

An Evaluation of The Manitoba Victim Impact Statement Program

by

Leigh Haldenby

A Thesis submitted to the Faculty of Graduate Studies of

The University of Manitoba

in partial fulfillment of the requirements of the degree of

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FACULTY OF GRADUATE STUDIES

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ABSTRACT

While victim impact statement programs are not new, little has been done in terms of evaluating these programs, The Manitoba Victim Impact Statement Program is no exception. The aim of this exploratory study was to examine the characteristics of victim who complete a victim impact statement. Using both a database of victim information compiled by Manitoba Justice prosecutions division as well as a telephone survey with victims, this study shows that sex, age, area of the province and domestic violence status all influence a victim's decision to complete a victim impact statement. The study also identifies areas for future research and points to areas where the criminal justice system needs to target its approach and change its approach to ensure victims are able to get the best possible benefits from The Manitoba Victim Impact Statement Program.

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Chapter 1: An Introduction

A neglected aspect of our criminal justice system has been the impact of crime on victims. In our adversarial court process, victims are often considered the forgotten voice. Until recently, they have had no formally recognized role in the trial and no real mechanism to voice their concerns and feelings about how the crime committed against them has had an impact on their lives. Under the adversarial system, victims have no power over how a case is prosecuted and are rarely consulted on the decision to dismiss, reduce, stay or plea negotiate a charge. If they are recognized in the court proceeding, it is often in the secondary role of Crown witness.

Over the past four decades, despite the reluctance of participation by legal professionals, the criminal justice system has begun to acknowledge the important role victim input can play in a criminal case. One of the initiatives the criminal justice system has introduced to acknowledge the value of victim input is the victim impact statement program. Victim impact statement programs allow victims the opportunity to participate in the court system by informing the court, in their own words, of the physical, emotional and financial impact a crime has had on them. Manitoba introduced its victim impact statement program in the fall of 1998. The primary purpose of the Manitoba Victim Impact Statement Program is to give anyone who is the victim of a crime, an opportunity to tell the court how being a victim has affected them [sic] and those around them [sic] (Manitoba Justice, 1998: 4).

We often see accounts of crime victims in media interviews. In these accounts, victims often share how what has happened to them has affected them. This is especially true when the victim is a survivor of homicide.

In February 2003, the body of 20 year old Trevor "TJ" Wiebe was found frozen in a field near Ste. Agathe, Manitoba. An autopsy later revealed the young man had died of exposure after having been stabbed and beaten unconscious. Three adult males and a male young offender were charged with first degree murder. In March 2005, the first of the four accused stood trial and was found guilty of second degree murder by a jury of his peers. On March 23rd, 2005 at the sentencing hearing Floyd and Karen Wiebe, the parents of TJ Wiebe, read victim impact statements. "My heart physically hurts so much I'm amazed it still beats" Karen Wiebe told the packed courtroom" (Winnipeg Free Press, March 24, 2005 p. A9). "I shall not be able to dance at TJ's wedding" said the elder Wiebe. Nor, he said, will he get the chance to spoil TJ's grandchildren" (Winnipeg Free Press, March 24, 2005 p. A9).

The accused was later sentenced to life in prison with no chance of parole for at least 15 years. The young offender is currently on trial, at the time of writing and the two other adult offenders are scheduled to stand trial in early 2006.

In the case of Trevor "TJ" Wiebe, the victim's family greatly benefited from being able to share their feelings through a victim impact statement. Many other victims have had equally positive experiences. Other than media accounts however and the rare off-hand comments made to victim services workers or Crown attorneys, there is no other source to tell us how victims feel about The Manitoba Victim Impact Statement Program and whether or not they find it valuable.

Since the inception of the Manitoba Victim Impact Statement Program and victim impact statement programs in general, there has been little work done in terms of evaluating their effectiveness. The original intent of this research project was to examine victim satisfaction with the victim impact statement program and determine if the program had an effect on a victim's overall level of satisfaction with the court system. Due to a low number of potential respondents, the researcher was unable to examine this research question. Instead, as the body of research surrounding victim impact statements is so new, the researcher converted the proposed research project on victim satisfaction with the justice system into an exploratory, descriptive project on victims who submit victim impact statements. The revised research question then became: What are the characteristics of a victim who completes a victim impact statement versus the characteristics of a victim who does not? The researcher looked at the following characteristics of victims: age, sex, area of the province, and type of crime.

