

VICTIMS' RIGHTS ORGANIZATIONS AND
THE DAUBNEY COMMITTEE:

AN EXAMINATION OF CLAIMS AND THEIR INCORPORATION

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Submitted to the Department of Criminology, University
of Ottawa, in partial fulfilment of the requirements for the
degree of Master of Arts.



Raymond Lonsdale, Ottawa, Canada, 1996



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ABSTRACT

The purpose of this thesis is to assess the response of the Daubney Committee to the claims of five victims' rights organizations. The idea for this research project came after reading the book: Victims: The Orphans of Justice by Jerry Amernic. The book tells the story of Don Sullivan and his fight to bring changes to the criminal justice system, and the resultant victims rights movement. Victims' rights organizations claim that the criminal justice system consistently fails to keep dangerous offenders incarcerated and drinking drivers off the road, resulting in considerable threat to the public. Victims' groups such as Victims of Violence and Mothers Against Drinking Drivers have demanded changes to this system. Yet the system continues to use them primarily as "tools of evidence" (Waller, 1988b: 37), rather than responding to their needs or to the broader concerns with the issue of public safety.

Chapter 2 presents a number of theories that have dominated the notion of social problems and claims making in the last fifty years. Of particular interest is the notion of

"claims-making" as it focuses on explaining a social problem as a series of claims made by a person or a group about an issue.

Chapter 3 offers a brief historical account of the establishment of several victims' rights organizations. Once established, victims' groups proceeded throughout the 1980s making claims and lobbying for fairer treatment. Their claims as victims soon became recognized internationally by the United Nations, but it was not until the death of Celia Ruygrok in 1985 that the issue of victims' rights was brought to Canadian political forefront.

Chapters 4 and 5 concern the primary claims-making activities of the five victims' rights organizations in this study, and focuses on how these claims-makers framed issues in order to attract attention. Common links can be made between these groups who are ultimately concerned with greater rights for victims and their families; and who advocate, above all else, for a more equitable and compassionate criminal justice system.

Chapters 6 and 7 explore whether the Daubney Committee responded to claims-making by these five groups.

Specifically, chapter 6 presents those recommendations of the Daubney Committee that apply directly to victims. For example, Recommendations 5a, b and c, are of particular importance as they provide specific criteria that meet the informational, practical and emotional needs of victims.

Chapter 7 introduces Bill C-36. This legislation is important as it embodies the spirit of the Daubney Committee. It will be argued, that while the Daubney Committee made a concerted effort to respond to some of the concerns expressed by victims' rights organizations only those concerns seen as reparative in nature were seriously considered.

Chapter 8 illustrates this point, listing the expectations of the victims' group and the response of the Daubney Committee in a table format. Recognition of the claims of victims of crime may have a practical impact on the criminal justice system. The field of criminology has to a large degree had as its focus the offender. It has been principally concerned with the causes of crime and implications in terms of penalty.

Victims' rights organizations argue that there must be a shift in emphasis from focusing largely on the offender

to considering all the circumstances and participants in the crime. The thesis suggests that before such groups can become a more effective political force they must attempt to better understand the intentions and desires of the various governmental and non-governmental agencies and officials with whom they are dealing.

In Chapter 9, the thesis concludes by suggesting that the creation of an amendment to the Canadian constitution would be a necessary step in ensuring fair and equitable treatment for victims of crime.

CHAPTER 1

INTRODUCTION

Historically, the criminal justice system has focused its attention on the offender, expanding resources to locate, punish and rehabilitate the offender. The victim, however, is left with the burden of dealing with the emotional and physical trauma of the incident. Since the early 1980's, a growing victims' rights movement has spread throughout Canada. The impact of organizations formed for the purpose of articulating victims' rights has become pronounced at both the federal and provincial levels. Proposals embodying group demands are appearing in both social policy and legislation. However, very little is known about the already established victims' rights groups, the positions they represent, the changes they advocate, and the future impact they might have on the criminal justice system.

The inequities which characterized the role of the victim in the criminal justice process were largely taken for granted until 1987, when a federal sub-committee (chaired by Ottawa MP, David Daubney) explored the existing criminal

justice system. The Daubney Committee addressed three important issues (see Daubney, 1988: 2-3): the public concern over the treatment of victims versus offenders; the fear felt by many Canadians at the failings of the criminal justice system; and, the question of whether or not the system is one of law enforcement or victimization reduction (and the subsequent consequences for communities).

A. Purpose

It is the purpose of this thesis to investigate whether the Daubney Committee succeeded in responding to victims' rights organizations and their requests for what they would consider a more equitable, just and accessible justice system.

Objectives

With this in mind, the thesis has three (3) specific objectives:

1. to identify "grass-roots" victims' rights organizations in an effort to determine their wants, needs and objectives;

2. to examine the Daubney Report and any resulting "victims" legislation; and,
3. to investigate whether the Daubney Committee responded to the concerns of the victims' rights organizations.

B. Methodology

The following study attempts to explore victims' rights organizations and the work of the Daubney Committee, focusing specifically on the Committee's response to the needs and concerns of victims of crime. To begin, there was an identifiable need to define what constitutes a victims' rights organization for the purposes of this study. For example, does the organization have to be political or can victim service organizations constitute a victims' group? Do the primary goals of the group have to be victim orientated or can groups advocating victims' rights as a secondary concern qualify?

For the purpose of this study, a victims' rights organization is a group that is:

- influential at the local level (i.e. "grass-roots");

- in existence for the purpose of enhancing victims' rights;
- focusing on the increase of rights for victims through legislative action; and,
- registered as a charitable or non-profit organization.

Identification of these groups was accomplished by contacting the National Victims Resource Centre at the Ministry of the Solicitor General; by viewing published sources identifying local victims' rights organizations; and, by consulting the list of witnesses and contributors who took part in the Daubney Committee hearings.

Once a list was compiled of the various groups earmarked for the study, a letter of introduction was sent stating the purpose of my thesis and a request for information on the groups' primary goals and objectives (see Appendix B).

After receiving the necessary information, I was able to select five (5) victims' groups that fit the definition as previously stated. The groups chosen are: Victims of Violence

(VoV), Mothers Against Drinking Drivers (MADD), Citizens United for Safety and Justice (CUSJ), People to Reduce Impaired Driving Everywhere (PRIDE) and Parents Against Impaired Driving (PAID).

The thesis uses qualitative data drawn from a series of wide-ranging semi-structured interviews with seventeen (17) individuals who are members of the participating victims' rights organizations. Five (5) individuals from Victims of Violence were selected; four (4) from Citizens United for Safety and Justice; two (2) from People to Reduce Impaired Driving Everywhere; and, two (2) from Parents Against Impaired Driving.

Due to the nature of the study and the identified population, the exploratory study was initiated by way of a non-random, unobtrusive, purposive sample. In selecting respondents I paid particular attention to the position each individual held within the group, postulating that the more senior positions would have greater access to information, and be more active within the organization.

Of the respondents in this study, three (3) were the founding members: Don Sullivan (VoV); Inge Clausen (CUSJ);

and, Sally Gribble (MADD). The remaining respondents held senior positions within their respective organizations.

The research was conducted through interviews. An interview schedule was used, although the natural flow of conversation took precedence over following a precise order. The interviews focused on issues pertaining to organizational and legislative data but additional categories for analysis emerged from the words of the respondents. Specifically, the variables of interest were:

1. Organizational Data:

- a) information regarding the groups' origin and history'
- b) size of the organization;
- c) goals and objectives of the organization; and,
- d) patterns and methods of decision-making.

2. Legislative Data:

- a) efforts in legislative lobbying;
- b) past legislative efforts;
- c) present legislative efforts; and,
- d) future legislative efforts.

Government and criminal justice personnel were selected using a non-probable haphazard sampling approach.

The sample consisted of individuals who were conveniently available, recognizing that information gained from these individuals would not adequately permit generalization beyond the collection themselves. However, information was compiled demonstrating the perceived success or failure of the Daubney Committee and any resulting policies or legislation.

Finally, additional information was collected by analyzing the minutes on the proceedings of the Daubney Committee. Only those presentations by the identified victims' rights organizations and the identified experts in the field of criminology were selected for analysis. The purpose was to identify any issues and concerns not expressed in the interviews.

CHAPTER 2

OVERVIEW OF CLAIMS-MAKING IN THE STUDY OF SOCIAL PROBLEMS

The explanations concerning social problems vary widely in substance and empirical validation. Advocates of different theories often disagree with one another. Every theory has certain merits and shortcomings. Some theories are more effective in analyzing a particular social problem, whereas others are more effective in analyzing other problems. Therefore, it is important for those who study social problems to have a knowledge of contemporary theories in order to select the theory or theories most effective in analyzing key dynamics of the problem under study. In this section, I will discuss claims-making as another approach to the study of social problems.

A. Claims-Making

Claims-making attempts to study the causes and consequences of the concerns of a particular group rather than studying the causes and consequences of the social

condition. Therefore, the question of how and why concerns emerged become central to the analysis.

Social constructionists argue that conditions must be brought to the attention of people in order to become social problems. A social problem, then, can be defined as: "the activities of individuals or groups making assertions of grievances and claims with respect to some putative conditions" (Spector and Kitsuse, 1977: 75). That is, social problems become socially constructed where people make claims arguing that particular conditions are social problems, and others then respond to these claims. How, then, do claims come about? Where do they come from?

Some social construction theorists have avoided these questions and treat a claim as a given. Spector and Kitsuse speculate that claims may be grounded in values, but then advise against trying to explain claims-making by merely specifying values and motives (see Spector and Kitsuse, 1977: 96). Spector and Kitsuse (1977) infer that values are resources used by claimants to define conditions as social problems, but an investigation into how such values become part of a claim remains absent.

Joseph Gusfield, in his research on drinking and driving, suggests that claims should not be viewed as objective evidence but should be seen in terms of rhetoric (Gusfield, 1981). That is, a claim is to be viewed as part of a claimant's efforts to persuade.

Joel Best (1987, 1990) after investigating Gusfield's argument, holds that claims-making is a rhetorical activity, which can be used to analyze claims. To further his point, Best adapts the work of Stephen Toulmin (1958) who developed research into the structure of arguments. Toulmin's basic premise was that every argument has a structure where a distinction has to be made between a claim and the facts that back that claim up. The claim and the facts are bridged on a continuum by what Toulmin calls "warrants", or that part of the argument which justifies the step(s) that commit you (see Toulmin, 1958: 98). Best refers to "claims" as "conclusions"; "facts" (Toulmin called these "data") as "grounds"; and warrants remain as "warrants" (see Best, 1990: 25).

Herbert Blumer (1971) holds that a social problem exists primarily in terms of how it is defined and conceived of in a society. Phol (1977) feels it paramount to the

success of a claim to define the realm in which the claim will take place. A definition, he argues, will attract attention as long as the definition identifies a new phenomenon. Phol and Best refer to these definitions as domain statements (see Phol, 1977; Best, 1990).

Research into the missing children problem offered a definition that was deliberately broad and inclusive (see The Calgary Herald, March 21, 1985; The Vancouver Sun, January 16, 1982). Research into the drunk driving problem encompassed several campaigns that were directly and indirectly aimed at reducing the amount of drinking within society (see Reinerman, 1988: 91; Gusfield, 1976). And research into prostitution was equally as broad defining prostitution as part of a "trade" (see Lowman, 1985).

Whatever the domain, definitions that are broad and inclusive allow for different interpretations, and can then guide individuals into courses of action. Claims-making about missing children accentuated the "missing" so that any child who went missing could be considered as in danger and in need of protection (see Best, 1987). Claims-making about drunk driving emphasized "problem-drinking" that demanded immediate

action (see Gusfield, 1976); and claims-making about victims' rights stressed "rights" to mean "human" and "legal" alluding to the notion that everyone had a stake and could be a victim at anytime.

This extension to basic human and legal rights, for example, coupled with stories of released inmates murdering, received support from the general public. Newspapers and magazine articles which called attention to the issue of "victims' rights" usually began with accounts of one or more atrocities leaving behind diffuse feelings of anxiety. Such tales are often products of social tension and strain. They express fear that the complexities of modern society threaten the traditional order (Best and Horiuchi, 1985). Atrocity tales are emotional appeals that provide the reader with a sense of the problem's magnitude.

It is often considered standard by the news media to use examples that typify the problem so as to grab the reader's attention, and perhaps shape perceptions of the problem. A Maclean's magazine article indicated that the fear of crime is on the increase (see Chisholm, 1993). Not only are crime and violence perceived to be increasing, but crimes

are also believed to be becoming more vicious and irrational. According to Leyton (1986: 16), such crimes as those of multiple murderers which are commonly perceived as totally irrational and committed by deranged individuals, are better understood as acts "representing the logical extension of many central themes in their culture of worldly ambition, of success and failure, and of manly avenging violence". A common image in the minds of the general public is that of a demented person who has no concept of right and wrong, and who has little in common with the rest of society. Such an image can be linked to sensationalism by the mass media, and the exaggeration by law enforcement officials and victims' rights organizations.

Atrocity tales typify the issue. Victims' groups and victim crusaders used the cases of people being released on an early release program and murdering when really those released on an early release program rarely commit crimes of any great magnitude. We are taught to constantly be afraid of violent crime, and the constant promotion of the problem by the claims-makers directly influences our attitudes and beliefs (see Wright, 1986). Claims-makers play on these fears

and lend superficial support to the perceived reality of the fears. They emphasize the magnitude of the problem, attach a human dimension, and then estimate the extent of the problem.

When trying to estimate the extent of a problem, Joel Best (1990) reports that claims-makers attempt to quantify the number of cases, incidences, or people affected. They then make claims about the problem growing if something is not done. And finally, they make statements about the epidemic nature of the problem.

Claims-making about drinking and driving estimated that 250,000 lives had been lost in "alcohol-related auto crashes" (see Reinerman, 1988: 98). Victims' groups supporting survivors of murder reported that between 1975-1989 at least 130 Canadians have been murdered by parolees out on early release, and that over a five (5) year period between 1974-1979, 712 offenders on mandatory supervision were convicted of violent crimes. The numbers can be argued as being inexact, as it is hard to say exactly how many people are killed in alcohol-related crashes. Often statistics report accident deaths for which alcohol relatedness is not known.

Moreover, by using arguable statistics and calling attention to only murderers, rapists, paedophiles in the number of parolees released who recidivate, and by excluding those who don't commit, claims-makers led many people to infer that the most serious cases were commonplace.

Public opinion surveys found that many people felt unsafe, that violent crime was on the increase, and that those released on early release were usually the most dangerous of criminals. Claims-makers then infer that things are getting worse; that the problem is growing and action must be taken. Claimants claim the problem is becoming an epidemic. For example, MADD claims a person is killed by a drunk driver every twenty-three (23) minutes; that on an average weekend night, ten (10) per cent of the drivers are intoxicated leaving no one safe on the roads; and that drunk driving is now the leading cause of death for 16-24 year olds (see MADD, 1987).

Victims' groups then claim that the problem extends beyond the immediate into the whole social structure. Best calls these "range statements", and they serve an important rhetorical function by making everyone feel they have a

vested interest in finding a solution to the problem (Best, 1987: 108). Claims made by victims' groups presented their case in such a way that could not be ignored.

Making claims that something must be done infers to the reader that some warrant or conclusion be accepted. In his adaptation of Toulmin's argument, Best states that warrants are statements that justify drawing conclusions from the grounds (see Best, 1987: 108). The extent to which grounds may be disputed are not that important to claims-makers as they might argue that one drunk driver is too many, or that one person killed at the hands of someone on early release is too many, and, therefore, something must be done, or at the very least, that the problem deserves attention.

There are certain warrants that predominately figure in claims-making about victims' rights. The following three (3) warrants adapted from Best's work on missing children (1987, 1990) figured predominately in claims-making about victims' rights.

A strong warrant used by victims' groups is that of the blameless or innocent victim. This warrant is used to stress that the victim did nothing to deserve what happened

to them; they were either out for a walk, or in the wrong place at the wrong time. By stressing the non culpability of the victims, claims-makers are offered a rhetorical advantage. They paint pictures of people engaged in respectable activity who, minding their own business, are overcome by an uncontrollable and unforeseen force. Painting this picture offers validation to the claims-makers.

A second warrant use by victims' rights claims-makers insisted that existing policies and resources could not handle issues relating to victims' rights. When it came to balancing victims' rights with those of the offenders, police departments often said that they had to follow procedure to ensure the rights of the offender were not violated. Then stories of atrocities demonstrated that official policies neglected the concerns of victims. Victims' rights organizations sought to have these policies changed. Therefore, by calling attention to the inequity in criminal justice policies and lack of victim resources, claims-makers presented a warrant for change.

Claims-making about government policies and victim resources involved warrants about rights and freedoms. This

final warrant emphasized the right to live in peace and security. It spoke of freedom from the threat of violence, and of rights to protection by authorities.

B. Conclusion

Victims' rights groups presented claims which called for action to alleviate a social problem. Victims' groups acting as claims-makers had several goals designed to affect the general public, criminal justice policy and social policy. Victims' groups sought to bring the problem to public attention. Their goal was not only public awareness, but also social action.

Initially their efforts reached few people, but as newspapers exposed the problem and victims kept telling stories of horrific incidences, word spread. The use of rhetoric by the media and victims' organizations played a key role in claims-making. Case histories coupled with estimates that so many convicts murder on their release convinced many that the problem could not be ignored. The warrants emphasizing the unaccountability of criminal justice officials drew much of their power from the examples of

atrocities which typified the victims' rights problem. Atrocity tales helped individuals imagine how they might respond under the same circumstances. Atrocities stressed the notion that no one was safe, thus making the problem all the more relevant and persuasive to the rest of society.

The success that atrocity tales has had in manifesting public and government support, serves as a testament to the use of rhetoric as a primary focus of most claims-making activity. But, as Best (1987, 1990) suggests, the success of claims-making activity lie in finding convincing warrants. Convincing warrants are essential as they bridge the gap between grounds and conclusions.

Claims-making involves the process of selecting from available arguments, placing the selected arguments in sequence, and giving particular arguments emphasis. Moreover, claims-makers assess the response to their claims; and depending on the conclusion, claims may be revised through the use of rhetoric and reconstructed in hopes of making them more effective.

In the next chapter, I look at the claims-making activity of five (5) victims' rights groups as they present

their position on a variety of criminal justice and social policy issues.

