



July 21, 2022

Standing Committee on Justice and Human Rights
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6

Honourable Chairperson and distinguished members of the Committee, thank you for giving the Canadian Centre for Child Protection (“C3P”) the opportunity to participate in the **study of the government’s obligations to victims of crime and the *Canadian Victims Bill of Rights (CVBR)***.

C3P is a registered Canadian charity with a mandate of preventing the sexual exploitation and abuse of children. It owns and operates **Cybertip.ca**, Canada’s national tipline to report the online sexual exploitation of children, and **Project Arachnid**, an innovative technological tool designed to help break the cycle of abuse for survivors by combatting the growing proliferation of child sexual abuse material (“CSAM”)¹ online. We are often the place victims of online child sexual exploitation and abuse come when government/legal systems have not met their needs or they do not know how to access those systems. Throughout this document, we will use the term “**online CSE**” to describe online child sexual exploitation and abuse, which includes CSAM, online grooming, sextortion of children, and related criminal offences.

Executive Summary

- Police-reported online CSE has been steadily increasing since 2014 when Statistics Canada first began collecting cybercrime data² – the number of victims of these crimes will only grow.
- Online CSE has potentially devastating impacts on its victims; tragically, Canadian children have died by suicide after being exploited online, including Amanda Todd of Coquitlam, B.C. – victimized over 10 years ago – and Daniel Lints of Pilot Mound, Manitoba – victimized in February of 2022. Daniel died only 3 hours after an online extortionist coerced him into sending a sexual image, which underscores the escalating tactics used against our children.
- Statistics Canada has stated, “The nature of cybercrime is such that victims and accused can be located anywhere. Victims can be targeted in Canada though the perpetrator may be located outside of Canada and, conversely, Canadian offenders might target victims abroad”.³
- CSAM is a permanent record of a crime – the CVBR, the systems victims of CSAM encounter, and the supports available to them, are not suited to the ongoing impacts associated with this victimization.
- Online CSE victims need better support across systems, understanding of their unique needs, more information, and ways to enforce their rights under the CVBR, the *Charter*, and international law.
- Many aspects of the justice, compensation and support systems are confusing, not transparent, and not trauma-informed. For example, forms to access compensation are complex, bureaucratic, and fail to account for expenses associated with online CSE crimes in particular, placing an onus on traumatized victims to self-advocate.

¹ Encompasses what is referred to in section 163.1 of the *Criminal Code* as “child pornography”.

² Statistics Canada, “Online child sexual exploitation and abuse in Canada: A statistical profile of police-reported incidents and court charges, 2014 to 2020” (12 May 2022).

³ Statistics Canada, “Online child sexual exploitation and abuse in Canada: A statistical profile of police-reported incidents and court charges, 2014 to 2020” (12 May 2022) at 22, available online: < <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2022001/article/00008-eng.pdf?st=6-LldPlg>>.



- Many of the Canadian victims of online CSE with whom we work never enter the justice system, and so never receive needed supports.⁴
- Non-offending parents/caregivers and siblings of victims of online CSE are not considered “direct” victims, despite the emotional and financial harms they often experience.⁵ This must change.
- Many of the systems and services accessed by victims are the responsibility of provincial/territorial governments, which has resulted in serious inequities and substantial gaps across the country. The support a victim receives should not depend on where they live.
- More funding for support services is needed – we often hear of wait times and difficulties finding counsellors and services to address complex trauma caused by online CSE.

Challenges with the CVBR for victims of online child sexual exploitation

Does not address the unique position of children, their vulnerabilities as victims, and their international rights

The CVBR fails to embrace the principles in the **United Nations Convention of the Rights of the Child (the “UNCRC”)** (see especially Article 3 and Article 39) and the **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (the “Optional Protocol”)** (see especially Article 8). This must be remedied. The issues facing child victims are different from those facing adult victims. Some areas urgently in need of clarification/adjustment for children (there are many) are:

- Ensuring the right to information is fulfilled in a developmentally appropriate way and that it is crystal clear **who** is responsible for providing **what** information **to whom** and **when**.
- Children must have access to an advocate who can explain their rights, help them identify and access available resources and supports, ensure appropriate safety plans are in place, and advocate for their interests as a victim at various stages.
- Recognizing the critical role of the victim’s family and their need for information and supports – when parents/caregivers do not have the right to access supports, their ability to actively support their child’s recovery is diminished which can have far-reaching consequences not just for the child, but also for the caregiver and society at large.