Chapter 2 discusses how and why victim impact statement programs were conceptualized. The chapter will outline how Canada came to introduce victim impact statements into the *Criminal Code* (Canada) and will outline the history of The Manitoba Victim Impact Statement Program. It will also examine some studies that have been used to evaluate victim impact statement programs in Canada and around the world and will discuss why it is believed such programs are of benefit to victims.

Chapter 3 will outline the methodology for the entire research project. It will outline the construction of the survey instrument used in this research, discuss sampling

method and data collection. It will also discuss in further detail the revised research question as well as the data analysis plan.

Chapter 4 outlines the results of the research and Chapter 5 outlines the recommendations of the researcher based on the findings as well as the overall conclusions about the study.

Chapter 2: Victim Impact Statements: A Policy and Literature Overview

Victim impact statements have been used by courts periodically since 1986. It was not until 1988 however until victim impact statements were legislatively permitted in Canadian courts. Even then, each province was able to decide whether or not they were going to create a program that would allow victims to complete a victim impact statements according to the guidelines set out in the *Criminal Code* (Canada). It was not until 1998 that Manitoba decided to create a victim impact statement program. This chapter will outline The Manitoba Victim Impact Statement Program. It will also outline how and why victim impact statements came to be and will give guidance using the methodology and findings of three research studies on victim impact statement programs and a study of a victim offender mediation program on how to evaluate The Manitoba Victim Impact Statement Program. A program theory on The Manitoba Victim Impact Statement Program is also presented based on the findings and methodology of the research projects examined.

Victim Impact Statements: A Canadian History

Although victim impact statements have been used periodically by the court since 1986, prior to 1988, there was no legislative authority permitting the introduction of a victim impact statement in court. In 1988, *Bill C-89: An Act to Amend the Criminal Code (Victims of Crime)* was introduced to permit victim impact statements to be heard at the time of sentencing. Section 735 (1.1) was added to the *Criminal Code* (Canada) and read as follows:

For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 736 in respect of any offence, the court **may** consider a statement, prepared in accordance with subsection (1.2), of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence (emphasis added).

Note the use of the word may in Section 735 (1.1). While judges were allowed to consider a victim impact statement under this section, they were able to use their discretion in deciding whether or not to consider victim impact in a sentencing decision.

Additional subsections under Section 735 stated that the statement had to be made in writing and in accordance with procedures established by the province in which the court was located. The province of Manitoba chose not to develop procedures for a victim impact statement program at this time.

In September of 1996, the *Criminal Code* (Canada) was amended again. *Bill C-41* introduced section 722, which replaced section 735 of the *Criminal Code* (Canada). Section 722 is very similar to section 735. The major difference is a wording change from **may** to **shall** in terms of the court considering any victim impact statement that had been submitted. This change forced the court to consider all admissible victim impact statements submitted. In order to be considered admissible, according to section 722 of the *Criminal Code* (Canada), a victim impact statement must have the following features:

1. The statement is to be prepared in writing.
2. The statement is to be in the form and in accordance with procedures established by a program designated for that purpose by the province.

3. The statement is to be authored by a person meeting the definition of a victim (s. 722(4)1) of the Criminal Code (Canada).
4. The statement is to describe the harm done to, or loss suffered by the victim arising from the commission of the offence (not criticisms of the offender, assertions as to the facts of the offence, or recommendations as to the severity of the punishment).
5. The statement is to be filed with the court.
6. The clerk of the court is to provide a copy of the statement to the judge, the prosecution and the defence (s. 722.1 of the Criminal Code (Canada)).

According to the *Criminal Code* (Canada), each province implements its own victim impact statement program. Victim impact statement programs are administered by the provinces according to the guidelines they set out for the program with orders in council.