CHAPTER 3

HISTORICAL BACKGROUND

A. The Establishment of Victims' Rights Organizations

Before discussing the creation of the Daubney Committee, a brief historical account of the events leading to the creation of the five (5) victims' rights organizations in this study is explored.

1. Pamela Sullivan

On October 23, 1980, Pamela Sullivan, a twenty-one (21) year old community service worker, was sexually assaulted and murdered in Ajax, Ontario by a man out on mandatory supervision. The man, Mark Stephen Shannon, had a previous history of violence and behavioural problems dating back to kindergarten (Amernic, 1984: 6). Pamela's father, Don Sullivan, was outraged at a system that released a dangerous individual without prior notification to local police. He formed a group called Victims of Violence and began an arduous journey to change a system that he claimed granted more rights to offenders than to victims. He articulated his

case to the National Parole Board President who dismissed the case as an unfortunate incident (Amernic, 1984: 98); he sent letters to the Chairperson of Correctional Services Canada who apologized but did nothing else; he talked to the Solicitor General's office whose reply took seven (7) months to arrive and was, to Don Sullivan, unsatisfactory; and, he went to the Prime Minister of Canada who sent him away with what Don Sullivan called "a glossed over analysis of liberal policy on capital punishment" (see Amernic, 1984: 99). Don Sullivan's story resulted in a best selling book criticizing the present prison and parole systems (see Amernic, 1984).

2. Federal Provincial Task Force

Meanwhile, the Federal Provincial Ministers responsible for criminal justice were establishing a task force of officials to examine the current needs of victims, and the experiences of victims' in the criminal justice system (Federal Provincial Task Force, 1983: ii). Informed that he would not be allowed to make a personal appearance, Don Sullivan submitted a written brief exploring seven (7) areas of great concern to his group (i.e. VoV) in the areas

of sentencing and parole (see Amernic, 1984). VoVs concerns were: notification of next of kin by police; equitable treatment by the justice system; financial assistance; information and legal advice regarding murders in other provinces and/or countries; trauma counselling; media; and, human rights.

3. Lise Clausen

In 1981, an eleven (11) year old Lise Clausen was jogging near her home when she was forced into a car by a man with a starter's pistol and handcuffs. She was sexually assaulted and strangled to death by a man released on mandatory supervision who had a known history of sexual assault. Unsatisfied with "official" responses to her daughters death, Inge Clausen held meetings in the basement of her home with concerned neighbours to look into "what mandatory supervision and parole and all that stuff was" (Globe and Mail, 1983: 10). In 1982, Citizens United for Safety and Justice advocating the use of stiffer penalties for violent offenders was formed.

4. Bill S-32

At about the same time in 1982, Robert Kaplan, then Solicitor General, introduced Bill S-32 before the Senate Committee on Legal and Constitutional Affairs. The Bill introduced changes to the mandatory supervision program. Kaplan refused to offer the termination of the program as a viable solution, though he noted that forty-one (41) per cent of offenders released on mandatory supervision were revoked for failing to meet the requirements of their parole. He said the program provided offenders with a "valuable support system" during the difficult period of re-adjustment that follows a federal sentence, and that it provided a degree of supervision by police and parole officers of the offender's activities (see Amernic, 1984: 169). At the time, however, the government was concentrating on changes to the Criminal Code and to the rape law, so little attention was paid to Bill S-32 (see Lacombe, 1988). In addition, the Bill did not address the automatic release segment of the program.

5. David Kilgour

On May 19, 1983, David Kilgour, a member of parliament, introduced a private member's bill calling for an overhaul of the legal process. The Bill would have established a precedent for victims who suffered physical or mental injury at the hands of offenders to come forward in court, before sentencing, state their case, and possibly have damages awarded. This meant that a victim would no longer have to hire a lawyer and could forego litigation. The Bill was submitted with the support of both the Conservatives and the New Democrats, but was never given a first reading.

6. Mothers Against Abduction and Murder (MAAM)

As individuals and organizations were lobbying for changes, the criminal justice system was continuing to fail the victim. Two (2) years later (1983), Mothers Against Abduction and Murder was formed by Sharon Rosenfeldt in response to the Clifford Olson murders. The particular focus of this group was on the mental health practices in Canadian psychiatric hospitals.

7. Drinking and Driving

MADD was introduced into Canada in the winter months of 1982 as a result of the death of a British Columbian teenager. This was followed shortly by PRIDE in Ontario and PAID in Alberta.

8. Victims of Violence

After 1984, a chapter of VoV moved to Ottawa from Manitoba to introduce a more active political awareness mandate and to fight for victims on a national scale. These two (2) organizations (Victims of Violence Inc. and Mothers Against Drinking Drivers) have dominated the victim's scene for the last ten (10) years. In 1992, Citizens Against Violence Everywhere Advocating Its Termination (CAVEAT) formed as a response to the murder of a nineteen (19) year old Hamilton girl by a dangerous offender.

9. Celia Ruygrok

In 1985, Celia Ruygrok, a counsellor at a half-way house in Ottawa, was murdered by a resident on day parole who had a sexually violent criminal history. A coroners' inquest

was set up to study the circumstances antecedent to Ms. Ruygrok's death. Soon after her death, horror stories were told of men being released from prison sexually assaulting, abducting and killing innocent victims. Victims' rights organizations are claiming to have legitimized their role as advocates for changes to Canada's criminal justice system since the early 1980s. During this period, surviving family members and victims of both impaired drivers and violent crime began to develop small self-help groups in various parts of the country. These groups, making claims about mistreatment and a lack of understanding on the part of the justice system, began to demand government intervention. Task forces, commissions, and committees were formed, in support of the claims made by victims' rights organizations. Moreover, the United Nations formalized a commitment to the same. The next section outlines the events that led to the establishment of the Daubney Committee.

B. The Establishment of the Daubney Committee

The establishment of the Daubney Committee can be seen as a culmination of events and claims beginning around

1982 and ending with the publication of the Daubney Report in 1988.

In the early part of 1982, various Deputy Ministers responsible for criminal justice assigned a task force of public servants to look at victims' issues. The task force, although setting the ground work for Bill C-89, failed to hold public hearings. This denied victims' groups an opportunity to voice their opinions in a public forum. In 1983, this task force reported seventy-nine (79) recommendations on the general needs of victims and the need to assist victims in dealing with the justice system (see Federal Provincial Task Force, 1983). The recommendations attempted to give victims an active role within this system, but failed to address victims' concerns over increased penalties. The Report was welcomed by victims' groups, but they (victims' groups) claimed it did little to balance the scales.

The following year, the Ontario government sponsored a two-day consultation with victims of violent crime to discuss the 1983 Report (see Ontario Government, 1984). The corresponding report was critical of correctional release and

victim compensation. It focused on the need to study causes of violence, and to identify, treat or control potentially dangerous offenders; and advocated the use of restitution, encouraging victims to participate in the criminal justice process (Ontario Government, 1984).

1. United Nations

In 1985, the United Nations General Assembly adopted a declaration stating that victims are entitled to access to the mechanisms of justice and to prompt redress (United Nations, 1986). The United Nations continues to urge that member countries ensure that the views and concerns of victims be heard at all stages of criminal proceedings.

2. The Sentencing Commission

In 1985, the Federal Government established a commission to examine sentencing in Canada, and restore public confidence in the sentencing and parole system. In 1987, the release of Sentencing Reform: A Canadian Approach, reported on proposals for the reform of the sentencing process (see Sentencing Commission, 1987a). The reforms

presented were the result of two (2) years of research and consultations. The Commission did not hold public hearings, but did solicit written briefs from various interested parties. Those who responded expressed their concerns on such topics as: sentencing guidelines; maximum penalties; the ranking of offenses; minimum penalties; purposes and principles of sentencing; disparity in sentencing; the use of community sanctions; and, early release. The Commission noted an absence of a statement outlining the Federal Government's reasons for sentencing offenders (Sentencing Commission, 1987a: xxii). The Commission believed that if such a statement were developed it would give the judiciary a guideline when sentencing offenders, and assist in recognizing the purpose of the sentence. That is, should a sentence be handed down for purposes of punishment, deterrence or rehabilitation; and, should it be handed down for specific or general reasons. The Commission noted that with the absence of such guidelines, the issue of sentencing will continue to attract considerable public discussion and debate (Sentencing Commission, 1987b: 2). The nine (9) member

commission contended that the present sentencing system was in need of change:

After conducting a thorough review, the Commission concluded that there are serious problems with sentencing in Canada and that these problems cannot be eliminated by tinkering with the current system . . . The system is in need of fundamental changes . . . (Sentencing Commission, 1987b: 1).

The Commission had little difficulty identifying the existing problem, but did experience difficulty in finding a solution to the problem. After two and a half years, they arrived at ninety-four (94) recommendations. Overall, two (2) issues were of major importance. Firstly, "real time" sentencing (i.e. when a person is sentenced to two (2) years, they serve two (2) years before being released); and secondly, the use of restraint when faced with the possibility of incarceration (Archambault, 1988: 2) (i.e. that is, sentences imposed by the judge and administered by the correctional authorities are to be similar, and when appropriate a judge is to use an alternative to prison).

In its recommendations, the Commission asserted that:

. . . It is recognized and declared that in a free and democratic society peace and security can only be enjoyed through the due application of the principles of fundamental justice. In furtherance of the overall purpose of the criminal law of maintaining a just, peaceful and safe society, the fundamental purpose of sentencing is to preserve the authority of and promote respect for the law through the imposition of just sanctions. (Sentencing Commission, 1987a: 151)

In all, the Sentencing Commission felt that the system they proposed addressed the needs of judges and individuals (especially victims). That is, a system that is less stressful for judges, more comprehensible to individuals (e.g. victims); and, overall, less punitive.

The need for protection is a concern which victims' groups claim is a fundamental natural right of every individual in the world. Moreover, these groups claim, a victim's right to life, liberty and security (protection) must be articulated. Victims of Violence National Inc. believe it well known and accepted that offenders are accorded basic legal rights such as they should not be

arbitrarily imprisoned, should not suffer inhumane or cruel treatment, should have effective legal representation, the right to a fair and impartial trial and the right to be considered innocent until proven guilty, and so on. However, Sharon Rosenfeldt said, ". . . the right to security and protection for the victim was not considered as important by the Sentencing Commission". "Instead", she continued, "they felt that the victim is in charge of his or her own protection and does not need the support of the judiciary". Victims' groups claimed that the Commission's focus seemed to be on the treatment of the offender through the justice system, not on the need to reduce victimization or make communities safer.

Due to the working procedures of the Commission, accessibility was seen to be limited by most victims' groups. Although it is no longer the case, traditionally, victims' groups have not been recognized as legitimate forces and are often left out of major task force initiatives. Victims' groups hold that their strengths lie in the spoken word, and when that is denied they are unable to fully articulate their crusade.

3. The Daubney Committee

In the same year that the Sentencing Commission released its report, the House of Commons Standing Committee on Justice and the Solicitor General targeted a year long review of sentencing and parole as a result of the murder of Celia Ruygrok by a man who had "slipped through the cracks" (Hatt, 1987: 3); and what victims' groups claimed to be a failure of the government to reinstate capital punishment. In response, the various victims' groups put considerable pressure on the government to develop a new criminal justice policy that would provide for the protection of society above the protection of the offender. As a result of the pressure, the Daubney Committee released a report with a number of thought provoking recommendations.

The Daubney Committee represented the first opportunity for victims' rights organizations to meet face-to-face with government officials to discuss their concerns on public safety. Victims' groups claimed that a majority of the changes introduced by previous studies (e.g. Federal Provincial Task Force's Report in 1983, and the Sentencing Commission's Report in 1987), did not result in significant

changes to legislation. These studies, they claim, may have served the needs of a few individuals victimized by ordinary "street crimes", but did little for the grass-roots organizations who sought a more equitable, just and accessible justice system. As a result, individuals and groups started seriously questioning the ability of the justice system to protect innocent law abiding citizens. Public perception of the justice and sentencing system could be viewed, then, as being at cross-purposes with the judiciary (see Hatt, 1987; Daubney, 1988).

The Daubney Committee echoed some of the statements made by the Sentencing Commission and the Ruygrok Inquest, but also stressed the importance of a more accountable correctional system and a more responsible sentencing system.

In summary, this chapter has outlined those events that can be seen as preceding the establishment of the Daubney Committee. The sensational media coverage of several brutal murders came at a time when the federal and provincial government was establishing a task force to discuss the needs of victims of crime; and the federal minister of justice was introducing changes to the mandatory supervision program.

Victims' groups were spreading across Canada, but the demands of these groups for a tougher criminal justice system were being largely ignored. The assistance from police, government and non-government agencies was, for the most part, non-existent.

Then in 1985, with the death of Celia Ruygrok and in 1987 with the failure of the Sentencing Commission to make change, the Daubney Committee was formed. The Committee marked the first time victims' groups had an official forum to voice their concerns. The following chapter examines in detail the claims of victims' rights organizations.

CHAPTER 4

VICTIMS' RIGHTS ORGANIZATIONS - SURVIVORS OF MURDER

This chapter outlines the claims of Victims of Violence and Citizens United for Safety and Justice. Both groups were established as a direct result of murders at the hands of "dangerous" offenders on early release. VoV is examined first, followed by CUSJ.

A. Victims of Violence (VoV)

VoV was formed in Ajax, Ontario in 1982 by two (2) couples: Don and Pat Sullivan, and John and Shirley Harrison, both of whom experienced the loss of a daughter to murder. Their immediate goal was to assist other families of murder victims to recover from the tragedy of losing a family member suddenly and violently. To this end, they were operating primarily as a self-help group, lending support to each other and to newly victimized individuals. Members of VoV are also concerned with the manner in which the criminal justice system responds to victims.

1. Areas of Concern

VoV advocates that victims be treated with dignity, compassion and understanding; that they be of primary concern to the authorities; and, that they be deemed more important than the offender. VoV expresses seven (7) areas of concern:

1. notification of next of kin by police authorities;
2. treatment by the justice system, especially by the police, the crown attorneys and the courts;
3. financial assistance - both short and long term;
4. assistance and advice regarding murders in other provinces and countries;
5. counselling;
6. media; and,
7. the Human Rights Commission.

2. Notification

Notification of next of kin has no set guidelines. Some families of victims are notified by the press, others by telephone and still others by the police. VoV states that

there is a tremendous need for education in this very delicate field. For example, doctors and clergy could be brought along to assist in the matter, or a female police officer could be brought along when the next of kin is a female. Whatever the scenario, VoV contends that an education awareness program for police is needed to include in-service training on dealing with victims.

3. Criminal Justice/Victim Liaison

VoV claims that victims are ill-treated by the justice system. They contend all victims should be informed step-by-step as to what to expect by way of evidence, pictures, exhibits, media coverage, etc., both in and out of court. Differing degrees of homicide should be defined for victims, and crown attorneys should explain thoroughly how they have arrived at the decision to lay the appropriate charge. It is their claim, then, that the liaison between victim and the criminal justice system must be improved if victims are going to be cooperative participants.

4. Financial Assistance

Financial assistance must be accorded to the victim and/or victims' family without delay. VoV asserts there is no justification for a victim or a victims' family to have to enter into a bargaining system with their respective provincial Criminal Injuries Compensation Boards for financial assistance. "After all", they assert, "if we are deemed to be as important as a convicted murderer then why does our Government not hesitate to allot over forty-five thousand dollars for his well-being?" (VoV, 1982a: 2). Moreover, Don Sullivan (President of VoV) maintains that the method of payment must be improved, and the definition of victimization must be redefined.

5. Financial Assistance Abroad

VoV wants consideration to be given by the Federal Government to victims and their families who have to travel to other countries and/or provinces to take part in the trial or make arrangements to have a body flown back home. VoV contends that the Federal Department of External Affairs

should assist financially and legally while preserving the rights of victims abroad.

6. Victim Counselling

VoV claims there is no meaningful counselling available in any part of Canada that deals with families of victims of violence. The mental health of victims seems to be a low priority as Shirley Harrison of VoV points out in a brief to the Federal Provincial Task Force: "psychiatrists relegate us into group therapy, other doctors . . . tell us there is no God, our child is dead, and it is time to move on" (VoV, 1982a: 3). VoV advances that more thought and action must be put forth by both levels of government to aid mental health professionals in ways of dealing with victims of violence (VoV, 1982a: 3). Moreover, they contend, that information should be obtained, confidentially, from all licensed mental health professionals regarding their religious beliefs or non-beliefs, and a central information body should be instituted for use by family doctors for easy referral of patients to doctors with similar beliefs and values.

7. Protection from Media

VoV asserts that guidelines and legislation should be introduced to protect victims from media personnel who reintroduce solved murders into print for the purpose of individual profit or circulation. In an interview with Sharon Rosenfeldt, she asserts that victims must be protected from these kinds of invasions to their privacy, and that "no one should profit from a crime".

8. Victims' Recourse

VoV claims that when a person is murdered by someone under the supervision of a Federal or Provincial correctional service, there is no recourse for the victim's family as the Government will not accept liability, and Human Rights Commissions will not act on behalf of the victim's family. Governments must be made to accept responsibility and be held accountable for their actions. Furthermore, VoV claims that a Federal ombudsman should be introduced to act on behalf of the family of a murder victim.

9. Policy Objectives

Policy development of VoV stems from five (5) main objectives:

1. to be a self-help group and a dispenser of information - to comfort, console, counsel and cope with the personal tragedies;
2. to force a national referendum on capital punishment for all persons convicted of first degree murder;
3. to abolish mandatory supervision;
4. to request an overhaul of the National Parole Board with increased public representation at the local and national level since it is the average citizen who is affected by crime; and,
5. to ensure the existence of a responsible government and elected officials who will take the time to reply to letters of concern to the public.

10. Sentencing

VoV contends that sentencing policy in Canada is too lenient for violent offenders. That is, offenders are being released from prison too soon, either on parole or on mandatory supervision. Guidelines for sentencing are set down

by a Chief Trial Judge. In Ontario for example, a Chief Trial Judge sentenced a twenty-one (21) year old male offender to two (2) years less a day for raping a thirteen (13) year old girl. The offender will receive an automatic release after serving only sixteen (16) months. Moreover, on January 12, 1988, a twenty-two (22) year old male received a ninety (90) day jail term for raping a Sault St. Marie woman. VoV asserts that this degree of leniency is intolerable.

