Submission to the Senate Standing Committee on Social Affairs, Science and Technology: Study on Bill C-83, *An Act to amend the Corrections and Conditional Release Act and another Act*

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May 2019
CONTEXT

As Federal Ombudsman for Victims of Crime, my mandate includes addressing complaints of victims about compliance with the provisions of the Corrections and Conditional Release Act (CCRA)\(^1\) that apply to victims of crimes committed by offenders under federal jurisdiction.

Bill C-83 proposes to bring in a number of amendments to the CCRA, which amongst other things collectively aim to:

- Implement a new correctional interventions model to eliminate segregation;
- Consider the specific needs of Indigenous offenders; and
- Improve support for victims in the criminal justice system – specifically by allowing victims who attend a Parole Board of Canada (PBC) hearing to access audio recordings of the hearing.

Given my mandate and its focus on victims, my submission will focus on the latter objective of the bill.

POSITION

Since June 1, 2016, owing to changes brought in under the Victims Bill of Rights Act\(^2\), victims have had the right to listen to an audio recording of the parole hearing of the offender who harmed them. That said there are several conditions that must first be met\(^3\):

- Only victims who do not attend the hearing, either in person or by videoconference, are eligible to apply to listen to its audio recording;
- the victim must be registered prior to accessing the service;
- the hearing must have taken place on or after June 1, 2016;
- the hearing must be for: a day parole review, a full parole review, and/or for a final decision to grant, deny, direct and/or continue parole; and
- only the most recent hearing of the offender’s sentence can be accessed.

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\(^1\) Enacted in 1992, the CCRA provides the legal framework for the incarceration and supervision of offenders serving a sentence of two years or more, as well as for their conditional release process and oversight. While primarily focused on offenders, the Act also provides recognition for victims of offenders under federal supervision by providing victims with specific opportunities to participate in federal corrections and conditional release processes.

\(^2\) Victims Bill of Rights Act (S.C. 2015, c. 13)

\(^3\) Government of Canada, “Victims – Audio Recordings”.
Further restrictions regarding how an audio recording can be accessed include the following:

- Victim representatives are **not** eligible to listen to the audio recording on behalf of the victim;
- access to an audio recording has an expiry date; and
- victims are not allowed to listen to an audio recording with a support person and are required to sign a non-disclosure agreement stating they will not share the recording with anyone.

For many years, victims and victim advocates have been requesting better access by victims to PBC hearing proceedings. The OFOVC has been amongst those recommending change.

While I support providing victims the right to access audio recordings of parole hearings, irrespective of whether or not they attend a hearing, I believe that the proposed legislative amendments should go further.

I am concerned that the sole change being proposed for victims is quite narrow and limited and does not offer real progress in terms of addressing what has been heard from victims and their advocates for the past 20 years.

Let us consider what has been heard as far back as the 2001 National Consultation with Victims of Crime. During that process, the federal government sought input from victims and victim service providers on contemplated changes to the CCRA. The Government heard that in addition to victims stressing that they should be able to have access to audio recordings of parole hearings even if they attended the hearing, it also found:

- “Many victims indicated that in addition to accessing the audiotape, they would also like to have access to a transcript of the hearing.”

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4 During the development of Bill C-32, the *Victims Bill of Rights Act*, the OFOVC repeatedly called on the Government to provide victims with access to audio recordings of parole board hearings even in cases where a victim has attended the hearing:

*Cornerstone for Change - A Response from the Federal Ombudsman for Victims of Crime to Bill C-32, the Victims Bill of Rights Act* – May 2014

*Strengthening the Canadian Victims Bill of Rights, Further Response to Bill C-32, the Victims Bill of Rights, from the Federal Ombudsman for Victims of Crime* - September 2014

*Remarks to Senate Standing Committee on Legal and Constitutional Affairs on Bill C-32, An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts* – March 2015

• “The need to improve the quality of hearing tapes was also emphasized.”

• “Many victims indicated a need for assistance when listening to the tapes in order to understand the purpose and process of the hearing, the terms used, the roles of the different parties, the types of questions being asked and the criteria that will be used to make a decision.”

• “Victims indicated that there should be no time limit on when they can access the tapes.”

• “It was also suggested that the legislation to allow access to the tapes should be retroactive in order to allow victims to hear tapes of hearings held prior to the new legislation coming into force.”

• “While supporting the recommendation to provide victims with access to hearing tapes, many participants indicated that they would prefer to be able to listen to or participate in hearings in "real-time" through the use of modern technology: teleconferencing or video-conferencing for those who can't be on-site, closed-circuit television or the possibility to observe from behind a one-way glass for those who can and want to be on-site, but not in the same room.”

RECOMMENDATIONS

In order to honour what victims have said for many years, I offer the following recommendations for potential amendments to Bill C-83:

Improving access to audio recordings of Parole Board of Canada hearings

1. Amend Bill C-83 to allow victims to access archived recordings of the hearings.

Currently, when victims access an audio recording, they can access the recording by phone via a toll-free number. They receive a passcode from the PBC that includes an expiry date. While a victim can play a recording as many times as they wish, they can only play the recording until the passcode expires. Furthermore, when requesting to listen to an audio recording, only the most recent hearing of the offender’s sentence is available to the victim.

Victims should not be subject to a time limit to access an audio recording. Some victims may not be able to access the audio recording within the imposed timeframe. Furthermore, some victims may want to review previous parole hearings in order to help prepare for a victim statement. Having access to archived audio recordings would ensure that victims receive full and consistent access to the hearing proceedings.
2. **Include Parole Board of Canada hearings regarding temporary absences as part of the applicable hearings for audio recordings.**

Victims can only request to listen to an audio recording of a PBC hearing regarding day or full parole. However, under the CCRA, an application for the first escorted temporary absence or unescorted temporary absence (family contact, community service, medical reasons, and personal development for rehabilitative purposes), for an offender serving a life sentence, is subject to a PBC hearing. Audio recordings of these types of hearings should also be provided to victims.