The most recent amendments to the *Criminal Code* (Canada) relating to victim impact statements took place in December of 1999. With the passing of *Bill C-79*, it became mandatory that a victim be allowed to read his or her victim impact statement aloud in court or present his or her statement in any other manner the court considered appropriate. *Bill C-79* also required that the judge in a case ask the prosecutor if a victim was advised of his or her right to fill out a victim impact statement and allowed

¹According to Section 722(4) of the *Criminal Code* (Canada) a victim in relation to an offence means a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence. In a case where the person to whom harm was done or who suffered physical or emotional loss is dead or otherwise incapable of making a statement, victim may mean a spouse or any relative of that person, anyone who is in custody of that person or is responsible for the care or support of that person or any dependant of that person. Case law (*R. v. Curtis*) further limits this definition to refer to the direct victim of a crime.

that judge the option to adjourn the court proceeding in order to give the victim the opportunity to fill out a victim impact statement. The most recent version of Section 722 of the *Criminal Code* (Canada) is outlined in Appendix A.

Manitoba's Victim Impact Statement Program

According to the *Criminal Code* (Canada), each province is in charge of creating and implementing a victim impact statement program according to the guidelines set out under section 722. All provinces and territories in Canada, with the possible exception of Nunavut, have an official victim impact statement program. It appears all provinces have similarly structured programs. The main difference in each program is where a victim submits a completed victim impact statement. Manitoba introduced its victim impact statement program in 1998.

In accordance with Section 722 (2) [of the *Criminal Code* (Canada)] an order in council provides Manitoba Justice the authority to establish the form and procedures respecting a statement referred to in section 722(1) of the *Criminal Code* (Canada) (Manitoba Justice, 1998: 6). With the signing of the order in council by the Lieutenant Governor of the province of Manitoba in October of 1998, the Manitoba Victim Impact Statement Program began. In a news release made on September 21, 1998, then Justice Minister Vic Toews heralded the program as being another avenue for a victim to use to ensure their [sic] voice is heard as part of the criminal justice system's efforts to hold offenders accountable. This program...provide[s] for a more responsive legal system. This government is leading the fight against crime, and that

includes...ensuring [victims] feelings are made known to the courts (Manitoba Government News Release, September 21, 1998).

Based on the criteria outlined in section 722 of the *Criminal Code* (Canada) that victim impact statements are to describe the harm done to, or loss suffered by, the victim as a result of a criminal offence, the primary objective of the Manitoba Victim Impact Statement Program, as outlined in the *Victim Impact Statement Program Policies and Procedures Manual*, is to give direct crime victims an opportunity to tell the court how being a victim has affected them and/or their relationships with others.

Victims are first advised of their right to submit a victim impact statement via an incident card handed to them by the police. Everyone who is a victim of a crime in the province of Manitoba is supposed to be handed a police incident card with a crime report number on it. On the back of this card is a sentence advising them of their right to complete a victim impact statement. Victims can obtain information about the Manitoba Victim Impact Statement Program through a fact sheet (see Appendix B) provided to them by the police, a Prosecutions Crime Victim Rights Unit (where applicable), Victim Services Unit (where applicable) or other agency responsible for specific target groups (e.g., Women's Advocacy Program, Child Victim Support Program or Older Victim Services). Contact with the victim is to occur as soon as possible after a charge has been made.

Once a victim has been informed of the Manitoba Victim Impact Statement Program, it is his or her responsibility to obtain a victim impact statement form (Appendix C). As victim impact statements do not come into play until after a charge is laid (which may be well after the crime occurred) and since The Manitoba Victim

Impact Statement is an optional program, victims are generally not offered a victim impact statement form unless they ask for one. Victims can obtain victim impact statement forms from most community police offices, Crown attorneys offices, Prosecutions Crime Victim Rights Units and specified victim services offices. In Winnipeg, victims can also obtain a copy of the victim impact statement form from the Victim/Witness Assistance office or a Crime Victims Rights Worker. In most rural areas serviced by the R.C.M.P., the investigating officer, during the initial investigation of the crime will provide the victim impact statement form to the victim. However, the victim impact statement forms will also be available in each R.C.M.P. detachment.

Any individual who has been the victim of a crime in Manitoba has the right to complete a victim impact statement form. Special efforts are made to provide victims who do not live in Manitoba with copies of the victim impact statement fact sheet and form as soon as the incident is reported or immediately upon opening an investigation into the case.