VoV contends that these two (2) individuals are able to roam our streets today while families and victims are left to bear the scars. Since the first sentence was handed down, the Court Watch Group of VoV has amassed clippings clearly suggesting that lower court judges are lenient in their dispositions for rape and sexual assault, with many offenders placed on probation without serving any time. In 1985 for example, the average time served in a federal Penitentiary was thirty-two (32) months for rape and twenty-five (25) months for sexual assault (VoV, 1983).

VoV advocates a mandatory sentencing policy. For example, a 5-7 year minimum is to be given to first offenders for rape and sexual assault. VoV contends that it must become

mandatory for every offender sentenced for sexual assault or rape to undergo a psychiatric assessment and enlist psychiatric help. Moreover, they contend, that "allowing a prisoner the 'right' to seek psychiatric care or the 'right' to refuse it, goes against the grain of justice in recognizing the protection of society" (VoV, 1982b: 2). If a first time offender refuses treatment, VoV suggests he must serve his full term without early release.

Upon second conviction the offender must be declared a dangerous offender under the Criminal Code and be sentenced to an indefinite term. The offender would not be eligible for parole until s/he has successfully undergone psychiatric treatment. And, the National Parole Board must guarantee that when such an offender is released, s/he has been rehabilitated. S/he then must be placed under the same terms of parole as a paroled lifer, i.e. supervision for an indefinite period.

11. Detection and Prevention

VoV estimates that a majority of the offenders in Canada have psychopathic personalities claiming that "fully

75% of the persons in prisons have a "personality disorder of an anti-social type". . . that they are psychopaths [sic]" (VoV, 1982b: 3). Citing the works of Drs. Randy and Nancy Thornhill of the University of New Mexico, and Dr. Wood-Hill of the Clarke Institute, VoV claims this trend starts to emerge between the ages of five (5) and eight (8) (VoV, 1982b: 3). From eight (8) to fourteen (14) successful treatment can be started and carried out to reverse the personality disorder (VoV, 1982b: 3). If nothing is started by the age of fourteen (14), then the personality disorder is formed and is considered to be irreversible; a psychopath is formed and free to roam in the community (VoV, 1982b: 3).

VoV advocates that tests incorporating pictures and colour drawings could be instituted as early as the kindergarten and primary grades. This would lead to a periodic multiple choice form incorporating the DSM-III factors (see Wade and Tavris, 1990). The results could then be fed into a computer and trained technicians could analyze the results. When a budding anti-social personality surfaces, the technician would be in a position to discuss the test results with a board of education psychologist.

Psychiatrists, school officials, and teachers should also be brought into the picture.

Although possibly confusing diagnosis with successful treatment, Don Sullivan claims that if such a system was enacted "initial results would be seen in seven years and even greater results would be accomplished in ten years". VoV makes this claim based on observational data comparing personality sketches of convicted sex murderers Olson, Shannon, Taylor, Bradbury, Brown and Musgrave. VoV submits that these individuals fell into the same cycle of anti-social behaviour. That is, normal during the first five (5) years of life, disobedient at home and in school in the primary grades with increasing anti-social behaviour after the age of nine (9) including bullying, truancy and the committing of minor offenses. In addition, parents and family members continuously covered up for these individuals, often paying restitution when necessary.

12. Capital Punishment

VoV states that Canadians must have a greater say in matters that affect their safety and their human right to

live in peace without fear. VoV contends that the issue of capital punishment should not be left to elected officials influenced by party solidarity with pressures to vote in a way that runs contrary to the wishes of their constituents. There should be another referendum and a period prior to the vote when all concerned parties would be able to present their views on the issue. VoV wants a complete and open public access to all available figures and studies that deal with capital punishment.

VoV wants the definition of first degree murder to be decided by a media covered conference including all interested individuals and groups, and not based on "hysteria" or "scare tactics" as was witnessed in previous referendums. Using rates from a previous census to support their claim, VoV reports that the rate of homicide occurring during the commission of another offence accounted for 15.7 per cent of all incidents in 1980, while in 1979 the rate was 14.6 per cent, and in 1978 it was 12.8 per cent (VoV, 1984, 1989). VoV contends this increase in the rate of homicide to suggest that the deterrent aspect of life imprisonment is virtually non-existent among the criminal element.

13. Mandatory Supervision (MS)

VoV contends that mandatory supervision should be abolished. They claim there is no incentive for inmates of federal institutions to better themselves: "If they do not qualify (for various reasons) or do not want parole, then they can sit back and do easy time and be released (by law) after serving two-thirds of their sentence" (Cameron, 1990). According to Carole Cameron, this means that a judge can set a term fully expecting it to be served to warrant expiry, but in actuality a prisoner can be released early without the benefit of rehabilitative programs (Cameron, 1990).

Mandatory supervision does not have a high success rate; and in many cases, persons on MS are reported to the National Parole Board and to the police for violations of their parole conditions (which should see them sent back to prison), but are not (see Amernic, 1984: 169). In fact, the Ruygrok Inquest reported that police are somewhat resistant to suspend a person for parole violations (see Hatt, 1986: 3). No answers or solutions have been provided to rebut this fact.

VoV claims the number of violent criminals on MS who are being arrested for different kinds of violent crimes is escalating every year. To support their claim they cite 1979 figures: there were fifty-four (54) homicides committed by thirty-one (31) persons on MS while 712 offenders on MS were convicted of violent crimes in that same period (VoV, 1984). And on November 6, 1987, The Edmonton Sun stated in their editorial that "In the past 12 years at least 130 Canadians have been murdered by cons on mandatory release" (see The Edmonton Sun, 1987). VoV states these statistics are outrageous, but they do not show how many crimes were committed; the cost to both the public and private sector in property lost and destroyed; the cost of all the trials for the victims, victim's family and offenders; and, above all, do not take into account the physical and mental anguish experienced by the victims, their families and their loved ones (see Rosenfeldt, 1985).

14. Criminal Code

In their continued efforts to create safer communities, VoV introduced their ideas and proposed

amendments to the Criminal Code to virtually anyone who would listen, but in particular centred their efforts at the federal level.

VoV calls for the repeal of Section 672 of the Criminal Code in the interest of the general public. This Section was incorporated into the Criminal Code when capital punishment was abolished and life imprisonment was enacted. Section 672 provides for the right of a person convicted of first degree murder to petition the judiciary for a hearing to have his eligibility for parole reduced to fifteen (15) years instead of the twenty-five (25) years that was mandatorily proscribed.

When a person is convicted of murder s/he must be convicted by all jurors. However, under Section 672, only eight (8) out of twelve (12) have to agree to reduce his/her eligibility period for it to be reduced. This Section is virtually unknown to most Canadians and receives little attention in the media. Moreover, government officials have made no attempt to make it public knowledge.

VoV contends this Section to be unfair. To further their claim, VoV points to a study on Conditional Release in

1981 that recommended this waiting period be further reduced to ten (10) years and in future to seven (7) years (Solicitor General, 1981). Thus, the most heinous of crimes could be committed against another person with little penalty attached. That should not surprising, as statistics (gathered by VoV) show that the crime of sexual assault results in an average sentence of only thirty (30) months (VoV, 1983: 2).

Section 688 of the Criminal Code (an application for finding of dangerous) should also be changed. This Section is designed to keep extremely violent offenders in jail for the protection of the public (see Criminal Code, 1985). VoV wants the minimum review period to be established by the sentencing judge. In addition, a minimum time before this review should coincide with the average sentence imposed for that specific crime. VoV contends Section 688 is not effective due to a clause allowing the offender a "review" of the sentence every two (2) years (VoV, 1984).

VoV contends that Section 653 of the Criminal Code (see Criminal Code, 1985) should be amended to require judges to order restitution in all appropriate cases and to allow victims the right to make representation in court regarding

their loss. In addition, a duty should be imposed on the judge to ensure that the victim is aware of this opportunity.

At an Annual General Meeting in 1984, VoV put forward the following motion recommending amendments to the Criminal Code:

THAT a law be put into place that will allow for Victim Impact Statements. These statements illustrate the harm done to you as a victim describing the physical, emotional or financial loss and will be read to the court informing them of the losses the victim has suffered;

THAT the Criminal Code be amended to allow the admittance of video taping of initial statements of child victims and sexual assault victims sparing the victim further trauma;

THAT Section 672 of the Code: Application for judicial review, be deleted. Failing this a new subsection be added, specifically ss(2b): "The next of kin of the victim, or the victim, if living, shall be notified, if possible, of such Review Hearings, and shall be allowed to make representations to the jury, if they so desired.";

THAT with respect to Section 547 of the Code dealing with the Lieutenant Governor's Review Board, Insanity Hearings. Victims of Violence proposes a new subsection be added:

`the victim or the victim's next of kin (or agent), shall be advised of any hearings in respect to releasing the person in custody and shall be allowed the opportunity to make representations to such hearings, if so desired.';

THAT Section 663(1b) dealing with Probation which reads "for a term not exceeding two (2) years" be deleted; and,

THAT the Criminal Code be amended to make it mandatory for the police to have the victim or surviving victim, or agent, accompany them when they search the victim's premises, vehicle, personal property, or any other property of the victim. A list of all property seized by the police shall be given to the person who accompanies them at the time of seizure (see VoV, 1984).

And finally, with regard to day passes, mandatory supervision and any type of early release, VoV wants the powers of decision returned to the judges at the time of sentencing, and judges should be in a position to state the exact number of days or years the offender must serve prior to release of any kind.

15. Criminal Justice System

VoV wants plea bargaining abolished. In 1987, the Attorney General of Ontario called for a ban on plea

bargaining but this was of no avail as two (2) appeals heard before the Ontario Court of Appeal in that year were based on agreements between the crown attorneys and defence lawyers. One appeal was allowed and a new trial ordered because the trial judge ignored the agreed sentence worked out between the lawyers and subsequently increased the sentence.

VoV contends that help must be given to crown attorneys in the shape of larger budgets to enable them to hire more staff and lawyers, and their pay must be raised to increase the attractiveness of the position. Uniformity in sentencing must be achieved, especially for violent crimes. There must be an increase in support for victims at the expense of the offenders. While the rights of the offender must be protected, the justice system must remember the victims' right to live in peace and safety.

16. The Parole Act

VoV would further like to amend the Parole Act allowing a victim of violent crime, or the surviving victim's family, to make representations either in person or by deposition at any and all hearings where early release of any kind is being considered.

17. Other

Additional recommendations advocated by Victims of Violence are as follows:

- any early release for repeat offenders should be forfeited;
- mandatory release provision should be abolished;
- when a conditional release violator has been returned to prison, there shall be no re-crediting of remission time and all remission time earned until his violation shall be forfeited;
- for all parole board hearings in regards to conditional release for all persons serving a sentence of life imprisonment as a minimum sentence, a temporary member representing a recognized citizen's group such as Victims of Violence should be appointed. This member would have the right to present any evidence and/or affidavits as they may deem pertinent to the hearing, and should have the same voting privilege as any other member of such boards;
- all persons serving a minimum sentence of life imprisonment for: i) first degree murder; ii) second degree murder; and, iii) any other violent offence, shall serve his or her full term;

- there must be a stated and published criteria for the earning of remission time and for the loss of remission time;
- eliminate plea bargaining;
- eliminate bail for murder; and,
- when sentencing for first degree, second degree murder or manslaughter, the judge and/or jury should have the decision on the degree of homicide that the crown prosecution charges. The crown should in turn only be required to charge on the basis of fact of whether the accused committed the homicide or not.

B. Citizens United for Safety and Justice (CUSJ)

In August 1981, in a quiet semi-rural community on a southern Vancouver Island, fifteen (15) year old Lise Clausen was jogging on a quiet road outside her home. The young honours student was forced into a car by a man with a starter's pistol. She was driven up the mountain behind her home, sexually assaulted and strangled to death. The man who killed Lise Clausen was free on mandatory supervision. He had been released from prison six (6) weeks prior to the murder.

Paul Kocurek was convicted of first degree murder in the attack and was sentenced to life in prison. As far as the justice system is concerned, the case is closed and justice has been served. Inge Clausen, Lise's mother, feeling justice had not been served formed Citizens United for Safety and Justice. CUSJ is a grass-roots organization representing individuals who became unwilling participants in the criminal justice system and concerned citizens who feel that the justice system serves dangerous offenders at the expense of the innocent and unsuspecting (CUSJ, 1985).

1. Undertakings of CUSJ

The sole purpose of CUSJ is to influence the federal government into providing greater controls when releasing dangerous offenders from Canadian institutions. They call for a referendum on capital punishment; want greater use made of preventive detention for dangerous offenders; and, want those convicted of violent and sexual offenses to serve out their sentences without eligibility for parole or mandatory supervision.

CUSJ proposes the following twelve objectives:

1. that mandatory supervision be abolished;
2. that any practice of earned remission be abolished;
3. that the safety of children and all innocent citizens of Canada take precedence over the rights of criminals;
4. that changes be enacted to the Dangerous Offenders section of the Criminal Code that will provide the Crown a greater facility in successfully classifying certain criminals as dangerous offenders;
5. that any sentence passed on convicted sex and violent offenders be served to its full term, and that the sentences be such that the prime concern of the sentencing judge be the ultimate safety and protection of the general public;
6. that under the present structure of Conditional Release, the National Parole Board and the Government of Canada be accountable for the criminal actions of violent and sex offenders released prior to the expiration of their full term of imposed sentence;
7. that in all decisions by the Parole Board regarding remission of sentence, a new

category of criminal designation, that of "persons convicted of crimes against the Person", be so understood to exist, and that remission of sentence for these prisoners be looked at with the greatest of concern by the Parole Board;

8. that new legislation be enacted, or possibly added to the current Dangerous Offender section of the Criminal Code, that will provide for continuing and indefinite incarceration for an offender, even though the term of sentence has expired, if the Crown can establish beyond a reasonable doubt that the release of that person would constitute a threat to society;
9. that as a consequence of proposal No. 8 above, the Crown should have the power to ask for classification of a Dangerous Offender at any time, and not merely after conviction, and before sentencing, as the existing legislation now demands;
10. that prime consideration be given to assisting children who exhibit violent or anti-social behaviour at an early age, and that support be given to all programs aimed at youthful offenders which will serve to prevent future tragedies;
11. that capital punishment be reinstated for exceptional cases of murder, namely the

killing of police and prison guards, premeditated murder, and the killing of any person during forcible confinement or sexual assault, and that another national referendum on the same be held; and,

12. that the general public be educated and informed of various aspects of the justice system, in order that future tragedies may be prevented.

Inge Clausen and the CUSJ claims that if these proposals are brought into law a "major proportion of criminal activity directed toward innocent people would be eradicated" (CUSJ, 1984). Moreover, the control factor would be placed and weighed against the repeat offender, and society would now have the tools at their disposal to deal more successfully with this type of offender. As the Parole Board and its Chairperson have admitted, there is no mechanism in effect to deal with the offender who will undoubtedly commit more violent acts once his or her sentence has been completed (CUSJ, 1986: 7).

2. Sentencing and Deterrence

CUSJ claims sentences are too lenient in Canada. They want minimum sentences allocated for certain offenses (CUSJ, 1987: 1-2). In the cases of violent and non-violent offenses there should be distinct "guidelines" for judges to follow in the sentencing process. They claim that too often, and especially in sexual assault cases against children, discrepancies in sentencing are overwhelming (see CUSJ, 1985: 4,8). CUSJ holds that in order for there to be a deterrent effect, a minimum sentence must exist and that this sentence must be harsh.

At present, the maximum sentence in Canada is "life" with recommendation of no parole for twenty-five (25) years (see Criminal Code, 1992). CUSJ contends there is a need for a "natural life" sentence ordered by the court, as there are some individuals who should never be released (see CUSJ, 1988c).

3. Violent vs. Non-Violent Offenders

CUSJ strongly suggests segregation of violent from non-violent offenders. Physical separation of the two (2)

will support the use of alternatives to incarceration for some non-violent offenders, such as restitution, community service and the use of electronic monitoring devices.

Furthermore, in the cases of non-violent crimes the victim could be approached for participation in a program involving some form of restitution. This is an option that should in certain cases be attempted, as most often a criminal sentence does little or nothing to address the immediate needs of victims in providing for recompense for harm done financially or emotionally.

CUSJ is not advocating for automatic remission of non-violent offenders. They do however, recognize that supervision programs would be highly desirable for offenders regardless of whether they are released on parole or simply at warrant expiry. The National Parole Board cannot predict violence with accuracy when deciding to release, and if there is any doubt at all whether to release an offender (violent or non-violent), public safety should be accorded first consideration.

4. Dangerous Offenders

CUSJ contends that Section 688 of the Criminal Code ("dangerous offenders") has restricted effectiveness (Clausen, 1988: 2). This Section is available for the indeterminate incarceration of persons who are deemed "dangerous". However, CUSJ claims its application is too restrictive because the requirement of repetitive pattern of behaviour is difficult to establish for the courts, and the narrow time span in which to process the application limits its use. CUSJ contends that Section 688 should be modified and improved, and that judges be given the latitude to impose open-ended sentences (CUSJ, 1988b: 2).

CUSJ claims that Section 688 of the Code is unwieldy and difficult to successfully apply. Between 1977 and 1982, there were only twenty (20) inmates classified as dangerous offenders in all of Canada (CUSJ, 1985: 7). CUSJ contends that Section 688 needs reworking in order that the courts would have greater success in its applications.

CUSJ claims it would be appropriate to incarcerate repeat violent and dangerous offenders for indeterminate periods in the interest of public safety. They advocate new

legislation or an addendum to the existing legislation that would provide for continuing and indefinite incarceration of an offender even if the offender's term of sentence has expired so long as the Crown can establish beyond a reasonable doubt that the release of that person would constitute a threat to society (CUSJ, 1988c: 4). CUSJ also holds that the Crown should have the power to ask for the classification of an offender as dangerous at any time during the trial; not only after conviction and before sentencing as the existing legislation now demands (CUSJ, 1988c: 4).

Inge Clausen maintains that indefinitely detaining an individual, even past his warrant expiry, if deemed "dangerous" would have prevented some very serious crimes from happening. Inge Clausen sadly contends, that if Paul Kocurek would have been detained further on the advice of a psychiatric report predicting that he would likely kill again if released, Lise Clausen would probably be alive today.