3. **Improve the sound quality of audio recordings.**

Some victims have noted difficulty hearing what is being said during a parole hearing due to the poor quality of the audio recording. Efforts should be made to ensure high-quality audio, such as ensuring that each person who speaks during the hearing does so directly into a microphone.

4. **Improve online request forms in order to facilitate all victims’ ability to request access to an audio recording of a parole hearing.**

Currently, victims must request access to an audio recording of a parole hearing either via a PDF fillable form or through the Victims Portal. Mobile devices such as iPads, tablets and mobile phones cannot be used for PBC forms. This means that victims are expected to have either a desktop or laptop computer with a PDF reader installed in order to exercise their right to obtain an audio recording of a parole hearing.

The way Canadians access the internet is changing. While a computer is currently the most popular way Canadians access the internet, using a smartphone or mobile device is steadily on the rise. Furthermore, the launch of the Canadian Digital Service demonstrates that modernizing the way Canadians can access government programs and services is a government priority.

Victims should not be expected to have specific technological devices or programs in order to access information. Digital delivery of victims’ services should be flexible and available on multiple platforms.

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6 Canadian Internet Registration Authority. *Canada’s Internet Factbook 2018.*
7 Canadian Digital Service. *Launch of the Canadian Digital Service.*
5. **Allow victims to listen to an audio recording with a support person and/or allow a victim representative to listen to the recording on a victim’s behalf.**

Currently, victims must sign a non-disclosure agreement stating they will not listen to or share the parole hearing audio recording with anyone else. For some victims listening to an audio recording of a parole hearing can be a traumatic experience. Being able to listen to the recording with a support person or having a named representative do so on their behalf can help ease victims’ stress and provide them with some enhanced explanation of the recording to improve their understanding.

**Provide alternatives beyond audio recordings**

6. **Ensure equal opportunity for victims with disabilities and Deaf victims to access Parole Board of Canada hearings.**

Some victims (i.e. Deaf victims or victims with a hearing impairment) may be unable to listen to an audio recording. Victims should be able to easily make accessibility requests, such as for a written transcript, and should be accommodated in a timely manner.

7. **Provide victims with a greater suite of ways to listen to or participate in parole hearings.**

Not all victims who want to attend a parole hearing in person have the capability or availability to do so. On the other hand, while some victims will find it important to face their offender in person, others may find this process intimidating and overwhelming. Victims should always have the option to attend or participate in a parole hearing in a manner that does not cause significant disruption to their daily lives and finances.

Victims should be given options of observing or participating in a parole hearing. This includes observing from behind a one-way glass for those who can and want to be on-site but not in the same room as the offender, or making use of remote real-time technology such as videoconferencing, closed circuit television, secure web cast, or audio feed.

Lastly, victims should always be given the choice on how they want to attend and participate. Recently, the OFOVC has heard from victims who wanted to attend a parole hearing in person but were forced to do so via videoconferencing.

Providing victims with choice and options will help ensure that their views and concerns are considered and that they are treated fairly throughout the parole hearing process.
FORWARD-LOOKING CONSIDERATIONS

Increase efforts to ensure that victims are aware of their right to register.

- In Canada, the onus is on the victim to seek out where and how to register in order to receive ongoing information about the offender who harmed them. Given that victim advocates report that many victims continue to be unaware that this service exists, or may have a number of concerns about registering, it is important that the Government take steps alongside the proposed legislation to address ongoing gaps in victim registration.

Bring greater respect to victims into the parole hearing process overall.

- While attendance at parole hearings and being able to access records of hearings is important to victims, the CCRA still provides insufficient consideration to victims when it comes to other aspects of the hearing. One example is the way in which hearings are scheduled, postponed or cancelled. Under the current law, an offender has the right to cancel a parole hearing without an advance notice and without providing a reason to the victim or their family. This can have devastating impacts on victims who make extensive plans and arrangements (e.g., related to travel, childcare, or work) in order to attend the hearing, not to mention the emotional preparation. A greater effort should be made, where possible, to consult with victims about hearing dates, to accommodate the victim's attendance via videoconferencing or other real-time technology.

CONCLUSION

Even with the enactment of the Canadian Victims Bill of Rights, we consistently continue to hear from victims of crime and victims’ advocates that there remains a systemic imbalance when it comes to the rights of offenders as compared to the rights of the victims. Simply put, offenders have more rights than victims. It is my belief, that if included as part of Bill C-83, the recommendations put forth in this submission would help to advance and enhance victims’ rights in Canada, increase compassion to victims and give better recognition to victims’ needs and concerns.

SUMMARY OF RECOMMENDATIONS

1. Amend Bill C-83 to allow victims to access archived recordings of the hearings.
2. Include Parole Board of Canada hearings regarding temporary absences as part of the applicable hearings for audio recordings.
3. Improve the sound quality of audio recordings.
4. Improve online request forms in order to facilitate all victims’ ability to request access to an audio recording of a parole hearing.

5. Allow victims to listen to an audio recording with a support person and/or allow a victim representative to listen to the recording on a victim’s behalf.

6. Ensure equal opportunity for victims with disabilities and Deaf victims to access Parole Board of Canada hearings.

7. Provide victims with a greater suite of ways to listen to or participate in parole hearings.

OFFICE OF THE FEDERAL OMBUDSMAN FOR VICTIMS OF CRIME (OFOVC)

The OFOVC helps victims to address their needs, promotes their interests and makes recommendations to the federal government on issues that affect victims. For more information visit: www.victimsfirst.gc.ca.