Charter-rights of victims must be recognized in decisions that impact them

State actions that infringe or impact the *Charter* rights of the victim must be rectified. For example, the lack of a clear process to lift a publication ban when circumstances have changed (and the fact many victims do not even know a ban was imposed) directly impacts the *Charter*-protected freedom of expression rights of victims. Some survivors tell us this is especially frustrating when the ban extends to keeping the offender’s name secret. They also object to the offender having a say in whether the ban is lifted, as the ban was never intended to protect the offender. Another issue arises with disclosure of evidence. When that evidence includes CSAM, often involving identifiable victims, victims want a specific process for how this takes place that includes safeguards for securing electronic information in order to protect their privacy and security rights.⁶ Related to this, there is no formal system to notify victims of CSAM about prosecutions involving their imagery, so they must trust police, prosecutors, and judges to protect their *Charter* rights.

⁴ This may be because police believe they cannot locate the online offender and do not take the report; the victim chooses not to use the justice system; the exploitation/abuse did not raise to the criminal threshold; the victim has not disclosed the exploitation/abuse to anyone; or the victim does not realize what happened to them is a crime.

⁵ An example of the impact on a caregiver and whole family is seen in *R v GM*, 2014 MBPC 57, which describes how the mother “struggle[d] to provide” after losing her job in the wake of her partner’s abuse of their daughters.⁵

⁶ Consider *R v Pohl*, 2021 MBQB 74, in which the court set out very specific conditions for the provision of a mirrored image of a hard drive to the defence expert, and *R c Abel*, 2019 QCCS 5832, in which the court dismissed the defence application for disclosure of an



Victims not aware of their rights under the CVBR

The victims we work with generally are not aware of their rights under the CVBR. Also, we monitor criminal law from across the country involving online CSE offences (e.g., “child pornography” offences under s. 163.1, online luring under s. 172.1). We rarely see the CVBR mentioned in any of the decisions we come across – the rights related to protection, participation and restitution are not being cited even when they ought to be.⁷

Constitutional division of powers must be properly navigated if victims are to receive needed supports

The federal government must raise the bar for victim rights across the country. While victim services programs exist, they are limited in scope, inconsistent across provinces, and are inadequate. For example:

- There are glaring differences in the amount of compensation available and in who qualifies across the country.⁸ For example, B.C. provides counselling for family members; other jurisdictions do not.⁹
- Some jurisdictions have detailed victim rights bills but not all. For example, Manitoba’s legislation sets out the exact pieces of information law enforcement, prosecutors, court administrators, correctional services, and other actors must provide; when and how a victim can have a say on certain decisions; and whether these rights are automatic or fulfilled on request.¹⁰
- Some jurisdictions assist victims in recovering restitution awards, while others do not. As an example, Saskatchewan provides a “Statement on Restitution” form that can be submitted alongside a victim impact statement and its Restitution Civil Enforcement Program allows victims to register their restitution orders so that government collection officers will enforce them.¹¹

Also, there is a right to certain forms of protection in the CVBR, but no right to support through victims services or to safety planning, which tends to be offered provincially.¹²

Not trauma-informed

The CVBR does not reflect trauma-informed practices, nor does it mandate systems to mitigate against potential re-traumatization. A trauma-informed approach equips victims with information and support throughout the process so they can make decisions about their needs, whereas the CVBR places the burden on victims to request information, protection for their identity, and testimonial aids, etc.