Currently the procedure the victim follows after he or she has completed a Victim Impact Statement is to forward it to the nearest Crown office. Once the statement is submitted, Crown attorneys read each statement and, if necessary, edit the content to ensure that it complies with Victim Impact Statement Program guidelines. Disclosure of the edited victim impact statement to the defence occurs as soon as possible after it has been reviewed. The original edited statement is held on the Crown file with two copies until there is a finding of guilt.

Upon a finding of guilt, the Crown attorney's office provides the original and

one of the copies of the statement to the Clerk of the Court who provides a copy of the statement to the Judge prior to sentencing and places the original statement on the court file.

During the sentencing phase of a trial, a judge must weigh a number of sentencing principles when making a sentencing decision. These sentencing principles can be found in section 718 of the *Criminal Code* (Canada). Among these principles is the requirement that a judge take into consideration any victim impact statement made by the victim or victims. The problem with these sentencing principles is that the *Criminal Code* (Canada) does not specify how much weight a judge should place on each of the individual principles when determining a sentence for a particular offender. As this is the case, it becomes difficult if not impossible to measure the influence a victim impact statement has on a sentencing decision.

Because of a recent process change in how the Manitoba Victim Impact Statement Program is administered, it also becomes difficult to study a victim impact statement program that is in transition. To better serve the needs of victims, the province has hired Crime Victims Rights Workers to assist victims in completing victim impact statement forms and to take a more proactive approach in informing victims about the Manitoba Victim Impact Statement Program. Manitoba's *Victims' Bill of Rights* which was proclaimed in August of 2001 also modifies the Manitoba Victim Impact Statement Program by making it mandatory that victims of certain offences are given copies of all victim impact statement material, without having to request it. These offences include: murder; manslaughter; aggravated sexual assault; sexual assault with a weapon; infanticide, criminal negligence causing death; impaired

operation of a vehicle cause death; dangerous operation of a vehicle cause death; aggravated assault; assaulting a peace officer or public officer; discharging a firearm with intent; and, attempted murder. For these reasons, studying the current processes and outcomes is unfair to the program at this time. Such a study would be more appropriate after the program has gone through its growing pains stage.

There is one process and outcome that will remain constant despite the program's transitional status. Recall that the primary objective of the Manitoba Victim Impact Statement Program is to give anyone who has been a victim of a crime the opportunity to present his or her views to the court. Implied in this objective is the goal of the program to ensure that victims are aware of and are satisfied with their opportunity to participate in the court system by presenting their views to the court. In other words, the program objective can still be evaluated by looking at a victim's satisfaction level with the court system given their opportunity to participate in that system. As such, this evaluation will examine the program's objective by looking at victim satisfaction and possible factors that influence a victim's decision to complete a victim impact statement.

Literature Review

Victim initiatives and the acknowledgment of victim needs in legislation are a recent innovation in criminological research. The 1960s marked the first time the state really began to look at and acknowledge how crime affected the victim. During the late 1960s, increasing concerns about crime rates and frustration with law enforcement efforts to reduce crime began to emerge within the public sphere. In response to these

concerns, the state began to examine the problem of crime and its consequences. Through victimization surveys, it was found that as high as reported crime was, the actual crime rate was much higher. Many people were failing to report crimes to the police. Also, it was discovered that when victims did report crimes and arrests were made, some victims and other witnesses were hesitant or refused to cooperate in prosecuting the case because of the treatment they were afforded by the criminal justice system (Davis and Henley, 1990: 158). However, even with these problems clearly identified, it took nearly a decade of public pressure for the state to begin offering solutions.

In the early 1970s, attention to crime victims was virtually nonexistent. To combat this, public awareness campaigns were initiated by feminists, whose primary interest was to bring attention to the horrid treatment to which rape victims were subjected at the hands of the criminal justice system (Kelly, 1990: 173). Private citizens, typically those involved with grass-roots victim services programs who had themselves been crime victims in the past, also became instrumental in initiating public awareness campaigns (Davis and Henley, 1990: 159). These groups rallied to change popular and government attitudes regarding the issue of victimization.

The institutional responses of the day were often punitive to victims. Victims were sometimes blamed for their victimization, especially in cases involving sexual assault or domestic violence. Sometimes police refused to believe that a crime had even taken place. If the case did reach the court system, victims were often forced to incur the cost of child care and parking expenses in addition to their loss of wages from work just so they could attend the trial. Further, they were forced to wait in the

same waiting areas as the defendant's friends and family and were often inconvenienced by numerous adjournments. In essence, victims were re-victimized through their involvement in the criminal justice system.