CUSJ wants a system that will keep violent offenders incarcerated even after the sentence has expired. It is their intention that the Dangerous Offender section of the Code be amended to suit this proposal.

Moreover, CUSJ claims that if consistency is a goal in deterring and preventing further criminality, then in cases where an offender is applying for review, citizens should be assured that those appointed to make decisions on these hearings are of the highest calibre; that the safety of society remains the utmost of importance; and, that these individually appointed boards do not undermine a judge's authority to sentence (CUSJ, 1988c: 4).

5. Victims and the Criminal Justice System

CUSJ contends that the victim should have the opportunity to be involved in the sentencing process. One method is by way of Victim Impact Statements, which, at the time of sentencing, should be made available to the presiding judge. CUSJ states it should be the legal right of the victim to have this statement made part of the official court record and subsequent parole record (CUSJ, 1988c: 4). Victim Impact Statements must be made available to parole board members at the time of consideration to early release, and also be made part of the offender's record. However, when practising this, CUSJ wants the victim to receive protection through the

Privacy Act, as many victims live in fear of the criminal (CUSJ, 1988c: 5).

CUSJ contends that any information about the offender including his/her criminal record, circumstances that led to their early release, the institution where s/he is serving the sentence, and information on any institutional offenses, and so on, should be a matter of public knowledge and not considered to be "private information" (CUSJ, 1988b: 3).

Victims and their families should be allowed to indicate whether they want to be kept informed about correctional decisions, transfers, early release, and so on, about the offender. Furthermore, the victims and their families should also decide whether the offender should know that the victim(s) is interested in the process. CUSJ contends that the same right to "secrecy" enjoyed by the offender should be enjoyed by the victim (Clausen, 1988: 3).

CUSJ contends that on conviction of murder the offender should lose his/her legal rights until the sentence is served in full (CUSJ, 1988c: 6). It is imperative that both the impact of the crime on the victim as well as the

possible implications of parole for the victim be considered as an integral part of the parole decision making process.

Finally, the victim also should have the right to be protected from contact with the offender, and, if that is an expressed concern of the victim, avoidance of such contact should be a condition of parole. Moreover, CUSJ want victims to be advised, by whoever in the system, that they have the right to send a submission to the Board about the effect of the crime on their lives, and feelings about a possible parole for the offender.

6. Mandatory Supervision and Early Release

Citizens United for Safety and Justice are not alone in wanting the abolishment of mandatory supervision. In a talk given at a CUSJ meeting, the former Attorney General of British Columbia, Allan Williams, indicated his concern of present regulations governing mandatory supervision (CUSJ, 1968a: 3). He is concerned about the impressions of the program held by the average Canadian citizen. He contends that constant negative criticism of mandatory supervision leaves people with the feeling that the program is

inadequate; and the terminology used to describe the program results in a false sense of security within the Canadian people (see CUSJ, 1988a: 3).

In relation to conditional release, CUSJ holds that such early release programs usurp the authority of the courts to sentence; and unduly lessen the effectiveness of the sentence, thus making a mockery of the Justice system (CUSJ, 1988c: 5). They claim that parole complicates the sentencing process and creates fear and apprehension in a non-understanding public. In many cases, CUSJ contends that in many cases, it simply negates the sentence imposed by the court. CUSJ wants the power put back into the hands of the judges (CUSJ, 1988c: 3).

With respect to temporary absence, CUSJ holds that release from prison before warrant expiry should be for humanitarian reasons only, and provided that the release of the offender does not represent an undue risk to the public (CUSJ, 1988c: 3). Administration policy and guidelines for correctional authorities should spell out the types of situations, and the terms under which humanitarian release could be considered. By humanitarian, CUSJ means visits to

specialists for medical reasons, otherwise not obtainable to the offender; visits to a gravely ill close relative (parent, brother, sister, or grand-parent); and, the funeral of any of these close relatives. They are not to include release for trips to shopping malls as a birthday present, visits to art exhibitions, lectures, or sports events. All visits are to be escorted. Any temporary absence, other than for these reasons is considered reckless and irresponsible (CUSJ, 1988c: 4).

With respect to day parole and full parole, CUSJ wants parole boards empowered to order community service or restitution to victims as a condition of parole, even though this had not been ordered by the sentencing judge (CUSJ, 1988c: 4). CUSJ recommends that restitution for victims of crime should be tied to early release of criminals. CUSJ claims this would be a very positive re-habilitative step which would be healthy for the victim and offender (CUSJ, 1988c: 4). CUSJ further claims that if the victim agrees to such a plan, then the offender's willingness to embark on such a program and his attitude toward carrying it out, could well be a major factor in an early release decision (CUSJ, 1988c: 4). As former BC Attorney General, Brian Smith

suggested: "There should be no parole whatsoever for the person except as a condition that they repay reparations while out. The moment they stop, without good condition, they go back inside" (CUSJ, 1987).

CUSJ contends that day parole should be maintained, however, not at 1/6 of the sentence, as is the case now. They claim that if an inmate has four (4) more years to go on his sentence for example, it is unrealistic to begin day parole that early. When an inmate enters the last third of his sentence, then re-integration by day parole should start, followed by full parole through truly earned (not automatic) remission (CUSJ, 1988c: 4).

7. The National Parole Board

In relation to the National Parole Act, the Parole Board's rules, policies and practices are in dire need of an overhaul. In a booklet titled "Some People Say", the National Parole Board (NPB) sets out to be more accountable to Canadians by explaining its mission and methods. Within this book CUSJ claims that the Board made two (2) basic eye-opening and unacceptable assumptions. One assumption is that

the NPB is in a better position than a judge, following a trial, to assess penalties which fit the crime. The second, is that a certain number of mistakes in the board's judgements about who should be released, is acceptable.

Whether called deterrence or society's price for anti-social behaviour, CUSJ contends, the sentence is an important element of the justice system. They claim that parole (and other forms of early release) distorts the process by making a court-established sentence seem futile (CUSJ, 1988c: 5). In fact, they cite the Archambault Commission which reported that the power of the parole authorities to reduce a judge's sentence should be all but eliminated (see CUSJ, 1987). CUSJ claims that the National Parole Board is blind to the seriousness of a crime committed, and that 'seriousness' has no bearing on what they, the NPB, foresee as a possible future risk factor when offenders apply for early release (CUSJ, 1988c: 6).

When applying for release, criminals convicted of crimes such as gross indecency, sexual intercourse with a minor (both offenses are classified as non-violent sex offenses), homicide, kidnapping, and hijacking are classified

as less likely to re-offend. CUSJ contends that a fairer method of review for criminals who have committed violent crimes would result if the police pictures of the scene of the crime were included in the Parole Board file (CUSJ, 1988a: 2). This way, they claim, the members would be in better position to understand the anger and frustration of victims caused by some of the early releases.

CUSJ feels that accountability to the victim and the general public is warranted and necessary in the true spirit of equality, fairness and justice.

In this chapter, I have attempted to outline those areas of greatest concern to Victims of Violence and Citizens United for Safety and Justice and their respective policy objectives. Common links can be made between both groups who advocate for a system that treats victims and their families with dignity, compassion and understanding.

The next chapter takes an in-depth look at those victims' organizations advocating changes to legislation and attitudes on drinking and driving.

CHAPTER 5

VICTIMS' RIGHTS ORGANIZATIONS - IMPAIRED DRIVING

A. Mothers Against Drinking Drivers (MADD)

In May 1980, Cari Lightner, age thirteen (13) was killed while walking on a bicycle path near her home in Fair Oaks California. Four (4) days after the accident, a man was arrested and it was determined through investigation that he was drunk at the time of the accident. In fact, when Cari was killed, he had been on bail for only two (2) days for a previous hit-and-run impaired driving accident (see MADD 1990: 3). The driver's record reflected three (3) other impaired driving arrests, with two (2) convictions and the third plea bargained from a impaired driving charge to a reckless accident (see MADD 1990: 3).

Despite this record of repeated drunk driving offenses, he was again allowed to plea bargain. In return for a plea of guilty to vehicular manslaughter, other charges were dropped (see MADD 1990: 3). He was sentenced to two (2) years in prison; released less than a year later and was

eligible to have his driver's licence reinstated (see MADD 1990: 3).

As a result of Cari's death, a group of concerned citizens led by Candy Lightner, formed Mothers Against Drunk Driving (in Canada, MADD refers to Mothers Against Drinking Drivers). Their mission was to force effective and workable solutions to the drunk-driver legislation (Reinarman 1988: 97).

MADD was brought to Canada by Sally Gribble in February of 1982 as a direct result of the death of twenty-one (21) year old son Fred Gribble in an alcohol related crash (MADD 1990: 3).

1. Voice of the Victim

MADD claims they are "the voice of the victim" (see Reinarman 1988: 98; MADD 1983: 1) calling for a system built on mutual respect between victim and offender (see MADD, 1983: 1). The effect of the crime on the victim's life should not be to live their lives "in petty resentment or bitterness towards the judicial system; rather they should have a

healthy respect for the courts, for the future of the courts and the judicial process" (MADD, 1987: 50).

In the past, the judicial system has accepted the use of alcohol and substance abuse as a justification/excuse for the crime, thereby excusing the offender from the responsibility for the crime. MADD wants the courts to put the responsibility back onto the individual.

2. Aims and Objectives

MADD has thirteen (13) specific aims/objectives (see MADD, 1983: addendum):

1. eliminate drunk drivers from the road;
2. apply stiffer sentences and long term licence suspensions;
3. reduce the number of deaths and injuries caused by drunk drivers;
4. apply mandatory blood testing;
5. respond to the needs of the victims;
6. force changes in legislation;
7. to identify the drunk driver problems at local and provincial levels;

8. to work with legislators, judges, prosecutors and law enforcement agencies, to force effective reform to this problem;
9. to work with the victims in the area in which they live, offering emotional and physical support, and assisting them through the adjudication process;
10. to educate the community on the seriousness of this problem;
11. to increase awareness of the problem and to re-educate society to its social and moral responsibility not to drink and drive;
12. to establish a court monitoring system in each community; and,
13. to insist that prosecutors and judges implement the sentence to the full extent of the law.

3. Education

In terms of an action program, MADD has set out its own policies. They organize groups of individuals to speak in schools, private members clubs and to City Councils, and establish task forces within the communities. Committees are established that set up exhibits in shopping malls, stores,

schools, etc. with literature and stories about the horror of allowing drivers to drive while under the influence of alcohol or drugs. MADD wants the following issues to become an integral part of the school curriculum: public education on the relationship of alcohol and drugs to driving; public education on the laws and penalties for impaired driving; the social consequences of impaired driving; and, community action projects.

If task forces are established to educate people and students to the dangers of drinking and driving, then, MADD contends, such bodies should be more representative (MADD, 1989a: 21). That is, they should include a government representative (e.g. mayor), the top law enforcement officer (e.g. attorney general, chief of police, or sheriff), a chief prosecutor, a judge, a member of MADD, a member of the student body, a well-known religious leader, a liquor industry representative, an insurance industry representative and a representative of the Restaurant and Bar Owners Association or the Hotel/Motel Association.

4. Designated Driver Programs

MADD supports the designated driver programs throughout Canada, including The Traffic Safety Award funded by the Traffic Safety Department of the Insurance Corporation of BC for students at the secondary and elementary school levels. At the community level, MADD teaches "responsible hosting" as they encourage businesses and organizations to be responsible by providing food and non-alcoholic drinks at their functions and luncheons. MADD also encourages communities to distribute literature and prevention information to organizations and service clubs, in addition to encouraging teens to join school traffic safety programs.

5. Victim Assistance

MADD sees their purpose as being helpers to victims. To serve this end, they insist that prosecutors lay charges of criminal negligence when the drinking driver is responsible for the death or injury of an innocent person(s).

They insist that the investigation and analysis of drinking driving violations be taken seriously. This includes retracing the accused's whereabouts prior to the crash, where

were they drinking, how much, and with whom. MADD contends that victim's families should not have to hire private investigators to find out these answers. Moreover, the driving record of the accused should be a matter of public knowledge.

To assist the victim, MADD claims that they and the rest of society have a fundamental right to expect the criminal justice agencies to be vigilant in implementing appropriate measures to remove drinking drivers from the roads and highways (Gribble, 1988: 1).

6. Prevention and Deterrence

MADD claims that the crime of drinking and driving could be curtailed if maximum penalties were imposed upon conviction (Gribble, 1988: 48). They feel it has been the opinion of the courts that when sentencing a first time offender, a minimum fine is appropriate for the benefit of the person and in the interest of deterrence (McHugh, 1991: 18). But, in an interview with Sally Gribble, she stated this reasoning does not deter the individual or any other individual from continuing to drink and drive: "Drinking and

then driving is a crime that is widespread and committed by all types of people; it is only when maximum penalties are in effect that society will be in a position to rid their communities of this particular crime."

MADD contends that a maximum sentence for drinking and driving is necessary to deter an individual and avoid the likelihood of more serious crimes which, they claim, are inevitable (MADD, 1983: 1, 2). MADD does not take any pleasure from watching another person's pain, nor do they feel there are any winners "in the game of sentencing" (Gribble, 1988: 49). However, Ms. Gribble states the bottom line is that society must be protected. She contends it is not right that people feel threatened and vulnerable by another person's drinking and driving (see Gribble, 1988: 49).

MADD contends that upon conviction for drinking and driving, alcohol rehabilitation should be ordered as part of the disposition but not as an alternative to sentencing. They claim that an offender would be more responsible if forced to deal with alcohol or other drug related problems (MADD, 1989a: 18). MADD members are prepared to work with the

offender convicted of an impaired driving offence in an effort to assist with the alcohol rehabilitation. MADD claims they could be effective in this area if they had the funding to establish a concerted and comprehensive program between themselves and corrections personnel.

MADD supports the use of ALERT, a hand held device used by police to tell if a driver is over the legal limit while operating a motor vehicle. The use of this device will increase the likelihood of getting caught. In order for this device to be an effective deterrent, it must be placed in every patrol car in Canada.

7. Court Monitoring

In an telephone interview with Gordon McKay (President of MADD Canada), he stated that the present court monitoring program is crucial to MADD's success in lobbying for responsible sentencing. The goal of this program, he states, is to remind those in the criminal process about the public's interest and concern regarding its activities.

Monitors are used to ensure that the criminal justice system is operating on that part of their mandate dealing

with crime detection, prevention and the punishment of offenders. MADD claims that this program facilitates the system by proclaiming the position of the victim(s) (MADD, 1986: 3).

In general, monitors follow all codes of court conduct and have good working relationships with the prosecutors (MADD, 1986: 3). They gather information on the number of cases observed, convictions, appeals, failure to appear, dismissals, acquittals, continuances, severity of sentences, range of fines, plea bargaining, range of blood alcohol readings, repeat offenders, and age of offenders (MADD, 1986: 3). All information gathered is documented and assists MADD in research areas.

8. Legislation

In the years prior to MADD's inception in 1982, sentences imposed on drinking drivers were minimal. In fact, the range was anywhere between thirty (30) days to two (2) years (see Boyle, 1983). Since that time, there has been a steady increase in incarceration time imposed on those convicted of criminal negligence and impaired driving causing

death or bodily harm. A study published in 1983 stated the range to be between two (2) and six (6) years (see Boyle, 1983). In addition, there were changes made to the Criminal Code (see Appendix D), which MADD asserts as a step in the right direction. However, MADD is still quite concerned with the court's unwillingness to follow the minimum requirements (see MADD, 1989b: 47). MADD does not feel that a fine of \$100 on a first offence is sufficient when the minimum fine set by the Criminal Code is \$300. Judges are not following the mandate of the legislation (Gribble, 1988: 50-51). Boyle provides some examples of sentencing patterns: in Toronto a first offender is usually fined one dollar a point based on BAC readings, e.g. 80mg % = \$80 (Boyle, 1983: 12). A second offence has a mandatory fourteen (14) day jail term but often the offender is sent home from jail for lack of space (Boyle, 1983: 12). The Crown usually asks for a licence suspension greater than six (6) months but is usually turned down. For a third offence a three (3) month jail term is usually handed down (Boyle, 1983: 13). If a death occurred and the offender was found to be impaired, the disposition would range

anywhere from a heavy fine to a jail term ranging from six (6) months to two (2) years less a day (see Boyle, 1983).

In terms of driving suspensions, MADD claims that these are not being adhered to (see Gribble, 1988). In December 1987, the CBC Television news program "The Journal" showed videotapes of people leaving court after their licences had been suspended, and driving away in their cars (see Gribble, 1988: 54). These individuals were followed to work or home where they denied they had been driving (see Gribble, 1988: 54).

MADD wants people driving under suspension to be imprisoned (as per the law) for seven (7) days and have their vehicles impounded until such time as the suspension is lifted. MADD claims this would undoubtedly stop that particular individual from driving and further risking peoples lives. MADD wants a system in place that would suspend, at time of arrest, the driving privileges of anyone caught driving while impaired (MADD, 1990).

9. Other Changes

MADD wants additional changes such as: research initiatives on the relationship of alcohol consumption to impairment; written tests on the penalties for impaired driving as part of the process of acquiring a driver's licence; and, a continuance of any police programs designed to reduce impaired driving during special holidays into all times of the year (MADD, 1983: addendum).

MADD wants an increase in the apprehension of impaired drivers through: improvements in police tactics; and, increased allocation of resources to police departments specifically for this purpose.

With respect to the Liquor Control Act, MADD would like the following revisions made:

- to bring the use of occasional permits under the same licensing provisions presently applied to licensed premises; and,
- to institute a set of regulations and proceedings specifically addressed to the problem of preventing public consumption resulting in impaired driving.

It is MADD's claim that the person most qualified to help a victim is a person who is a victim and/or has been through a similar tragedy. Although I disagree with this claim, MADD contends that victims working with MADD are able to direct their negative energies into positive accomplishments (see MADD, 1990: 14). MADD is an organization of victims, and concerned citizens encompassing all types of people - male, female, young and old, determined to rid the streets of dangerous drinking drivers.

B. People to Reduce Impaired Driving Everywhere (PRIDE)

PRIDE is a group of victims and concerned citizens who contend that impaired driving is unacceptable and criminal; and, that public policies and programs must be established to promote personal accountability (PRIDE, 1988: 2). PRIDE's main and only goal is to stop people from drinking and driving (PRIDE, 1988: 2).