Lack of practical enforcement mechanisms and responsibility

Victims need more tools to enforce their rights. Often, actors within the justice system think it is someone else’s job to help the victim, so no one does. Even if it is not their responsibility, they must be required to help the victim find the right provider. Moreover, many of the rights in the CVBR are really the right to have

identical copy of the items seized at his home, including CSAM contained thereon, and declared the Crown’s mode of access (at the police station) reasonable (C3P intervened in *Pohl and Abel*).

⁷ For example, in *R v Subia*, 2022 ONSC 1693, the Crown asked the court to seal a recorded community impact statement (CIS), in which survivors of child sexual abuse material appear asked to protect their identities but which statement also featured their real voices. Our agency facilitated this filing and submitted an affidavit outlining the fears survivors have shared with us about this the possibility of this CIS being viewed by offenders. Yet, the judge stated there was no evidence the survivors were at risk. This matter directly implicated the survivors’ right to protection but was decided without any reference to the CVBR in the reported reasons.

⁸ For example, provincial/territorial caps on victim compensation vary by province (e.g., a victim in Saskatchewan can receive up to \$5,000 for counselling, while the limit in New Brunswick is \$2,000).

⁹ *Crime Victim Assistance Act*, SBC 2001, s 3(b).

¹⁰ *The Victims’ Bill of Rights*, CCSM c V55.

¹¹ See <https://www.saskatchewan.ca/residents/justice-crime-and-the-law/victims-of-crime-and-abuse/victim-impact-statement-and-restitution>.

¹² Consider Manitoba’s Bill 43, *The Disclosure to Protect Against Intimate Partner Violence Act* (introduced May 30, 2022) – as worded, this bill would require, as appropriate, a government agency to create a safety plan and provide information about resources to persons who make a request under the act to receive information about a possible risk of intimate partner violence.



the victim's needs *considered*, as opposed to an enforceable standard. Finally, the complaints process outlined in the CVBR leaves it to individual federal entities and provinces/territories to develop a complaints mechanism. Manitoba's legislation is more specific, including a provision that the director that receives the complaint "must make every reasonable effort to provide the victim with a report on the investigation within 30 days after receiving the complaint".¹³

Challenges with specific rights enshrined in the CVBR

Information rights

Many online CSE victims, particularly parents when their children are victims, do not feel adequately updated or informed. Information relating to victim compensation funds and restitution is sorely lacking. Marginalized communities have an even tougher time accessing services and information.

Protection rights

Many justice officials are not informed about the safety issues facing victims of online CSE. For example, victims of CSAM typically use pseudonyms in legal proceedings to protect their identity as some have been identified by individuals who have seen their CSAM online.¹⁴ Through operating Cybertip.ca, we know that some offenders are interested in information about CSAM victims. These risks – and the practice of using pseudonyms – are not well understood by Canadian judges, impairing the protection CSAM victims receive.¹⁵ Ongoing, specific safety planning for victims of online CSE is critically necessary, is very different from safety planning for other crimes, and may need to change as the child ages and/or their abuse images circulate.

Participation rights

The participation rights of victims of online CSE are impeded by:

- The shortcomings in providing information described above. Information is a gateway right. When victims are not informed, they are not able to participate.
- The lack of support around/information about writing a victim impact statement – many victims, especially young children and children in care – need help conveying their experience.
- The lack of a formal system to notify victims of CSAM about prosecutions involving those who subsequently possess, view or distribute their CSAM, which would enable them both to file victim impact statements and seek restitution for the ongoing harm caused by these offenders.¹⁶

Right to Restitution

In the cases we see through our case law monitoring, restitution is barely ever mentioned, much less actually ordered. This despite the fact that online CSE can have financial impacts related to counselling, missed work

¹³ *The Victims' Bill of Rights*, CCSM c V55, s 28(3).

¹⁴ Canadian Centre for Child Protection, *International Survivors' Survey: Executive Summary*, page 29, graph 44, available online: <<https://protectchildren.ca/en/resources-research/survivors-survey-results/>>.

