

**Criminal**

# Victim impact statements, sentencing: Access to justice

By **Gena K. Dufour, Marguerite Ternes and Veronica Stinson**



Gena K. Dufour

(July 7, 2023, 12:13 PM EDT) -- The *Criminal Code of Canada* notes that sentences should be influenced by "evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation."

Victims' rights to participate in court proceedings that directly impact their lives and submit victim impact statements (VISs) are delineated clearly in the Canadian Victims Bill of Rights (2015). Through VISs, victims may show sentencing judges, offenders and others how the offences have shaped their sense of safety and security and affected them financially, physically and emotionally. Sentencing courts must consider VISs at sentencing, but what that consideration looks like or what it means is unclear. Whether the Canadian justice system intends for VIS to serve an expressive function only (e.g., solely to be a space for victims to express how they feel) or an instrumental one (e.g., to contribute to the sentence or some other outcome) is also unclear.



Marguerite Ternes

The fact that our justice system gives crime victims a voice at sentencing via VISs implies that their voice matters, and gives the impression that VISs affect sentencing outcomes — but do they? In a recent Canadian study of 1,332 sentencing rulings between 2016 and 2018, we found no evidence that VISs affect sentencing when crime severity is considered (Dufour, G. K., Ternes, M., & Stinson, V. (2023)). In other words, more serious offences are associated with lengthier custodial sentences, but the addition of a VIS does not mean the sentence will be longer than cases without a VIS.

When VISs are delivered, two variables appeared to be of particular importance when considering their relationship with sentencing outcomes. First, the number of VISs matters. On average, judges assigned sentences that were four years longer in cases in which more than one VIS was submitted than in cases where there was just one. Second, the format of the VIS also matters. Judges assigned sentences that were more than two years longer when VISs were delivered orally than when they were submitted in writing. Although these variables were associated with substantial differences in custodial sentences, future researchers should explore potential explanations for these findings.



Veronica Stinson

For example, it is possible that more serious offences are associated with more VISs, so crime severity might be driving that relationship. Moreover, it is possible that the content of orally delivered VISs differs from those submitted in writing. For example, maybe orally delivered VISs are richer in details or are longer accounts of the harm suffered compared to written VISs. Thus, the differences in sentencing outcomes between orally

delivered VIS and written ones may be a function of the format or of other variables. The true nature

of these relationships is mostly unexplored in scholarly literatures.

These issues and others lead us to ask: why do victims submit VISs? Writing and delivering a VIS is not mandatory; doing so takes mental and physical effort, requires interacting with the justice system and recalling a negative experience, and some victims have reported the experience to be retraumatizing. Yet, estimates indicate at least 10 per cent of sentencings have VISs delivered (although this is likely an underestimation), and the likelihood a victim will deliver a statement is higher under certain circumstances. For example, when offences committed against them are more severe, victims are more likely to submit a VIS.

Thus, victims must believe they will get something out of delivering a VIS; perhaps victims believe their statement will influence the sentence length or conditions. Research shows that is just part of the story, however. In addition to delivering a VIS with the expectation that it would influence, victims' goals for delivering a VIS include, but are not limited to: (1) to have a voice and be heard or acknowledged, (2) to provide catharsis or healing for the victim, or (3) to trigger their offender to apologize. It is also possible that encouragement and support from crown prosecutors play a role in victims' decisions to deliver an impact statement.

Our research supports these findings. We found that nearly every sentencing for first-degree murder had a VIS. The sentencing outcome in these cases is pre-determined, meaning that even knowing that their VIS cannot influence a first-degree murder sentencing outcome, Canadian victims still chose to deliver VISs. This pattern is evidence that for victims, the goals of delivering a VIS go beyond the desire to impact sentencing. It is possible that a key goal for victims is to be heard and acknowledged, but the search for catharsis, healing and recovery may also play a role. In fact, it is possible that feeling heard and acknowledged contributes to positive outcomes for victims.

The decision to deliver a VIS is likely a difficult one for some crime victims. Some victims seek a voice and agency in matters that affected their lives — the crime(s) committed against them — in a justice system that centers on those who are accused and have offended. These victims often seek access to justice, and VISs provide a unique mechanism for participating in the justice process. Crime victims who do not wish to submit a VIS but worry that not doing so may affect the outcome should know that their concerns are likely unfounded. Justice, measured as sentencing outcomes, does not hinge on the presence or absence of a VIS. Offenders and their advocates may find this reassuring.

Crime victims who feel uncertain about whether submitting a VIS is right for them should carefully consider their goals and whether delivering a VIS will likely help them achieve them. Crime victims who have the opportunity to deliver a VIS should also seek advice and support from victims services/advocacy organizations as they consider the benefits and challenges of delivering a VIS. Legal professionals, including Crown counsel, Crown witness co-ordinators and local police often work with crime victims to inform them of their options regarding delivering a VIS. Crime victims often need support in determining whether to deliver a statement at all, and how potential methods of delivery might achieve their goals (e.g., in writing, a drawing, read aloud in court).

These legal professionals should also consider the purpose of including VISs at sentencing and the psychological impact the VIS writing process can have on a victim as well as the instrumental impact the VIS can have on the sentencing outcomes. By improving their understanding of the reasons for providing a VIS and the influence (or lack of influence) of VISs on sentencing, these legal professionals will be in a better position to advise and support crime victims. We hope that Canadian victims of crime can make informed decisions on whether or how to submit a VIS and feel heard if they wish to be heard.

*Gena K. Dufour is a doctoral student in applied social psychology at the University of Windsor. Dr. Marguerite Ternes and Dr. Veronica Stinson are professors in the department of psychology at Saint Mary's University in Halifax.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of the author's firm, its clients, Law360 Canada, LexisNexis Canada, or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

*Photo credit / simplehappyart ISTOCKPHOTO.COM*

*Interested in writing for us? To learn more about how you can add your voice to Law360 Canada contact Analysis Editor Peter Carter at [peter.carter@lexisnexis.ca](mailto:peter.carter@lexisnexis.ca) or call 647-776-6740.*

---

© 2023, Law360 Canada. All rights reserved.