victims' right to information as it enables victims to exercise their other rights, such as applying for compensation. Specifically,

victim support organizations are required to provide “information, advice and support relevant to the rights of victims including on accessing national compensation schemes for injuries” (Art 9). However, this is the only reference to state compensation in the Directive, and all other references to compensation refer to restitution by the offender. This reflects a shift in focus, identified by Kirchengast (2016), away from costly state compensation programs that aim to help victims heal, towards service provision and the responsibility of the offender to pay restitution.

The EU has continued to monitor and evaluate the application of its directives. In 2020, the European Commission published its first *EU strategy on victims’ rights 2020 -2025* (COM (2020) 258 final). Key priorities outlined in the strategy include monitoring and evaluation, as well as the provision of EU funding in order to promote victims’ rights within the EU. In addition, the EU aims to strengthen cooperation with international partners such as the United Nations and the Council of Europe, which should result in renewed commitment to victims’ rights and the creation of new international standards and norms for victims of crime.

## VI CONCLUSION AND RECOMMENDATIONS

Canada no longer meets the standards and norms set out in the 1985 UN Declaration with respect state to compensation. Victims of crime in Canada have uneven access to services and are not treated equally. While some provinces and territories do not have state compensation programs, some offer very limited services to certain victims, and yet others offer substantive services and recognize the effects of crime on direct and indirect victims. Although there is just one criminal code in Canada, there is a lack of coherence across the country with regard to the types of crimes included and excluded from compensation programs. Eligibility criteria for compensation depends on program requirements, which are set by the province and each province uses different criteria. As

a result, the application of victims' rights and their access to compensation across the country is disjointed.

Programs often appear to favour criminal justice goals rather than other goals such as healing and social cohesion. Victims who apply for compensation, seeking validation, recognition and support, may feel re-victimized when they are confronted with a cold and bureaucratic system, regardless of the outcome (Kunst et al 2017). Focusing on the consequences of certain crimes while ignoring the devastation caused by other crimes can lead to frustration and promote competition among victims, which can be dysfunctional for society in the long run. It feeds into the notion that some victims and victimizations are more worthy than others. If compensation genuinely aims to help victims heal, then it should address their needs. Recognizing the equal value and dignity of all human beings promotes social harmony (Deutsch 2015) and the validation provided by state compensation can help restore victims' faith and confidence in the criminal justice system and government.

If programs are to genuinely serve victims and promote healing, then it is vital that they are evidence-based and trauma-informed. Victimological research has advanced significantly since the sixties and seventies when compensation programs were first created. The introduction of victimization surveys has allowed research into risk factors as well as the consequences of victimization, and revealed phenomena such multiple victimization and secondary victimization. State compensation programs must recognize the science and adapt accordingly.

The current crime-centred approach used by compensation programs is in conflict with research on multiple victimization and the cumulative impact of trauma. Programs should take a holistic, trauma-informed approach to victims, focusing on a person's needs rather than try to single out the consequences of one particular victimization. Prior victimization can increase a person's risk of serious victimization in the future. Rapid intervention is important, however until we perfect access to information and

support, it is equally important that programs recognize the possibility that victims may not report their victimization to police and, if they do report, it may be long after the crime occurred. Following a trauma-informed approach, programs should not use deadlines or reporting to police as exclusion criteria.

Following a trauma-informed approach, it is important to recognize the impact of victimization on the individual. Childhood victimization, for example, can have a profound impact on behaviour, including offences such as illegal drug use and vagrancy. Recognizing the impact of trauma, programs should not exclude victims simply because they been convicted of a crime in the past. Similarly, programs should recognize the important impact of non-violent victimisations such as fraud. The exclusion of certain types of serious crimes from compensation programs fails to recognize the experiences of victims. Excluding victims who are clearly impacted by crime seems arbitrary and is difficult to justify if the goal of compensation is to help victims recover from crime.

