Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts

Brief prepared by Arlène Gaudreault for the Association québécoise Plaidoyer-Victimes and submitted to the Standing Committee on Legal and Constitutional Affairs of the Senate of Canada

May 2, 2019
Foreword

In 1984, the Association québécoise Plaidoyer-Victimes (AQPV) was created out of a desire to advance the rights of victims and to give them a voice. It has a strong presence of approximately 200 members who support the cause of victims and who come from victim services, the justice system, the health and social services network, the teaching and research community, and private practice. The AQPV is a member of several round tables, working committees and boards of directors. Its expertise is called upon both in Quebec and in Canada.

The AQPV has responded to numerous requests from victims and their families who needed advice and support in their efforts to exercise their rights and recourse before various authorities. It has done a long and patient job of educating and raising awareness among various organizations and the general public. Through its representation on various forums and committees, the AQPV has contributed to improving policies, legislation and practices for victims of crime and witnesses involved in justice.

This brief is part of its ongoing mission to represent the rights and interests of victims of crime and their families. It addresses only the issue of the victim surcharge.
I. The adoption and enforcement of the victim surcharge: a brief review

The federal victim surcharge (FVS) is one of the many recommendations listed in the Report of the Federal/Provincial Task Force on Justice for Victims of Crime (1983). Introduced into the Criminal Code in 1989, this “criminal surtax” was intended to encourage offenders to acknowledge their responsibility for the consequences and costs of the crimes they had committed. The FVS was also a source of funding at a time when the first victim assistance and compensation programs were being developed. When Bill C-89 was passed, provisions were included in the Criminal Code to ensure that FVSs were paid into a victims of crime assistance fund administered by each province and territory.

The implementation of this measure has not been without difficulty, as evidenced by studies conducted by the Department of Justice Canada in recent years. Indeed, three of them reported that FVS exemption rates were high and varied considerably from one jurisdiction to another (Law and Sullivan, 2008; Ha, 2009; Justice Canada, 2014). The Saskatchewan study conducted by the Department of Justice Canada (2014) found that, in many cases, judges did not question requests for exemptions and asked few or no questions about the offender’s financial situation before deciding whether to impose such a measure when the offender was represented by a legal aid lawyer or was unemployed. In several cases, the researchers also found that judges did not give reasons for their decision, even though they were required to do so under the Criminal Code.

High exemption rates are one of the main reasons why the higher revenues that should have been generated by the FVS did not materialize, even after the amendments introduced in the Criminal Code to make it automatic starting in 1999 (Justice Canada, 2014). When the FVS was made mandatory after the amendments made to the Increasing Offenders’ Accountability for Victims Act in 2013, “creative approaches” were put forward by some judges to avoid imposing the surcharge or, alternatively, to impose it on conditions that made it virtually impossible to enforce (Justice Canada, 2016).

To increase the income from their assistance funds, several provinces have turned to other sources of funding. For example, Quebec adopted the Act to amend the Code of Penal Procedure (2002), which added a surcharge to certain offences related to provincial legislation, mainly those under the Highway Safety Code.
Despite the challenges and obstacles, victim surcharges and other victim assistance funds have made it possible to make progress in funding victim services. In Quebec, they have contributed to the development and consolidation of the network of crime victims assistance centres (CAVAC) in all regions of Quebec. Each year, these organizations provide thousands of victims and their families with a wide range of services, from providing them with information about the criminal justice system, to assisting them through the various stages of criminal proceedings, to helping them deal with the multiple impacts of crime. The victim assistance fund (FAVAC) also supports the mission of organizations such as the Centre d’expertise Marie-Vincent or the Ligne SOS violence conjugale. It has contributed to several activities aimed at improving and disseminating victimology research and knowledge, training professionals in different fields of intervention, and developing various programs that have reached more vulnerable groups and individuals or who previously had no access to services. In other words, this fund has made it possible to better meet the needs of victims and their families, to adapt and diversify the services available to them and to improve practices for them.

However, it is important not to lose sight that assistance and compensation to victims remains largely underfunded across Canada, despite the efforts made in recent years. In this context, it is understandable that the Supreme Court’s decision invalidating the FVS in December 2018 raised serious concerns for many organizations whose mission or projects are supported financially, in large part, by the victim surcharges paid to FAVAC. In Quebec, each year, they represent one-third of the amounts transferred to it. In 2017-2018, they amounted to $11.8 million.

In Quebec and elsewhere in Canada, financial losses are therefore significant, and the AQPV hopes that they will be compensated to ensure continuity and stability for many organizations dedicated to victim assistance.

II. The AQPV’s position on the federal victim surcharge

On May 1, 2019, during his appearance before the Standing Senate Committee on Legal and Constitutional Affairs, the Honourable David Lametti, Minister of Justice and Attorney General of Canada, expressed his commitment to reinstate the FVS and mentioned the fact that discussions were under way with his
provincial and territorial counterparts to ensure that it would not be further challenged in court. The Minister also reiterated the importance of the FVS in funding services for victims.

Nevertheless, we have few answers at this stage as to what changes would be put forward and what the discussions between the Minister and his counterparts would be and how far they would go. Is it realistic to believe that the FVS could be reintroduced as part of the study of Bill C-75? The AQPV is very concerned, as the time frame for the study of this bill is very short given its complexity and scope.

Should the FVS be reinstated, the AQPV would agree with provisions that would allow judges to take into account the financial situation of offenders when imposing this measure, particularly in the case of marginalized and vulnerable persons or those who, for various reasons, are financially unable to pay for it.

We also believe it is very important that clear criteria be established to guide and support court decisions on whether to impose the federal victim surcharge. The court should have at its disposal the necessary information on the offender’s financial situation to establish that payment of the FVS would cause undue hardship to the offender and to decide to provide an exemption. This decision should be justified in writing in all cases, without exception.

The AQPV hopes that discussions and work on reinstating the federal victim surcharge will be carried out diligently to ensure that it regains its place in the range of measures that allow offenders to take greater responsibility for the harm caused to victims and their families.

**III. Areas for future consideration**

It is unfortunate that, even today, many criminal justice system stakeholders have little or no knowledge of the existence of the victim surcharge and do not know what it is used for (Justice Canada, 2014). If reintroduced, they should be better informed to understand its importance and to fulfill their obligations, particularly when it is their responsibility to monitor and supervise offenders who are required to pay a surcharge. In addition, time should also be taken to explain to offenders the reasons for the sentence so that they understand its meaning.
Further consideration should be given to measures that promote restitution and reparation for the harm done to victims and their families, considering their needs and those of offenders in an equitable manner. Victim assistance and services should not be dependent on legislative measures such as fines or ad hoc political decisions. The various levels of government must commit to ensuring the stability and consolidation of the organizations that support them. The Department of Justice Canada, the Policy Centre for Victim Issues and the Office of the Federal Ombudsman for Victims of Crime should, in their respective mandates, help to advance knowledge and deepen discussions on these issues.

Every year, thousands of people and their families suffer losses related to the commission of a crime, whether it is the loss of a loved one, a decrease in their quality of life, a loss of income, injuries that prevent them from returning to work or going about their daily activities. The right to compensation for damages must be reflected in practice. It must be better enshrined in the Canadian Victims Bill of Rights.

References