1. Group Structure

To ensure the realization of this goal, PRIDE has established five (5) groups each of which has a special mission (see Pride, 1988: 2):

Group 1

- Victim Assistance - this group promotes the development of support groups; the use, the development and importance of victim impact statements;

Group 2

- Legislative Goals - this group advocates for changes to the legal drinking age; impounding of vehicles of impaired drivers; lowering legal BAC levels; reduction of life-style advertising of alcoholic beverages; and victim compensation and rights;

Group 3

- Public Awareness - this group is responsible for promoting designated driver programs; and various prevention strategies, including working with the media, greater reporting of alternatives to drinking, and arranging speakers for schools, seminars, and conferences;

Group 4

- Criminal Justice - this group is in charge of court monitoring, case surveillance, and presentations to various committees, city councils, and government agencies. They gather

the statistics that are used in PRIDE's research and various official submissions; and,

Group 5

- Administration of Justice - this group is responsible for lobbying governments for uniform sentencing, including the abolition of the plea bargaining system; increased accountability and competency when issuing parole; and the increase and importance of spot checks.

PRIDE claims that drunk driving is a form of "socially accepted murder" that kills more Canadians in any six (6) year period than died in action during World War II (PRIDE, 1989: 7). PRIDE contends that legal initiatives such as blood tests, in conjunction with tougher enforcement and legislation, will assist in the battle to make drinking and driving socially unacceptable (PRIDE, 1988: 4). In their efforts to change the attitudes of legislators and law enforcement officers, PRIDE has centred their efforts in the following areas (see Pride, 1988: 1; Goynt, 1988: 79): abolition of earned remission; sentencing system; maximum penalties; detection and deterrence; and, victims and criminal justice.

2. Earned Remission

The system of earned remission presently in place in the criminal justice system does not allow a judge to make a precise disposition, as correctional authorities have the power to make modifications to that sentence once a certain degree of time has been served. Remission is not only confusing to the public, but there is no proof that it is an effective tool in the control of the prison population. To this end, PRIDE advocates the use of conjugal visits or education programs. When sentencing an impaired driver, the sentence served by that offender should be the exact disposition pronounced by the court.

PRIDE wants drinking and driving offenders to be considered violent offenders at the time of sentencing. Paul Goynt, Past President of PRIDE (Alberta Chapter) believes that "killing with a vehicle is no less hostile than killing with a gun or knife." (PRIDE, 1988: 79). A wilful disregard for the law is committed when the person takes the first drink knowing that s/he is going to subsequently drive.

3. Sentencing System

Sentences for all criminal offenses must be proportionate to the gravity of the offence and accordingly, penalties for impaired driving causing injury or death must be of the same order as those for other crimes resulting in injury or death. PRIDE feels that the disparity in decisions, for whatever reason, is unacceptable.

It is PRIDE's position that the gravity of the offence of impaired driving, particularly where injury or death has resulted, has apparently been ignored by many trial judges as well as appellate decisions, in that the sentences handed down do not, in the majority of cases, reflect the severity of the situation. It may be true that many trial judges are confused with respect to the goals of sentencing and the entire system, but the inappropriate and disproportionate sentencing, for whatever reason, is not acceptable.

PRIDE believes that sentencing guidelines should be statutory in nature. This would minimize the prevalent disparity in sentencing and assist in developing consistency and clarity for the judiciary. Judges would be required to

stay within a certain range and going outside that range would involve a detailed justification. If guidelines are implemented, the victim will then have the satisfaction of knowing that the impaired driver is a criminal offender.

PRIDE calls for the reformation of the sentencing system. They recommend that more complete information be assembled and made readily available to the public in the area of sentencing. Although the media may be at fault for their sometimes erratic role in the dissemination of information, PRIDE feels it is incumbent upon the judicial system to make sure detailed and comprehensive information is available.

4. Maximum Penalties

PRIDE feels that the present maximum penalties and presumptive dispositions for alcohol related offenses do not adequately reflect the seriousness of the crime. PRIDE contends that all unpremeditated offenses that result in death whether caused by criminal negligence, dangerous or impaired operation of a motor vehicle or using any other

weapon, should result in a sentence equal to that of manslaughter or second degree murder.

When someone refuses to give breath or blood samples, PRIDE wants this to be construed as withholding evidence or obstructing justice; and, that a penalty equal to or greater than that of the charge being avoided be applied.

With respect to drivers leaving the scene of an accident to avoid a more serious charge, PRIDE feels that this method of avoidance is growing in frequency and popularity and must be stopped. A graduated range of penalties should be introduced to accommodate the wide diversity in severity of the infractions from minor "fender-benders" to major personal injury or death.

PRIDE is also concerned with the current high number of drivers who drive while under suspension. They advocate to impound or forfeit the car to authorities for as long as the offender is under suspension. "If someone robs a bank, the least you would expect is they would take his gun away from him, and if somebody kills while he is impaired, the least you would expect is they would take his car away as well" (PRIDE, 1988: 83).

5. Detection and Deterrence

To deter offenders from further impaired driving, PRIDE would like to see the use of electronic surveillance. It is a cost effective and humane method of allowing the offender to attend work or school during the day and treatment during the evening without the sanction of incarceration. Furthermore, those not involved in activities during the day would be required to attend their treatment during this period and be in their homes in the evening. Any violation however, would result in criminal charges and incarceration.

6. Ignition Interlock System

Another method of curbing the incidence of re-offending would be the use of the ignition interlock system. It is a system whereby the person has to be able to breathe properly into a computerized system before they can start their car. Every member of the family is taught the system which will shut down the motor if somebody blows over the designated limit set by the parole officer. Moreover, it can detect a certain amount of alcohol in a person's blood and

when doing so, assumes the alcohol level is going up and subsequently beeps every fifteen (15) minutes while the car is in motion. If the person does not do the test over again, the car will honk the horn continuously until the test is taken again. The device is taken out every thirty (30) days and put into another computer which gives the probation or parole officer a print-out of everything the offender has been doing. The system is in use in three (3) states and is virtually foolproof.

7. Mandatory Treatment

PRIDE contends that mandatory treatment should be implemented and used during the incarceration of all impaired driving offenders. Treatment has been regarded as ineffective during the period of incarceration because forcing someone to do something has been seen to have no rehabilitative effect. However, PRIDE feels the means are available for alcoholic testing and there are currently a number of successful treatment programs in existence. If the system was to have greater confidence in its ability to implement programs, victims and offenders would be better served.

The impaired driving problem is often associated with alcoholism and unless an offender's drinking problem is addressed, recidivism is inevitable. The chronic drinking driver is a time bomb waiting for a disaster to happen. Moreover, assessment and treatment can be considered sanctions in their own right, but should be in addition to, and not an alternative to, incarceration. PRIDE feels that assessment and treatment should begin during the period of incarceration and be continued during the period of parole.

8. First Offenders

For first offenders who have not caused any crashes, injuries or fatalities, PRIDE feels that probation with a condition of alcohol treatment would suffice. First offenders should be dealt within the community using such options as fines, community service orders and ignition interlock. Fines should be based on ability to pay which is increased in proportion to income. If the offender does not have any income or is on social assistance, a fine option program should be implemented.

PRIDE believes that most people who drive while impaired have substance dependencies; once in treatment they can begin to change their attitudes about driving while impaired. It is hoped that through treatment and community involvement, the offender would become able to realize his/her mistake(s). However, any violation(s) of a community service sanction would then result in incarceration if convicted.

9. Early Release

In the area of parole, PRIDE is supportive of the idea with the condition that the period of parole is equal to the period of incarceration, so as to allow for a controlled and supervised re-entry into society. PRIDE believes that the majority of offenders will benefit from parole if the system of treatment established is based upon positive rather than negative sanctions. Furthermore, all the necessary treatment resources and community support services should be made available to the parole supervisor for the offender.

When an individual comes up for parole, PRIDE insists that a full treatment plan be prepared for the offender or

the offender will have to present a treatment plan before being released. And upon release, any violations would result in a charge equalling a new criminal offence.

10. Victims and Criminal Justice

The needs and interests of victims must be addressed in all possible ways and considered a central element in the administration of justice. If justice is to be achieved, then the violation of the victim's personal and property rights must be redressed by the courts. PRIDE feels that restitution is an ideal measure to achieve this end. However, the definition of restitution should be expanded so that the interests and needs of the victims are met, and a recognition that the victims loss does not end at the point of sentencing.

11. Guidelines and Compensation

Guidelines for judges and for compensation must be given further study. Judges must be accorded greater authority to impose restitution and obliged to impose

restitution unless reasons are given to justify why such an order can not or should not be made.

PRIDE would like the Federal Government to assume the responsibility for compensating victims for damages done by criminal offenses. For instance, even if restitution were to become the norm in sentencing due to the inadequate means of the offender, the victim would not be adequately compensated for the damages. PRIDE wants the Federal Government to assume this residual role. The victim should not have to seek redress through the civil process (with its delays and inevitable setbacks) to recover damages resulting from the crime.

Victims' rights should be tantamount in the judicial system. Guidelines should be established to direct Crown counsel and keep victims fully informed of plea negotiations and sentencing proceedings. At present, this is not the case; and, until there are guidelines, victims should be given legal assistance and support independent of the Crown counsel. The victim should have the right and opportunity to present additional information in court, as well as to introduce a Victim Impact Statement.

12. Informational Needs

Victims should be provided with information concerning all aspects of the proceedings including general information about the charges and process, court dates, sentencing ranges, plea negotiations, sentencing, parole, remission and other applicable information. PRIDE holds that sensitivity to the plight of victims should be exercised at all stages of the process in an effort to make a victim's involvement as free from trauma as possible.

13. Counselling

Victims should be accorded professional assistance in dealing with their grief, rehabilitation, preparation of their impact statements and the complicated court process including guidance regarding their role as a witness. Community and judicial awareness of the impact of crime on victims would be enhanced with increased visibility of the victim in the judicial process.

C. Parents Against Impaired Driving (PAID)

PAID was founded in May of 1982 in Edmonton, Alberta by Gladys Armstrong and Pat Baril. PAID is a non-profit volunteer organization fighting for tougher laws and stiffer penalties for impaired drivers in the Province of Alberta. PAID has several representatives sitting on several government committees including the "Impaired Driving Counter Measures Committee" formed in Alberta in 1984. PAID members are also involved in presenting mall displays in major centres; and, in a co-operative province-wide campaign with the Alberta Medical Association that provides all taxi cabs with special bumper stickers.

Unfortunately, PAID failed in its bid to become a registered charity in the eyes of Revenue Canada, but meanwhile organized another organization that is responsible for Research and Education on Impaired Driving (REID) that successfully became a registered charity.

1. Research and Education

While PAID is essentially a lobby group, REID is concerned with the research and educational efforts of the organization which are as follows:

- the establishment of the "National Impaired Driving Research Endowment" at the University of Alberta, providing funding for both graduate students and professors who would like to do research on the issue of impaired driving;
- the organization of an annual Province-wide "Impaired Driving Awareness Campaign" in April of each year. This campaign is targeted towards high schools and includes public speakers, educational and promotional literature and materials, displays in malls and trade shows and an intensive media advertising campaign; and,
- the sponsoring of a Province-wide outdoor billboard and bus shelter campaign during the summer when the highest number of fatal collisions occur.

2. Objectives

PAID and REID are governed by a common Board of Directors with executive meetings held monthly and general

meetings held (at least) six (6) times per year. Members of PAID/REID join in a united voice against impaired drivers and have devoted much of their resource time to lobbying for more realistic application of the Criminal Code and the Motor Vehicle Administration Act (MVAA). Public awareness campaigns focus mainly on teenagers and young adults.

Towards this end, PAID has developed a total of thirty-one (31) objectives. These objectives are directed at certain public agencies discussed below.

3. Solicitor General

With respect to the Solicitor General, PAID would like to:

- increase the detection and apprehension of drinking drivers;
- rehabilitate repeat offenders for drunk driving;
- use Solicitor General's computers to prevent repeat offenders from escaping appropriate prosecution even though they are proceeded against summarily;

- create a designated funding source for provincial and local efforts to decrease the impaired driving problem;
- alter periods of suspension in the Motor Vehicle Administration Act;
- implement a task force on public information and education;
- increase fines for open liquor in passenger compartment of motor vehicles;
- provide special grants for the use of ALERT devices in every police car in Alberta; and educate every police officer as to its use;
- ensure that police officers throughout Alberta serve the accused with a notice that the Crown will be seeking the greater penalty;
- regularly release statistics on impaired driving in Alberta;
- deal more harshly with those who drive while under suspension when the suspension was a result of a driving while impaired charge;
- add a subsection to the Motor Vehicle Administration Act that would allow a

vehicle to be impounded when the owner of the vehicle allows a suspended driver to drive the vehicle;

- provide the public with information on impaired driving and to educate the public to focus attention on the need for an attitude change to reduce impaired driving;
- prevent chronic alcoholics from operating motor vehicles on the highways and roads of Alberta;
- ensure suspended drivers obey and heed the licence suspensions imposed by the courts; and,
- pass the necessary measures to enlist the assistance of the highway patrol in apprehending impaired drivers.

4. Attorney General

With respect to the Attorney General, PAID is lobbying to:

- prosecute repeat offenders more effectively;
- attain more uniform sentences for impaired driving offenses within Alberta and

sentences for criminal negligence or dangerous driving;

- implement a special task force on impaired driving;
- set up a central facilitating committee regarding impaired driving;
- publish accurate and comprehensive statistics involving impaired driving in Alberta;
- ensure that effective changes are legislated to the Motor Vehicle Administration Act of Alberta; and,
- that provincial legislation or procedures are in effect to protect physicians from civil liability with respect to blood sampling.

5. Ministry of Health

With respect to the Ministry of Health, PAID advocates for:

- the promotion of rehabilitation of alcoholic drivers; and,
- the establishment of a "trauma registry".

6. Ministry of Transportation

With respect to the Ministry of Transportation, PAID rallies for:

- a change in legislation and procedure that would contain a consent to a blood sample on a persons driver's licence;
- increase information on the problems of impaired driving and the laws and consequences of an offence to be geared at drivers;
- a decrease in the number of accidents involving drivers under 21;
- mandatory seat belt legislation; and,
- effective child restraint legislation.

7. Ministry of Education

With respect to the Ministry of Education, PAID promotes and encourages:

- greater awareness among the students of Alberta of the consequences of impaired driving;

- prevention efforts through the educational system; and,
- students to become more active in raising awareness about the problems of impaired driving.

As with other grass-root organizations, PAID is fighting a seemingly endless battle to change not only government attitudes but societal attitudes. It has been estimated that the odds of getting caught for impaired driving are estimated at 1 in 2000. PAID believes changes must be made.

8. Detection and Deterrence

PAID is determined to keep drinking drivers off the road. To this end they feel that an increase in check-stops would heighten police visibility and the apprehension of arrest to the potential drinking driver. Police should have increased power to set up roadblocks outside tavern parking lots during key times of tavern operation. Furthermore, police should be outfitted with an ALERT device so that apprehension can be immediate. PAID is aware that increasing

check-stops and the number of ALERT devices is expensive but feels it is politically attractive, and is the most effective way of decreasing impaired driving.

PAID would like to see highway patrol officers assisting in the arrest of impaired drivers and want the power to use handcuffs when making arrests reinstituted. Without the ability to restrain arrested offenders through handcuffs, many highway patrol officers are reluctant to have the offender in the same car due to the offenders volatile state. In many cases, RCMP officers will not travel to the scene of the arrest in order to apprehend the driver and take him/her to the breathalyser machine. PAID feels that the officer's ability to aid in the enforcement of our lives and apprehend impaired drivers has been significantly diminished.

In the event that an offender is arrested and taken to the police station, the offender should be fingerprinted and have photo identification issued to aid in further detection of an individual's impaired driving. PAID would like all arrested drivers put in cells overnight after providing a breath sample so that the driver will experience what jail is like in hopes of preventing a repeat offence.

The certainty of punishment is much more important than the severity of punishment. That is, if it was generally known that all repeat and freshly arrested offenders will go to jail, this action proves to be a more effective deterrent than the length of time they spend in jail.

Therefore, if the number of incidents of impaired driving were to decrease by a heightened police presence and certainty of jail, then health costs could be reduced. According to the Manitoba committee on impaired driving, each traffic fatality costs Manitoba citizens \$390,000 and the cost of each serious and moderate injury is \$260,000 and \$2,500 respectively (PAID, 1989).

9. Treatment of Offenders

It has been estimated that twenty-five (25) per cent of drivers involved in injury accidents had consumed alcohol, killing an average of 2,500 people each year. Of those convicted (in Alberta), 5,000 repeatedly drove while impaired but only 200 were treated as repeat offenders (PAID, 1989). Despite this statistic, PAID feels that repeat drunk driving offenders can be rehabilitated. In fact, research has

indicated that seventy-five (75) per cent of impaired drivers are rehabilitative (Kalusa, 1989). These are the drivers who are not chemically dependent on alcohol but may suffer from serious health/economic consequences of a high level of alcohol consumption. PAID feels that a prevention initiative, in the form of a re-education program with an objective of a behavioural change is potentially effective.

Funds for such a treatment program could be generated by a designated surcharge on impaired driving offenses assessed and collected by the provincial courts. It would also be necessary to train probation and parole officers in methods of alcohol rehabilitation in order to follow the progress of repeat offenders.

"Tagged ... for life" is a program aimed at individuals between 16 and 24 years of age who have been convicted of serious traffic related offenses. In this program, each individual is required to spend part of a day at the University of Alberta Hospital in Edmonton and experience the consequences of trauma that may result from high risk driving. The program is designed to increase awareness of the deaths and severe disabilities resulting

from high risk motor vehicle behaviours by giving offenders a first hand view of the consequences and severity of high risk driving. The goal is to lessen the desire to engage in high risk driving and influence participants to encourage their peers to engage in safe driving habits.

10. Legislation

PAID's legislative efforts centre on changes to provincial legislation. PAID would like to see the suspension period in the Motor Vehicle Administration Act and the Criminal Code be altered. That is, increasing from three (3) months to six (6) months the suspensions for conviction of s.109(1)(a) (failing to provide a breath sample) of the MVAA and s.234.1 or s.235(2) of the Criminal Code. Up-to-date records should be kept on all periods of driver's licence suspensions so that the ability of a suspended driver to obtain a replacement driver's licence is minimized.