**Information** is vital in order to ensure that victims know that help is available and are able to access it. In order to make sure that information is accessible to victims, programs should offer information in multiple languages, including Canada's two official languages and local Indigenous languages. At a minimum, programs' websites should offer information in both English and French. In order to serve the local population, websites could also offer information in other languages and reach out to ethnic minorities in the province. Websites can also include short videos for those who cannot read. In general, an effort should be made to increase public awareness about programs. Any and all professionals interacting with victims of serious crimes, such as the police and victim support services, should be required to inform victims about available services. Ideally, victims should receive information repeatedly and from multiple sources.

Compensation programs should prioritize victims' most fundamental needs and ensure that at a minimum, the **available services** meet victims' basic human needs. Concretely, this means ensuring that direct as well as indirect victims' physiological needs are met, not only by providing medical care, including mental health care, but also providing financial assistance in order to protect victims from poverty and ensure that they have access to adequate food and shelter. In addition to meeting victims' basic physiological needs, compensation programs must address victims' need for safety and security. This includes money for security devices, but it also includes money to break a lease and move, if necessary, in order to meet victims' need for safety. Failure to ensure that victims' basic human needs are met will hinder their recovery from crime.

Recognizing the impact of trauma on one's ability to process and retain information, it is vital that the government provide **support** services to help victims apply for compensation. State compensation programs should provide victim support services with a portal to their program in order to allow support workers to help victims with their application. In addition, those executing programs should have a solid understanding of trauma and how it impacts individuals, in order to better serve victims that apply for compensation and reduce the risk of secondary victimization.

Budgetary constraints are a major limitation for the existing programs. Although the UN Declaration requires that states "establish, strengthen and expand national funds for compensation", currently the federal government does not provide funding for provincial compensation programs. The disappearance of several compensation programs in the 1990's after the federal government terminated its cost-sharing program with the provinces and territories, shows that costs determine compensation rather than victims' need. As a result, Canada no longer meets its obligation under the UN Declaration.

It is important to reconsider how programs are **funded**. Rather than relying on surcharges collected from offenders, in order to ensure sufficient access to victim

services they should be funded by the state. The provinces and territories have shown that they are unable to shoulder the costs of victim compensation on their own. Cost-sharing with the provinces and territories is regularly used by the federal government in order to promote access to services, such as health care. A system of transfer payments ensures that across the country residents of Canada have reasonable access to health care services regardless of geography or economic status<sup>7</sup>. From 1973 to 1992, the federal government successfully used transfer payments in order to encourage the creation of victim compensation programs across the country. It was when this program was terminated, that provinces and territories began to shut down or cut back their compensation programs for victims. Transfer payments have been shown to work and the federal government should reinstate funding for victim compensation programs.

Under the UN Declaration, Canada has a responsibility to ensure that victims across the country, regardless of where they live, have equal access to compensation programs. Currently, there is no clear guidance or obligations for programs and as a result, there are huge differences between existing programs, program goals are not clearly defined and their application is inconsistent across the country. With the creation of transfer payments, the federal government could identify **minimum standards** for compensation programs, in order to ensure that across the country victims have access to vital services. Once established, these minimum standards must be regularly **monitored** and assessed in order to ensure that Canada meets its obligation to victims.

In this paper we have outlined core elements of a victim-centred compensation program. These include a focus on the effects of crime on victims, including indirect victims, and a need-based distribution of resources, which respects the equal social value and dignity of victims. State compensation programs have the potential to help

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<sup>7</sup> The Canada Health Care Act and the Canada Health Transfer (<https://www.canada.ca/en/health-canada/services/health-care-system/canada-health-care-system-medicare/canada-health-act.html>)

victims recover from crime, provide them with a sense of justice and restore their confidence in the state even when the criminal justice system cannot. However, this requires that the government of Canada implement the UN Declaration and honour its responsibility to victims by promoting access to fair compensation.

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