In order to combat this treatment, lobby groups systematically set out to change how the general public viewed victimization. They used the media to publicize accounts of victimization in an effort to elicit sympathy for crime victims and to evoke public outrage surrounding the institutional response these victims often faced (Kelly 1990: 173). The purpose of raising public concern was to generate a response from politicians, who had both the means and the resources to do something about the situation. Once public support was secured, lobby groups were able to pressure politicians to take up the issue and demand expanded services and more sensitive treatment for victims. As a result of the lobbying efforts, state agencies began to provide funding for research and programming for crime victims.

Soon the state began to fund a variety of services to victims. Initially the victim service program efforts concentrated on economic and psychological difficulties arising from the crime. Activities on behalf of victims resulted in legislation which mandated rights of compensation from the state, restitution from the offender [and] support and counselling services (Erez and Sebba, 1999: 177).

Victim/witness programs were established to provide court orientation and support; law-enforcement based crisis intervention programs were created to provide support immediately following a crime; special victim-only waiting rooms were built; and victim compensation programs began to emerge as a way for victims to recuperate some of the losses they incurred.

As the process continued, concern for victims' rights expanded into areas beyond its initial focus and has centred more recently on victims' reintegration into the criminal justice process (Erez, 1991: 2). This shift in focus has resulted in a movement toward the integration of victim participation rights into the criminal justice process and a shift toward increased victim rights in general. Although the attitudinal changes produced as a result of lobbying were welcome, crime victims want more than sensitive treatment. They want the right to participate in the criminal justice system (Kelly, 1990: 173). The demands for increased victim participation are supported by research on victims' concerns and attitudes toward the criminal justice process. The most prominent concern emphasized in these studies was victims' frustration with, and alienation from the system (Erez and Tontodonato 1990; Knudten et al. 1976).

Victims' grievances stemmed more from the procedures of the criminal justice process, particularly the lack of involvement in the decision making process, than with the supposed injustice of outcome (Erez and Tontodonato, 1990: 452). Erez (1991) indicates that one of the most important grievances cited by victims is their lack of standing and voice in the proceeding. Advocates of the victims' rights movement argue that the victim deserves just as much of a right to participate in the criminal justice system as the offender does.

Victims, no less than defendants, are entitled to their day in court. Victims, no less than defendants, are entitled to have their views considered. A judge cannot evaluate the seriousness of a defendant's conduct without knowing how the crime has burdened the victim. A judge cannot reach an informed determination of the danger posed by a defendant without hearing from the person he has victimized (President's Task Force on Victims of Crime as cited in Wallace, 1998: 324-325).

Advocates argue that victim input will provide recognition of a victim's wish for party

status and individual dignity. It will also remind judges, juries and prosecutors that behind the state is a real person with an interest in how the case is resolved (Kelly 1987 as cited in Erez and Sebba 1999: 178).

The main stumbling block facing victims in achieving full participation in the court process has been that the court system is constructed around an adversarial model of justice. This model is based on the premise that crime is committed against the state and not against an individual victim. "The state is not just the arbiter in a trial between victim and offender; the state is the victim" (Walklate 2002: 149). As a result, attempts to provide victims with rights in the criminal justice process have met with resistance from the legal community. Critics of the adversarial model of justice argue that a criminal justice system which denies victims a chance to participate, fosters a sense of helplessness and lack of control. The adversarial model of justice relegates the victim to the role of observer, or at best the limited role of Crown witness. The plight of the victim is further compounded by the fact that most cases are resolved via plea bargain or guilty plea. When this occurs, the victim is not even given his or her day in court as a witness. Essentially, in an adversarial process, when guilty pleas and plea bargains occur, the victim is given no means of participating in the justice process at all and his or her voice is never heard.

Some of the more recent legislative reforms have acknowledged victims' frustration with the lack of opportunity for victim participation in the criminal justice process. One such reform is the Manitoba Victim Impact Statement Program. Victim impact statement programs are aimed at reducing a victim's frustration with and