This period of maximum suspension should be increased to an indefinite term when someone has been designated a chronic alcoholic. The licence can only be resumed when the offender satisfies the court that s/he has been

rehabilitated. This would reverse the onus in such cases and put pressure on the offender to seek treatment.

The effectiveness of a suspension sanction is determined by the risk of apprehension and the certainty of punishment. PAID notes that the penalties for driving while suspended are relatively minor. For example, the MVAA has a maximum penalty of \$2,000 under s.5(6) while most fines issued are only \$200. PAID is pushing for a mandatory imprisonment of a minimum thirty (30) days and/or the impounding of the motor vehicle and/or a minimum of \$350 to a maximum of \$2,000 for any individual convicted of driving while under suspension when the suspension was as a result of an impaired driving charge.

Section 28 of the MVAA should be amended to include a new subsection dealing with the impounding of any vehicle owned by a person allowing another (whom s/he knows is suspended), to drive. The length should not be less than ninety (90) days. Allowing a suspended driver to drive is deemed a flagrant act of disrespect for the law and for the lives of innocent people.

Records of suspensions should be kept in a computer and made available to car rental agencies on a twenty-four (24) hour basis so that they can ensure that their customers hold valid driver's licences. If this is instituted, then it should be an offence to rent vehicles out to individuals with driving suspensions. The computer should also be available for employers to enquire on the status of their employee's driver's licences. Employers would be required to make periodic checks to determine the status of their employed drivers. If these offenses are not legislated, the suspensions assessed by the courts will be meaningless and disregarded by drivers who are hazards on our roads.

Legislation should be enacted in Alberta that would require driver's licences to contain express and/or implied consent by the driver to give a blood sample if they are injured in a motor vehicle accident. That a probationary driver's licence be issued to any individual under the age of twenty-one (21) which could be taken away in the case of an impaired driving or failure to give a breath test charge. PAID feels that these methods would promote safer driving among individuals.

Paid would like to see legislative advances increasing fines for open liquor in passenger compartments of motor vehicles; and, establishing a re-licensing fee for all drivers suspended for impaired driving.

11. Education

With respect to educating the public, offenders and teenagers, PAID advocates the introduction of a central committee composed of provincial representatives who have a stake in public education on impaired driving. The function of this committee would be to share ideas, encouragement and resources and when necessary to co-ordinate the implementation of activities. This committee would succour in any task force assisting the Alberta government and its ministries on legislation and policy direction, and ensure continued focus on the problem of drinking and driving.

PAID appealed to the Solicitor General to publish statistics on impaired driving at different stages in the calendar year. A press release and/or report to the Legislatures in each province would be very effective in raising public awareness. This would assist victims'

organizations in public awareness and lobbying campaigns, decide on legislative directions and aid in research goals.

In the area of offenders and repeat offenders, PAID feels that these individuals can ultimately learn to drive without being impaired. Provincial criteria, standards and review procedures should be established for alcohol education programs, treatment and rehabilitation programs. A provincial agency would be assigned responsibility to certify these programs. PAID is fighting to create a designated funding source for provincial and local efforts that will help educate offenders to the dangers of impaired driving.

PAID suggests that any fines collected for impaired driving should be earmarked to this fund. Five (5) per cent of all alcohol profits should go to check-stop programs to fund enforcement, prosecution, adjudication, education, treatment and rehabilitation of offenders. A ten (10) per cent surcharge on all criminal fines assessed for impaired driving should be assessed pursuant to some provincial legislation and this surcharge then placed to this fund. The re-licensing fee for all drivers suspended for impaired driving would go to this fund and help reimburse the

provincial governments who fund alcohol education and intervention programs.

All drivers must be adequately informed on the problems of impaired driving and the laws and consequences of an offence. PAID advocates that this information be included in the driver's licence manual, driver and vehicle registration renewal forms and driver licence examinations. These procedures of information dissemination should be reviewed to ensure that sufficient attention is given to the hazards of drinking and driving and the existing alternatives that can be pursued to avoid drinking and driving. Moreover, facts on alcohol and other drugs, the Criminal Code provisions, penalties, and suspensions information should be included to ensure that the applicant knows and understands that driving is a privilege and not a right; and, that drinking and driving must not be combined.

PAID wants the Ministry of Transportation to alert all drivers to the dangers of drinking and driving when they mail an individual's vehicle registration. This factual brochure will clearly outline the laws, penalties and enforcement practices regarding impaired driving. This

brochure should be developed by the Solicitor General in concert with the Ministry of Transportation.

A booklet for parents and teenagers should be distributed by the Solicitor General and local associations for dispersion in doctors' offices and hospitals. PAID cites the efforts made by the National Institute for Alcoholism and Alcohol Abuse in the United States who have developed this exact program. In Hawaii, for example, the Motor Vehicle Department is required to develop a poster providing facts on the drunk driving laws and post it in all establishments that sell alcohol.

Finally, PAID feels it the responsibility of the education ministry to promote greater awareness among students to the problems of impaired driving. High school driving courses should be expanded to include content designed around the hazards of driving while impaired and the alternatives to driving while impaired. Part of the course content could focus on the emotions and attitudes of young people who have been affected by impaired driving and its consequences.

Ministry of Education guidelines should actively promote and support "safe-graduation" programs operated by high school students, and assist high schools in establishing their own "safe-graduation" programs.

PAID insists that young drivers must be the primary focus in prevention efforts. Students should be encouraged to be more active in raising awareness about the problems of impaired driving. Teachers in the fields of social studies, health promotion, political sciences, etc., should encourage the adoption of a Students Against Drunk Driving (SADD) group or similar group to bring attention to this incredible killer of young people.

12. Victims and Criminal Justice

As a testament to the victim, PAID feels that police officers should inform the accused with a written notice that the Crown will be seeking the greater penalty when the case comes to court; and, that judges deal more harshly with repeat offenders and with repeat offenders who have had their licences suspended.

PAID would like to alter the instructions and professional guidelines to prosecutors regarding second offence prosecutions of impaired drivers. To this end, PAID is calling for more pre-sentence reports on offenders including alcohol addiction assessments and previous driving and criminal records. PAID wants less plea bargaining and more use of Victim Impact Statements where serious accidents or loss of life resulted.

A trauma registry should be established central to all provinces that would co-ordinate the gathering of statistics from all of the present registries that deal with motor vehicle trauma. This registry would contain information from police files, RCMP files, accident files, emergency admission files, etc., and in the long term would demonstrate the effectiveness of health care and the effect of differing social policies enacted by the government.

Drinking and driving is one of the biggest killers of Canadians today. Changes in attitudes and legislation must be adopted to secure the mental health of all victims and individuals assuring them that it is safe to drive the streets of their town, city, province and country.

This chapter has outlined the aims and objectives expressed by three (3) organizations advocating changes to the drinking and driving legislation. Chapters 3 and 4 illustrate those groups seen as most active in victims' rights during the 1980s. What these groups had to say and how they said it did not go unnoticed by the federal and provincial governments. It became increasingly apparent that Canadians were not satisfied with the present operation of the criminal justice system.

The next chapter looks at the mandate and terms of reference of the Daubney Committee, but of particular interest, it discusses the recommendations of the Daubney Committee as it attempted to respond to the concerns of the victims' organizations.

CHAPTER 6

THE DAUBNEY COMMITTEE

This chapter focuses primarily on the Daubney Committee, its mandate and terms of reference. The chapter also identifies specific recommendations that focus on the concerns of victims.

A. Mandate

The Daubney Committee was a subcommittee created by the Standing Committee on Justice and the Solicitor General. Chaired by Ottawa lawyer and Progressive Conservative Member of Parliament, David Daubney, the Committee was composed of six (6) other Progressive Conservative MPs, two (2) Liberal MPs, and one (1) New Democrat MP. It was their task to respond to public concern over the accountability and responsibility of the correctional and sentencing system.

The Committee began its review in the spring of 1987, about the same time the governmental debate on capital punishment was coming to a close. Although the debate received little government attention after this point, the

public (especially victims' groups) was still quite concerned for their safety and protection.

The Committee felt the unease of the public with the criminal justice system warranted deeper study (Daubney, 1988: 1). The Committee wrote to victims' groups and other interested parties asking for briefs to be submitted. They held "in camera" meetings and public hearings with victims' organizations and front-line professionals, hoping this route would create a clearer and perhaps more accurate picture of the criminal justice system (Daubney, 1988: 2).

Acknowledging the prevailing scepticism and the frustration felt by many victims' groups, the Committee travelled across Canada conducting public hearings. Holding public hearings could be seen as a demonstration of a commitment to investigating the issues. This process marked the first time victims of crime could confront a major government initiative face-to-face.

The Committee looked at sentencing to determine whether its function is to rehabilitate, punish or protect. They studied the lack of confidence Canadians have with the criminal justice system recognizing the need for more

education, greater accountability and increased victim/public involvement. They also tried to tackle the efficacy of conditional release.

The Committee's Terms of Reference (see Daubney, 1988: 269-271) serve to further demonstrate this commitment, and echo some of the major concerns expressed by victims' rights organizations: that is, the improvement of the present system of sentencing and conditional release, and the assurance that the operation of the criminal justice system contributes to public security.

Specifically, the Terms of Reference are as follows (see Daubney, 1988: 269-271):

1. That the Committee consider, among others, the documents which have been released in 1987:
 - the Report of the Canadian Sentencing Committee;
 - the Correctional Law Review's Working Paper on Conditional Release and other relevant working papers; and,
 - the Report to the Solicitor General of the Task Force to Study the Recommendations of the Inquest into the Death of Celia Ruygrok.

2. That the Committee invite the expression of views from all participants in the criminal justice system, both governmental and non-governmental, federal and provincial, including, but not restricted to, the judiciary, crown prosecutors, defence lawyers, police forces, victims, inmates, aftercare agencies, advocacy groups, and academic researchers.
3. That the Committee consider and examine the efficacy, responsiveness and appropriateness of legislation, regulations, policies, practices, and institutional structures and arrangements now in place in relation to sentencing, conditional release and related aspects of the correctional system.
4. That the Committee examine the following issues, among others, in relation to sentencing:
 - sentencing principles and goals;
 - sentencing disparity;
 - reform of minimum and maximum sentences;
 - incarceration and alternatives to imprisonment;
 - role of community and victims in the sentencing process; and,
 - sentencing guidelines: a)
sentencing in relation to violent

and non-violent offenses; and, b)
fixed term or discretionary
sentences.

5. That the Committee examine the following
issues, among others, in relation to
conditional release:

- objectives of remission and
conditional release;
- impact of conditional release and
remission on sentencing practices and
public perceptions;
- differential impacts of remission and
conditional release on federal and
provincial inmates;
- retention or abolition of remission or
conditional release in any or all of
its forms;
- eligibility of violent, non-violent
and recidivist offenders for
conditional release;
- participation of parole and
correctional staff, inmates, police,
judiciary, community and victims in
conditional release decision;
- effectiveness of supervision and
social re-integration of conditionally
released offenders; and,
- efficacy of legislation, regulations,
rules, policies, practices,
information exchange, and agency
collaboration and interaction of

National Parole Board, Correctional Service Canada and aftercare agencies in the preparation for, granting and supervision of conditional release in all its forms.

6. That the Committee examine the following issues, among others, in relation to the correctional system:

- use of sentencing information in case management and preparation of offenders for release;
- efficacy of legislation, regulation, rules, policies, practices, information exchange, and agency collaboration and interaction of National Parole Board, Correctional Service Canada and aftercare agencies in case management and planning (from reception to release) and delivery of correctional programs and services (including treatment where appropriate); and,
- role of community in corrections.

7. That the Committee hold public hearings and visit institutions and facilities to determine not only how sentencing, conditional release and related aspects of the correctional system should work, but to see for itself how this system works in practice on a daily basis.

8. That the Committee prepare a Report to the House of Commons in which it will recommend the changes it has concluded may be necessary to improve sentencing, conditional release and related aspects of the correctional system and a target date for completion of the Report by Autumn, 1988 (Daubney, 1988: 269-271).

Of the ninety-seven (97) recommendations set out by the Daubney Committee a total of six (6) recommendations dealt with victims, one (1) with the importance of education, six (6) with sentencing, twenty-five (25) with alternatives to imprisonment, twenty-nine (29) with conditional release and thirty (30) with Native Canadians and female offenders. The recommendations are an attempt to reflect a number of guiding principles, the acceptance of which can be seen as crucial in efforts to reform the criminal justice system. The key to the Daubney Report is the issue of responsibility:

. . . The offender must take responsibility for his or her actions and do what is necessary to repair the harm done Sentencing judges must ensure that the appropriate penalty is imposed on the offender The correctional system must ensure that the necessary treatment and programs are available The releasing

authority must ensure . . . the protection of society. The release supervision system must ensure that the offender is properly reintegrated into the community The community must do its part in assisting those who have offended to reintegrate into society and not to re-offend (Daubney, 1988: 243-244).

The Committee assumed that every individual is responsible for his/her actions. The first step in accepting this responsibility is to acknowledge the harm; the second step is to repair this harm to the victim and to society; and, the third step is to reintegrate offenders back into society. The Committee believed the justice system has a responsibility to provide programs to offenders to ensure their safe reintegration in addition to a responsibility to provide victims with offender information, recognizing that this action would contribute to the victim's healing process (Daubney, 1988: 47). Without this information, the offender's right to privacy supersedes the victim's right to healing. The Committee had to balance the offender's right to protection and the desire of victims' groups (and society) to seek reparation. Many Canadians believe that the only way to

protect the moral fabric of society is to enact harsher criminal laws (McLaren, 1986). But, enacting law has provided no guarantee that it will be enforced with vigour or that those attracted to illegal activities will change their ways.

The Committee was presented with various arguments relating to the importance of punishment as act of either specific or general deterrence, or both. The Committee was not totally convinced that punishment would effect general deterrence, but they felt that ". . . to ignore punishment is to ignore generally accepted public attitudes about sentencing" (Daubney, 1988: 47). However, most victims point out that they would accept offenders who took responsibility for the harm done if the offender took the necessary steps to repair the harm (see Gribble, 1988; Clausen, 1988). Daubney (1988: 47) suggests that the community would have to assist those who have offended to take responsibility and make any necessary reparations. Without this accountability, Daubney feared that people would flout the law, using it for personal gain knowing that the rewards for unlawful behaviour outweigh the costs (Daubney, 1988: 53). The Committee argued that the state must intervene in the lives and conduct of individuals

when their behaviour, deemed unacceptable, results in harm to others, threatens the security of society or undermines public confidence in the criminal justice system (Daubney, 1988: 26-28). The Committee also recognized that victims' rights may, at times, conflict with the offender's right to privacy, but in the interest of the victim's right to heal, these rights should be considered. In all, the Daubney Committee recognized the victim as an integral player in the criminal justice system, whose needs must not be forgotten.

Victims are not a homogeneous group. They can be victims of assault, robbery, murder or even petty theft. The crime may have been calculated or a random, unforeseeable act committed by a stranger or by someone close to the victim. Whatever the case, victims respond in many different ways to their victimization, and the victim may suffer "secondary victimization" in the criminal justice system, unless his or her needs are attended to (Daubney, 1988: 13). To restore a victim's trust and sense of worth, certain needs must be met. These needs can be placed into three (3) categories: informational needs, practical needs and emotional needs.

B. Informational Needs

Informational needs are needs which include advice on crime prevention, compensation, police progress in investigations, information about the offender (whether he is on bail, in custody, etc.), court procedures, legal advice, tentative court dates and so on. Research into victim's needs has revealed that victims of crime express more of a need for information on crime prevention or on the progress of the case than any other kind of service (see Daubney, 1988; Waller, 1988a; Brown and Yantzi, 1980; Stuebing, 1984; Maguire, 1982; Shapland, 1984).

The need for information is an important variable in the recovery and peace of mind of the victim; and to his or her satisfaction with the criminal justice system (see Waller, 1988a: 9). It is clear from research that only small proportions of victims have even heard of the available compensation programs or victim support services (see Ministry of Solicitor General, 1984).

C. Practical Needs

Practical needs identified by most victims include help with housekeeping concerns (e.g. cleaning, changing locks and repairs to damaged property); financial concerns such as receiving immediate funds; paper work details (e.g. replacement of credit cards and completion of claim forms); and, transportation concerns to and from police stations, court houses, hospitals, and so on. In general, these needs are not satisfactorily met. For example, victims of violence are faced with the possible immediate expenses of replacing eye wear or clothing. Often victims need someone to stay with them in their time of crisis to provide a feeling security and protection (see Stuebing, 1984).

In addition, victims have a practical concern for their own safety. The Daubney Report notes that protection from re-victimization or retaliation is crucial to alleviate the victims' feelings of vulnerability (Daubney, 1988: 14). Victims often fear the offender may seek revenge upon release (Waller, 1990: 464). In the past, the security interests of victims ranked third behind the interests of the state and the offender. Indeed, there have been instances where victims

have been imprisoned because they refused to testify for fear of their own safety (see Waller, 1990).

Victims are also interested in reparation of the harm done by the offender which can take the form of a payment, an apology, or another action deemed appropriate by the victim (Waller, 1988a: 6; Daubney, 1988: 14). Moreover, victims have expressed a need for police officers to promptly identify the practical needs of victims, communicate these needs to the appropriate officials and to expedite the delivery of services that address such needs (Waller, 1988a: 26-27).

D. Emotional Needs

The emotional and psychological needs of victims are the most difficult to quantify. Studies have shown that when victims are asked what needs arose from the offense, the number mentioning emotional support was low, but when prompted, the number mentioning the need for someone to talk to was higher (see Brown and Yantzi, 1980; Friedman et al., 1982). Victims are often reluctant to admit to emotional distress until they have been able to make the connection

between the offense and their present feelings of stress and/or depression; and, until such time as they are able to talk about the victimization (Maguire, 1985).

Post-traumatic stress has been perceived as a fairly common reaction to the most ordinary of crimes (Waller, 1982). The recovery from post-traumatic stress is dependant upon the recognition by the court, the offender and the media of the harm done to the victim (CCSD, 1985). In the past, there was no requirement for the court to hear from the victim on the harm done to them as a result of a crime. The Daubney Report noted that victims should be given the opportunity to present at hearings and observe justice being done (Daubney, 1988: 15).