¹⁵ For example, in a CSAM sentencing for which C3P coordinated the availability of victim impact statements, the court's written reasons connected the victim pseudonyms to the names of their CSAM series and provided detailed information about imagery of the victims, which risked making this information available to those in the offending community. Once informed of the safety risks by C3P, the Crown requested redaction of the series names and the court complied. Consider also, C3P requests that all video victim impact statements from victims of CSAM be sealed in order to protect their safety. While this is generally not an issue, consider *R v Subia*, 2022 ONSC 1693 at para 34 where the court refused to seal the video victim impact statements provided.

¹⁶ A system exists in the U.S. whereby a victim is notified in writing when imagery of their child sexual abuse is found within the collection of an individual who has been charged with a child pornography offence (if the victim has opted to receive such notices).



or school, medication or replacement of household items.¹⁷ Unlike the U.S., Canada completely lacks a formal system to notify victims of CSAM when their images form part of a prosecution. This means victims of CSAM are not able to seek recovery from subsequent possessors. It also deprives the courts from understanding the long-term cost to victims, and society from the circulation of this material.¹⁸ Also, most provinces/territories do not assist victims in recovering restitution orders, leaving the burden on them when an offender fails to pay.

Recommendations: Improving the CVBR and services for victims overall

1. Specifically incorporate the rights of child victims under the UNCRC and the Optional Protocol, especially the right to physical and psychological recovery and social reintegration (Article 39).
2. Review the CVBR from a trauma-informed lens and implement trauma-informed practices.
3. Strengthen the language in the CVBR to state not only that the victim's rights will be considered, but require that all actors be accountable for fulfilling each right to the greatest extent possible.
4. Enshrine the right of a child to have an advocate, especially if their family is not able or is not a safe support (e.g., if the offender is a family member).
5. Reduce jurisdictional inequities. It is the federal government that signed onto the UNCRC. It must organize a taskforce to review legislation and programs from across the country and identify ways to ensure the CVBR promotes consistent baselines throughout Canada.
6. Adapt to the realities of online CSE, recognizing the ubiquity of anonymous perpetrators and ongoing victimization. Case in point: victim compensation forms ask for a police report number, but no number issues if police will not take the report. This can happen if they do not believe they can unmask the perpetrator or the perpetrator is in another country. **A report to Cybertip.ca should be considered a valid indicator of a report of the crime.**¹⁹
7. Non-offending parents/caregivers and siblings of child victims of CSE must be considered direct victims and have access to information, support, and compensation.
8. Implement online complaint options (email, online form); electronic modes of contact are essential for today's young people and will improve access overall.
9. Enhance statistics kept about victims of crime – better statistics will assist in identifying the level of services required and who is likely to be accessing the services.

The above summary of our overarching recommendations is a starting point for how the federal government can fulfill its obligations to victims. There is so much that can be done, and Canada has an opportunity to lead the development of a model that truly works for children and families victimized online. We have many more specific ideas – including implementing a system of restitution for CSAM survivors and processes to protect their privacy and security throughout the criminal justice system. We would like the opportunity to present to the Committee to detail these recommendations, and share more information about what online CSE victims are telling us on a daily basis. Thank you for your consideration.

¹⁷ Consider *R v MS*, 2017 ONCJ 479. The offender sexually abused his 4-year-old daughter; he took pictures of the assaults and distributed some online. The victim's grandmother became the victim's guardian after the abuse; in her victim statement impact, she relayed that she has been unable to work; and she is required to pay for medications and new clothes and underwear as the victim has frequent accidents. There is no mention of the CVBR or the right to have restitution considered in the sentencing decision.

¹⁸ Consider *R v Suomo*, 2018 MBPC 3. The court awarded \$5,000 to a victim whose child sexual abuse material the offender possessed, and whose victim impact statement was tendered in the proceeding. In *Suomo*, the court was provided with information about that specific victim's economic losses; information that is typically not available in Canadian sentencing proceedings.

¹⁹ British Columbia's form is an example of a one that permits victims to say they reported not to police, but to a doctor, social worker or counsellor.