Victims want a resolution of the stress that results from a crime. Many want to tell the offender and the court about the harm done, to ask for restitution and to express concerns about the release of the offender. They want a chance to recover with dignity and the opportunity to resume their daily routines without fear. In addition, victims of crime want a greater public awareness of their needs. In an equitable system it would be expected that victims be treated

with the same respect and courtesy as the offender. There are two (2) principles of natural justice that apply to victims' interests in a criminal procedure: the duty to give persons affected by the decision a reasonable opportunity to present their cases; and, the duty to listen fairly to both sides and to reach a decision untainted by bias (Waller, 1988a: 8).

E. Recommendations

Out of the ninety-seven (97) recommendations set out by the Daubney Committee, six (6) dealt with the basic issues and concerns of victims:

Recommendation #2

- The Committee recommends that all participants in the criminal justice process give high priority to the provision of general and appropriate case-specific information to victims and their families;

Recommendation #3

- The Committee recommends that, at a minimum, general information include the victim's right to seek compensation and restitution, the right to submit a Victim Impact Statement and the right to be kept informed about various pre-trial, trial, and post-trial

proceedings. Basic information should identify who is responsible for providing it and where further information may be obtained;

Recommendation #4

- The Committee recommends that the provision of case-specific information to victims and, in appropriate cases, to their close family members be facilitated by the use of a form on which the victim may check off the various kinds of information he or she would like to receive. Such forms should be appended to Crown attorneys' files and subsequently forwarded to correctional authorities;

Recommendation #7

- The Committee recommends that judges be required to state reasons for the sentence imposed in terms of the proposed sentencing goal and with reference to the proposed sentencing principles, and salient facts relied upon, so that victims, offenders, the community, correctional officials and releasing authorities will understand the purpose of the sentence and appreciate how it was determined; and,

Recommendation #21

- The Committee recommends that the federal government enact legislation, and/or contribute support to provincial/territorial governments, to enhance civil enforcement of

restitution orders with a view to relieving individual victims of this burden (Daubney, 1988).

These recommendations reflect the Committee's understanding of the need to protect the personal interests of crime victims. The Committee understands the important role victims play in the effective operation of the justice system, and feels that the criminal justice system should promote respect for the law among victims. To this end, the Daubney Committee points to the need to make communities safer and to give greater respect to victims as stated in the following recommendation:

Recommendation #5

- The purpose of sentencing is to contribute to the maintenance of a just, peaceful and safe society by holding offenders accountable for their criminal conduct through the imposition of just sanctions which:

a) require, or encourage when it is not possible to require, offenders to acknowledge the harm they have done to victims and the community, and to take responsibility for the consequences of their behaviour;

- b) take account of the steps offenders have taken, or propose to take, to make reparations to the victim and/or the community for the harm done or to otherwise demonstrate acceptance of responsibility;
- c) facilitate victim - offender reconciliation where victims so request, or are willing to participate in such programs;
- d) if necessary, provide offenders with opportunities which are likely to facilitate their habilitation or rehabilitation as productive and law-abiding members of society; and,
- e) if necessary, denounce the behaviour and /or incapacitate the offender (Daubney, 1988: 246).

Recommendations 5a, b, and c are of particular importance because they provide specific criteria that meet the informational, practical and emotional needs of victims in recognition of the harm done, restitution and resolution of the stress. What this recommendation did not provide for was

the recognition that victims want more input to protect their own personal safety.

In the following chapter, the thesis explores Bill C-36. This piece of legislation can be seen as providing for basic victims' needs and concerns.

CHAPTER 7

BILL C-36

The purpose of this chapter is to briefly explore Bill C-36 while commenting on its significance and shortcomings. The responses point to areas that are of greatest concern to victims, namely: protection of society, accountability, education and improvement to the court and, sentencing systems.

A. Bill C-36

On October 8, 1991, Doug Lewis, then Solicitor General of Canada, introduced Bill C-36, an Act respecting corrections and the conditional release and detention of offenders, and to establish the office of Correctional Investigator (House of Commons, 1991: 3427). Bill C-36 proposes changes to corrections and conditional release practices adhered to by the criminal justice system and recommended by the Daubney Committee Report (CCJA, 1992: 5). Of particular importance is the attention this Bill places on

the need to protect society from dangerous offenders. As Section 4(a) states:

"The principles that shall guide the Service in achieving the purpose referred to in Section 3 are: a) that the protection of society be the paramount consideration in the corrections process;"

Essentially, the legislation is divided into three (3) parts: Part I sets out correctional legislation and is designed to replace the Penitentiary Act. Part II defines the system of parole and the operation of the Parole Board. This Section is designed to replace the Parole Act. And, Part III establishes the office of the correctional investigator. More specifically, Part I illustrates how the correctional service will operate and under what rules; the correctional service is to reflect recent case law and the impact of the Canadian Charter of Rights and Freedoms. Part II is designed to toughen the existing rules of eligibility for parole for violent offenders, sexual offenders and drug offenders. In all, Bill C-36 asserts public safety as its number one

priority to the extent that if the release of an offender threatens society, the offender will not be released.

Parts I and II of Bill C-36 are of particular importance because they attempt to introduce the Daubney Committee's recommendation of the priority of greater public safety into the public eye. Canada's correctional system is a series of interdependent parts involving public safety, rehabilitation, deterrence, etc. Public safety has always been important to Canadians, but throughout the years governments have shown a tendency to neglect this area. Reforming or amending the corrections system does not mean that all public safety problems will be solved. Victims' rights organizations hope that Bill C-36 will restore confidence in the Canadian criminal justice system. A discussion of the responses follows a brief look at three (3) identifiable problems with this Bill.

On the issue of deterrence, Bill C-36 proposes that access to parole would be expedited for non-violent offenders. A problem arises, however, when crimes with visible victims and visible offenders (e.g. drug dealers) and no violence are committed. With Bill C-36, such an offender

would get an accelerated parole date which would be even earlier than the one-third date as per previous legislation. Bill C-36 is not adequate for this type of offender.

Clause 21 of Bill C-36 indicates that where an inmate in a penitentiary is injured during the participation of a proscribed approved program, the government may pay compensation for death or disability. This clause recognizes the importance of compensation to the offender, but neglects an important claim by victim groups of compensation to the victim of the original crime. Moreover, this Bill does little to address victims' concerns for restitution. It seems that Clause 21 was devised to help bureaucrats address problems within the system, but has forgotten that the victim is an equally important part of such a system.

Clause 25(2) stipulates that when an offender is released from prison, the police must be notified. However, it does not say which police detachments in which jurisdictions should be notified. If the offender is released from a prison in Manitoba, will every police force in the country be notified? Or, what about someone on unescorted temporary absence? Clause 25(2) seems somewhat vague on this

point; such vagueness is of concern to victims as it can lead to tragedies similar to the murder of Nina de Villiers: tragedies this Bill is hoping to avoid.

B. Responses

Bill C-36 does not deal with the protection of the public as Clause 4 would have us believe (see Appendix C). That is, it does not sufficiently move in the direction of greater protection of society. Currently, the parole system is functioning adequately (National Parole Board, 1987: 1). When a person is sent to jail, he usually serves close to fifty (50) percent of his sentence before being released. If someone is sent to jail and adequate programming is not provided ensuring safe reintegration into society upon release, then how would keeping them in jail longer be viewed as greater protection? It would only be greater protection, victims argue, if the offenders were kept in prison indeterminately.

The Church Council on Justice and Corrections closely scrutinized the Bill as well and had five (5) questions for the Solicitor General. These questions concerned the issues

of accelerated review, judicial determination, delayed day parole eligibility, increased public confidence, protection and public safety.

The feature of judicial review is important. It is impossible to predict how judges will use the "judicial determination" feature which presents a significant problem. The Ministry has based their assumption on a fifty (50) per cent usage. That is, judges will elect to have an offender serve at least half of his sentence fifty (50) per cent of the time. This feature does not address victims' claims as there is no standard procedure set up that says victims and society will be protected. However, when judges do choose to use the feature of judicial determination, inmates will remain incarcerated longer.

Ken Hatt, a Professor of Criminology at Carleton University, felt that in the interest of consistency with Clause 100 (which makes reference to rehabilitation and reintegration), Clause 102 should be amended to read:

The Board or provincial parole board may grant parole to an offender if, after considering both the rehabilitation of the offender and the

opportunities for rehabilitation available to the offender, it is of the opinion that: (a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and, (b) the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen (Hatt, 1992: 4). (Note: Professor Hatt's revisions are printed in bold.)

That is, in assessing the risk of an offender as the primary basis for a conditional release, the actions which followed the offender's imprisonment are not taken into consideration. Thus, if an inmate continues to ignore the available prison programs designed for rehabilitative purposes, he could still be released. Changing this clause to coincide with Clause 100 would greatly improve the quality of decision making by the National Parole Board; and would address the claim of victims' organizations by introducing a mechanism for encouraging the accountability of Correctional Services of Canada in a way which is congruent with the

statement of purpose for corrections found in Clause 3(b) of the Bill:

" . . . Assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community."

The Canadian Criminal Justice Association also looked at the issue of protection of society. Although they applaud the emphasis this Bill places on the protection of society, they feel that such an emphasis will not be effective without a crime prevention strategy. If such a strategy were to be developed, they feel it would add credence to this proposal.

It can be noted that in the interest of protecting society, a strategy to bring all levels of government, government agencies and the private sector must be devised on a national basis. Bill C-36 attempts to address the issue of protecting society, but does not take the necessary steps to engage its proposals. The Bill introduces the much needed penal sanctions asked for by victims' groups, but does not

introduce any efforts in the area of social development suggested by the Daubney Committee and victims' groups.

In regards to public education and corrections, Bill C-36 fails. If the intention of this Bill is to protect the public, what better way to do this than to prevent crime from happening through, for example, effective behaviour modification programs. Victims' rights organizations claim that if this action can be realized, then society could be better protected. The Daubney Committee referred to the necessity of public education and prevention, but this Bill seems to have rejected such a proposal.

The retention of the parole system has been supported by this Bill. However, Bill C-36 provisions may cause problems for the parole system. The first problem that exists is the categorization of offenders by their offence rather than by other characteristics. When an offender enters the prison system s/he is categorized as violent or non-violent first offender. This categorization is then used to determine whether an offender will be "fast-tracked" and released earlier. The problem with this categorization is that the less prison-wise inmates convicted of non-violent offenses

may not be first offenders. That is, they may have previous experiences as a young or a provincial offender. Therefore, such non-violent crimes as break and enter, car theft and fraud may be fast-tracked through the system; and, if the offence can be correlated with recidivism, this notion of fast-tracking could easily bring the administration of justice into disrepute. Thus, instead of protecting society it may actually cause harm; the very thing it is designed not to do.

Bill C-36 is important, but again is a back door proposal. The Bill does not tell the victim or the public how the court or sentencing process will be modified or improved or how these changes will impact the correctional and conditional release process.

A correctional service system can only keep offenders incarcerated for so long. Introducing legislation designed to do this will not prevent crime - it will only delay it. The focus of any legislation must be on the protection of society by means of crime prevention. Whatever the case, victims' rights organizations claim that the criminal justice system

needs to be re-worked. This Bill tries to tackle a very serious problem.

Some say Bill C-36 amounts to tinkering (see House of Commons Debates, 1991-1992); that it is not really addressing the issue. When we keep dangerous offenders imprisoned longer, then release them without supervision; or when we keep non-dangerous offenders inside the prison system to become more dangerous or better criminals upon their release - are we making the streets any safer? When we compensate an inmate for injury while in prison, but forget to adequately compensate crime victims outside the prison, are the needs of victims being adequately addressed? When the governments say they are putting public safety first, but fail to listen to the concerns of victims' organizations and the general public over the release of dangerous offenders; when they construct half-way houses to deal with offenders and do not notify the public; when they deregulate the airways so that offenders and kids can sexually harass and threaten people through the use of CB radios; when they do not allow the printing of the names of dangerous repeat young offenders; or, when they fail to recognize that driving while intoxicated endangers the

lives of everyone on the road, are these measures helping anyone or instilling a greater confidence in the average Canadian? Bill C-36 does not represent a total response to the claims of the victims' rights organizations. It tightens some of the existing practices, but does not change existing policies.

This chapter discussed Bill C-36 as embodying the spirit of the Daubney Committee, suggesting that the Bill did not address some of the claims of the victims' rights organizations, and does not go far enough in creating a more equitable criminal justice system.

The next chapter presents a detailed list of the expectations of victims' organizations in a table format.

CHAPTER 8

VICTIMS' EXPECTATIONS AND DAUBNEY'S RESPONSE

The table presented in this chapter outlines improvements seen as necessary in creating a more effective criminal justice system. The table illustrates that the five (5) victims' rights organizations wanted more than just reparation for crimes committed, they wanted wholesale changes to the system and to the policies that deal with victims.

A. Victims' Expectations and Daubney's Response

The following table combines the expectations of the five (5) victims' organizations representing Survivors of Murder (VoV and CUSJ) and Drinking and Driving (MADD, PRIDE, and PAID). With regard to education, detection and prevention, it was the intent of these five (5) victims' groups to prevent crime. Victims' groups felt that educating the general public was (is) a key step in this process. To effectuate crime prevention, victims' groups felt strategies should be in place to detect and identify antisocial

behaviour. Daubney also identified the importance of education, arguing that a more informed public would create a more just system. However, Daubney did not go as far as to recommend the development of programs such as the detection of psychopathic personalities in young children.

With reference to the Criminal Code, these five (5) victims' groups supported three (3) specific amendments or repeals. The Daubney Committee entertained one of these expectations, recommending that "section 653(b) of the Criminal Code be clarified to ensure that restitution for bodily injuries may be ordered in an amount up to the value of all pecuniary damages" (see Daubney, 1988: 252). Daubney went further to suggest that priority be given to an order of restitution when the offender has been given more than one pecuniary order. This recommendation, now contained in the provisions of Bill C-89 (see House of Commons, 1988: 9), provides that the court make a restitution order before it considers ordering a forfeiture or imposition of a fine. Such a response is welcomed by victims' groups.

One of the major recommendations made by Daubney was the conclusion that the goal of sentencing should be to

contribute to the safety and protection of the general public, thereby instilling public confidence. To this end, victims' groups argued that if judges had the latitude to impose open-ended sentences for dangerous offenders, or if the criminal justice system could impose "dangerousness" at any time in the process, society would be protected and confidence heightened. However, the Committee did not entertain or discuss these issues. Notwithstanding the Committee's position, Bill C-36 allows the National Parole Board and the Correctional Service of Canada the power to incarcerate offenders until warrant expiry which, according to Carole Cameron (VoV), is "better than nothing, at least we'll [society] be protected for a little while longer anyway."

On the issue of sentencing guidelines, the Committee did not support the idea that strict sentencing guidelines are needed. They point to the use of computers and other technological advancements as providing quick access to sentencing information arguing, that if judges were required to state reasons for sentences a more comprehensive sentencing database could be created to help in further

dispositions. The Committee did, however, support the notion of offence rankings as outlined by the Sentencing Commission (1987a: 494-515), and felt that the community needs to have more input when deciding on aggravating and mitigating factors.

The Committee did not support natural life sentences or increasing the present Criminal Code maximums, but did propose the introduction of a minimum sentence of ten (10) years for someone convicted of a second sex assault involving violence. The Committee also sided with the five (5) victims' rights groups in rejecting the Sentencing Commission's suggestion to decrease maximum penalties stating that "the public confidence in the criminal justice system would not be enhanced by a reduction of maximum sentences" (Daubney, 1988: 72).

With respect to Police, Courts and Corrections, the Committee responded only to those suggestions that dealt with Victim Impact Statements and the victim's need to be informed about the criminal process. These suggestions have been incorporated in Bill C-36 (see Daubney, 1988: 21-28).

The Daubney Committee responded favourably to the groups representing "Survivors of Murder" on the issue of early release (see Table, Pages 165-166). The Committee felt that the powers of early release should be given to whoever is responsible for the supervision of an offender (see Daubney, 1988: Recommendation #42); Section 133 of Bill C-36 legislates this power to the Parole Board and/or to the head of the releasing institution.

Victims' rights organizations representing "Survivors of Murder" wanted assurances that offenders serving life sentences for murder would not be eligible for early release. The Committee responded in part to these expectations with Recommendation #47 which suggests that violent offenders serve one-half of his/her sentence before being eligible for release; and Recommendation #56 which further suggests that such offenders be placed in community correctional centres so that they can be monitored while maintaining access to appropriate programs and supervision (Daubney, 1988: 259, 261). Recognizing the need for some form of early release system, the Committee felt this method would provide a greater quality of information to assist the releasing

authority in making decisions, and, thus, ensuring the releasing authority is more accountable for its release decisions (Daubney, 1988: 175). Moreover, Bill C-36 legislated that the Parole Board have the power to cancel an order of early release (see House of Commons, 1992: Section 107), thereby providing victims with greater assurance that repeat and dangerous offenders are being monitored.

All victims' groups participating in this study wanted the earned remission and mandatory supervision program abolished. Failing this, they wanted assurance that any remission accorded to an offender be justified. The Committee did not go so far as to recommend the abolishment of earned remission, but felt that the provisions should be repealed (see Daubney, 1988: Recommendation #53) in favour of a more accountable system where any offender granted parole must present a detailed release plan (see Daubney, 1988: Recommendation #44).

With respect to temporary absences, the Committee concurred with the five (5) victims' groups that such absences "be retained for purposes related directly to correctional programs and for clearly defined humanitarian

and medical reasons" (Daubney, 1988: 260). Bill C-36 ensures that any offender classified as a maximum security offender will not be eligible for a temporary absence:

. . . Offenders who, pursuant to subsection 30(1) and the regulations made under paragraph 96(z.6), are classified as maximum security offenders are not eligible for an unescorted temporary absence (House of Commons, 1992: 51).

All victims' groups participating in this study wanted the process of plea bargaining abolished. The Daubney Committee did not discuss the abolishment of this process, but felt that Victim Impact Statements would provide victims a forum in which to explain their reservations. It was argued that such a process would ensure that accurate and up-to-date information could be accorded to the trial and sentencing judge (Daubney, 1988: 25). Although the Committee did not support the request to allow victims' participation in parole hearings, it did support a policy of informing victims of parole hearings and release dates which has since been incorporated into Bill C-36 (see House of Commons, 1992: Section 26). It was felt by many witnesses to the Daubney

Committee's hearings that a victim's participation at a parole hearing would act counter to the process itself, although this may not always be the case. In fact, Victims of Violence in Ottawa and Citizens United for Safety and Justice make it their priority to track an offender(s) through the system. In this regard, victims' groups are sometimes better prepared than the National Parole Board with information about the release of an offender.

Legislation is another area where the five (5) victims' groups wanted change. Although the Committee did not respond favourably to many of the victims' groups' suggestions, they did feel that victims should have the right to protection from offenders released on parole as can be seen in a number of recommendations, but most notably in Recommendation #44 which states:

"If parole is granted, the inmates [institutional] rehabilitation plan must be extended into a Release Plan clearly setting out how he or she is to be dealt with in the community . . . "(Daubney, 1988: 258).

Such a plan would outline any and all special conditions that the parolee will have to submit to; any and all persons the parolee will be supported by; and, finally, the plan will ensure that any and all relevant information about the offender, including possible danger signs, will be given to the proper authorities (see Daubney, 1988: 182-183). Bill C-36 assists victims in this regard by legislating the disclosure of the offender's whereabouts upon his/her release from prison (House of Commons, 1992: Section 142).

The Daubney Committee recommended the use of restitution and other alternatives to incarceration where warranted. The Committee incorporated many recommendations that if acted upon would result in a fairer and more accountable justice system. Recommendations 39 through 52 addressed issues relating to the National Parole Board. The Committee recommended that members receive training in psychology, behavioural science, and the operation of the criminal justice system. Such training would ensure that the Board will make informed decisions. Moreover, the Committee alluded to the need for a proper flow of information from the

time the offender is caught to the time the offender is released.

Clearly, Daubney made an unprecedented effort to respond to the concerns of victims' groups. The Committee's acceptance of Bill C-89 (see Daubney 1988: 21-28) helped in the recognition that a harm had been done and restitution should be made to the victims; and the introduction and passage of Bill C-36 incorporated many of the concerns expressed by victims' groups for an emphasis on the protection of society, and the acknowledgement that victims have certain informational and personal needs.

The concerns not adopted by the Committee in any of its recommendations were concerns that could be seen as retributive in nature. It is true that the Committee could not ignore the massive public opinion on the overall leniency of the system, but it could not, in all consciousness, make recommendations based on what they saw as a distorted view of crime. For to develop a sound public policy, an informed public is of paramount importance. As a result, the Committee recommended, at the bequest of victims' groups, that all participants in the criminal justice system make public

education about the operation of the criminal justice system a high priority.

Although expressing a concern that not all of their needs were addressed, the five (5) victims' groups in this study did see the Report as encouraging. Their overall reaction was one of satisfaction. Victims' groups realized that the Committee had serious choices in attempting to overhaul a justice system that would ultimately "take responsibility".

In the following chapter, this thesis will explore a theoretical explanation as to why the concerns most often expressed by victims' groups are not always acted upon.

B. Table

Combined Expectations of Five Victims' Rights Organizations	Included in Daubney's Recommendations		Included in the Legislation
Education/Detection/Prevention	Yes	No	Bill C-36
♦ prevention by way of detection of psychopathic personalities		•	
♦ education of general public	•		
♦ designated driving programs		•	
♦ use of ALERT		•	
♦ use of Ignition Interlock		•	
♦ use of electronic surveillance		•	
♦ use of photo i.d. to identify convicted impaired drivers		•	
♦ up-to-date records to be kept of all licence suspensions		•	
♦ publication of impaired driving statistics on a regular basis		•	
♦ re-licensing fee		•	
Criminal Code	Yes	No	Bill C-36
♦ repeal section 672		•	
♦ repeal section 688		•	•
♦ amend section 653	•		
♦ alter the suspension provision			
Sentencing	Yes	No	Bill C-36
♦ fine surcharge	•		
♦ stiffer sentences for drinking drivers and persons caught while under suspension		•	
♦ long-term licence suspensions		•	
♦ laws of criminal negligence to be used when death results		•	
♦ rehabilitation to become part of disposition	•		
♦ sentences reflect the severity of the crime	•		
♦ graduated range of penalties		•	
♦ impound and forfeit any vehicle for as long as the offender is under suspension		•	
♦ exact sentencing		•	
♦ judge determines the degree of homicide on the basis of fact		•	
♦ dangerous offender classification		•	

Combined Expectations of Five Victims' Rights Organizations	Included in Daubney's Recommendations		Included in the Legislation
Sentencing Continued ...	Yes	No	Bill C-36
♦ sentencing to have as its goal the safety and protection of the general public	•		
♦ classification of dangerousness at any time during the criminal justice process		•	
♦ use of indeterminate sentencing		•	
♦ sentencing guidelines	•		
♦ judges to be given the latitude to impose open ended sentences for dangerous offenders		•	•
Police, Courts and Corrections	Yes	No	Bill C-36
♦ personal and property rights of victims to be taken into consideration including the same right to secrecy as the offender		•	
♦ victims be compensated by the government when offender is unable		•	
♦ eliminate plea bargaining		•	
♦ searching victim's premises in privacy		•	
♦ video taping of child victims and sexual assault victims		•	
♦ allow victims to make statements at bail hearings	•		
♦ victims given the option to be informed of an offender's progress and whereabouts within the system including review hearings	•		
♦ abolish plea bargaining		•	
♦ Victim Impact Statements	•		
♦ greater participation in matters affecting public safety (e.g. parole hearings)	•		
Early Release	Yes	No	Bill C-36
♦ abolish mandatory supervision		•	
♦ return powers of early release to judges		•	
♦ repeat offenders not eligible for early release	•		•
♦ those serving life sentences for murder not eligible for early release until parole date		•	

Combined Expectations of Five Victims' Rights Organizations	Included in Daubney's Recommendations		Included in the Legislation
Early Release Continued ...	Yes	No	Bill C-36
♦ earned remission be justified	•		•
♦ earned remission be abolished		•	
♦ Victim Impact Statements to be made at parole hearings	•		
♦ release on temporary absences for humanitarian reasons only	•		•
♦ parole board be empowered to order restitution and community service		•	
♦ day parole eligibility only after 2/3 of sentence has been served	•		•
♦ automatic remission of non-violent offenders	•		
Legislation	Yes	No	Bill C-36
♦ mandatory blood testing		•	
♦ driving records to become a matter of public knowledge		•	
♦ maximum penalties be developed	•		
♦ refusing to give blood be construed as withholding evidence		•	
♦ mandatory assessment and treatment of all drinking drivers		•	
♦ surcharge on impaired driving offences		•	
♦ introduce "natural-life" sentence		•	
♦ review of dangerous offenders every two years		•	
♦ offender's criminal history to become a matter of public record		•	
♦ offender loses rights until sentence is served in full		•	
♦ victims should have the right of protection from offender released on parole	•		•
♦ powers of parole board to reduce sentences be taken away		•	
♦ non-violent offender classification		•	
Alternative Measures	Yes	No	Bill C-36
♦ use of alternatives to incarceration for non-violent offenders	•		

Combined Expectations of Five Victims' Rights Organizations	Included in Daubney's Recommendations		Included in the Legislation
	Yes	No	
Alternative Measures Continued ...			Bill C-36
♦ use of restitution (especially for non-violent offenders)	•		
♦ probation for first offenders who have not caused any crashes		•	
♦ use of fine system	•		
General/Miscellaneous	Yes	No	Bill C-36
♦ development of a National Trauma Registry		•	
♦ develop a National Task Force on Drinking and Driving		•	
♦ development of sentencing guidelines	•		
♦ reformation of the sentencing process	•		
♦ establish rehabilitation programs	•		
♦ national referendum on capital punishment for first degree murder		•	
♦ overhaul of National Parole Board	•		
♦ safety of public and children come first over the rights of the offender	•		
♦ accountability of the Federal Corrections Departments	•		•
♦ upon release of an offender, the safety of society should be the main focus	•		•
♦ automatic public inquiries when offenders repeat a violent crime		•	

CHAPTER 9

CONCLUSION - THE FUTURE OF VICTIMS IN CANADA

In the final section of this thesis an attempt will be made to analyze the process of debate with respect to victims' rights.

A. The Future of Victims in Canada

Victims' rights issues are of great concern to many Canadians who have been adversely affected by the justice system, and to those Canadians who feel they cannot walk their neighbourhood streets for fear of being victimized. Legislators have been confronted with this issue for many years, and have made three (3) attempts within the last ten (10) years to initiate change to a system victims' organizations refer to as the "criminal injustice system". Committees have been formed as a result of public pressure, however victims' rights organizations claim that an "adequate" response has yet to be given. The outcome of such pressure may result in victims' groups re-examining their

role as advocates and the methods they use in affecting change.

Victims of Violence and Mothers Against Drinking Drivers were at the forefront in proposing that the rights of victims become a political issue in Canada. These groups continuously bring forward evidence of the incredible inconsistencies in administering justice to victims, and in the treatment of victims. These groups began to link the treatment of victims with the overall lack of emphasis on the safety of society and the protection of its members; they claimed victims were "non-entities" with no real identifiable role other than as "sufferers" (see Amernic, 1984: 24).

For the most part, victims' groups (e.g. VoV and MADD) have a vested interest in complaining about the ill-treatment of victims and the lack of resources available to them as it will continue to warrant their existence. Victims' groups were also concerned with the secondary victimization that results when a victim enters the criminal justice process.

Victims' rights organizations, unsatisfied with the initial (lack of) response, enlisted the help of certain

academics (e.g. Irvin Waller) and the media; and in so doing gained increasing support from the general public. The initial claims by victims' groups were accepted by the Federal/Provincial Task Force on Justice for Victims of Crime (1983), which concluded that:

. . . the most frequently expressed need by the great majority of victims interviewed is the need for information. To meet this need, it is not new services which are required, but a firm commitment on the part of the various criminal justice officials to let the victims know what is happening to "their" case (p.150) . . . the key words are concern, consideration and communication . . . (p.152).

The Daubney Committee was established years later, in part as a response to the pressures put on the government by victims' groups. Victims' rights organizations were asked to participate, but only to provide information on the problem and not to help define or negotiate solutions to its eradication. The Daubney Committee sought the testimony of others whose opinions may have run contrary to those of the victims' rights groups (e.g. John Howard Society, Elizabeth Frye, BC Civil Liberties Association, Salvation Army),

thereby reducing victims' groups to "one voice among many" (see Spector and Kitsuse, 1973: 153).

There was an aura of optimism among victims' rights organizations that surrounded the Daubney hearings, as it was the first time since the establishment of vocal victims' groups that a major initiative was undertaken. However this optimism was lessened by the fact that out of 246 written submissions and 198 face-to-face interviews with academics, administrators, researchers and so on, only eleven (11) per cent of those interviews were conducted with individuals representing victims' rights groups, while almost thirty (30) per cent were conducted with individuals representing (in one capacity or another) prisoners or prisoner's rights groups.

The Daubney Committee was to have "addressed the Canadian situation as it actually is and to deal with the perceptions Canadians have of it" (Daubney Committee, 1988: 3). Victims' groups were interested in greater involvement within the justice system, and in particular with the sentencing and conditional release process. Victims' groups wanted the guaranteed right to seek compensation and restitution; the right to submit a Victim Impact Statement

and the right to be kept informed at every stage of the trial proceedings. Essentially, the Daubney Committee legitimised these concerns.

Although the Daubney Report took great strides to respond to the claims of victims' rights organizations, the Committee realized the need to consider the submissions of all groups, recognizing a political reality that all groups must be heard so as to avoid public condemnation for recognizing the importance of one group over another. The report of the Daubney Committee clearly indicates compromise, but believes the importance of establishing a more equitable justice system for victims of crime. It tried to incorporate the strong views of victims' organizations with the views of various other non-victim organizations by advocating for moderate changes to the politics of crime through education and social services.

When Daryl Rosenfeldt was killed by Clifford Olson; when Pamela Sullivan was murdered by Mark Shannon; and when Fred Gribble was killed by a drunk driver, victims' groups were indignant. They wanted changes. The cessation of "Happy Hour" at many Canadian drinking establishments, the use of

the ALERT breathalyser system and the mandatory blood testing for drivers suspected of driving while drunk are a few of the notable changes. These changes were in response to the increasing pressure put on the various agencies within the criminal justice system and the government to enact legislation to deal with the perceived injustices. Victims' groups wanted the government to take an official stance on the issues of public safety and security. Groups wanted tougher sanctions for violent offenders and easier access to equitable compensation.

The Daubney Committee stressed the rights of victims within the criminal justice system, but did not entirely entrench them in its recommendations. For example, Recommendation #41 sets out that victims will be kept informed of an offender's prison and parole status, and that statements by victims can be considered at a parole hearing (Daubney, 1988: 173). Unfortunately, this is at the discretion of the parole board. This is not what victims' groups wanted. Victims' rights organizations do not consider "at the discretion of the parole board" a responsible move by the government to a very real problem. Victims, rights

organizations claim that discretion in this area is not doing what is necessary to deal with the issues of greater protection and safety nor does it allow access to the "whole" system. However, victims' rights organizations, when asked, concede that it is better than what was previously the case: at the discretion of the offender.

The Daubney Committee attempted to change the face of the criminal justice system by responding to the lack of confidence victims and the general public had in the criminal justice system. The Committee held that any sentence handed down for a violent offence should have the protection and safety of the public as the main consideration. The recommendations by Daubney on the criminal justice system did undertake to deal with some of the inconsistencies and injustices. However, the conditions of victims did not change and dangerous offenders were still being released.

When I interviewed Carole Cameron (VoV) and members of Citizens United for Safety and Justice, they stated that this was no way to deal with criminal law and justice reform. In reference to Bill C-36, VoV and CUSJ jointly believe the actions of the government to be manipulative and cynical.

Sharon and Gary Rosenfeldt (President and Vice-President, Victims of Violence National Inc.) felt the government was playing a public relations game: "They [the government] did it with the victims' surcharge and they are doing it now", said Gary Rosenfeldt in a follow-up interview conducted after Bill C-36 was passed. VoV and CUSJ argue that Bill C-36 was a political tactic borne out of compromise. They felt the government had no overall comprehensive plan for dealing with public safety and for dealing with victims. It was business as usual.

Victims' groups are not yet satisfied with the reforms that the government proposed. They continued to seek change with the help of their own public awareness campaigns and the use of members of federal and provincial parliaments.

The Canadian system of justice and bureaucracy makes it quite difficult for victims' groups to achieve their set goals. Victims' groups continue to work hard within a system that attempts to help, but is unable. When pressured, the government makes changes to legislation or enacts new legislation, hoping that it will respond to the need for public safety; but this may not always be the case. Bill C-36

has been in operation for one year, and yet the horror stories of injustices and lax sentences for violent crimes are ever present. It becomes evident that Bill C-36 is not working when one examines the ongoing problems such as the current request for a sexual predator law; the near release of paedophile Wray Budreo, into a Toronto halfway house located next to an elementary school; and, the release date of a convicted drunk driver kept from the woman whose family he killed.

The issue of victims' rights and the rights of Canadians to live in safety and without fear has remained on the political agenda due primarily to the efforts of victims' rights organizations with the help of a select few politicians and academics. The issue of justice is one that concerns victims and victims' rights organizations, as well as the majority of Canadians. They have been responsible for keeping the issue alive and for advocating for a safer society. Their efforts most often are heard but not listened to; they are given a forum in which to speak but their words often fall on deaf ears. When the Daubney Committee was first introduced, victims' organizations were grateful for the

chance to address their claims in person. They were even more excited when the recommendations were in their favour. However, when the report finally received notoriety in 1992, four (4) years after its completion, it was almost too late. It was evident that the government did not hold the feelings of victims close at heart, and it became more and more obvious that they were concerned with scoring political points.

Although officials consistently call for greater participation on the part of victims' organizations, they usually do well with little victim involvement. Officials in the criminal justice system often consider victims as a threat and an interference in their activities. Criminal lawyers, for example, are distressed with victims' groups who claim they have no place in the courts. They see such groups as vigilant and narrow-minded (see Edmonton Journal, 1984).

If officials of the criminal justice system are threatened by victims' organizations, they must be equally threatened by the thought of offering victim programming, unless such programs can be tailored to official objectives. For example, victim/witness programs may promote official

goals; but victim assistance programs may drain scarce resources, and thus be resisted by officials. Moreover, having community crime control closely connected to law enforcement reflecting official views and approaches may be embraced as improving police-community relations, but initiatives suggested by victims' groups promoting independent alternative institutions and techniques that question social structures and police functions, will be opposed.

Victim compensation emerged primarily to satisfy victim needs before the federal government determined the diversity of victim preferences. The programs started amidst the questioning by the federal and provincial governments of the sources of victimization and whether offenders were not also victims. Compensation programs were needed by victims' groups but used by the various official agencies as a means of maintaining its control and labelling victims. Compensation programs were merely symbolic gestures by the government to convey their concern for victims (see Elias, 1983). Compensation programs and Bill C-36 can be seen as having political purposes designed to promote victim and

public support. Most plans, for example, cover only selective victimizations despite public perception to the contrary. Few even qualify and fewer even apply (about one (1) percent of all violent crime victims), and only about one-third of them receive any payments in amounts often less than what they deserve and never at the time of need (see Federal Provincial Task Force, 1983: 113-115; Toronto Star, 1987; Waller, 1988a). While programs often receive considerable publicity, information on how to apply to such programs is usually very difficult to obtain and rarely is a regular part of the victim's initiation into the criminal justice system (Federal Provincial Task Force, 1983: 113-115; Elias, 1983).

These programs are often underfunded. Officials have often seen political advantage in advocating victims' interests, but have retreated when the potential costs are considered. As a result, the seemingly concrete plans often amount to symbolic gestures with little tangible or substantive assistance that have little in common with victims' interests (see Elias, 1983).

It is not the position of this paper to deprecate the efforts made towards victims' advocacy, but to suggest that

some advocacy (Bill C-36, compensation programs, assistance programs, and so on), in favour of victims' rights may have purposes that place victim interests secondary, if it promotes them at all. To promote victims' interests successfully there is a need for a strategy that will transform victims into a potent and independent political force, one which will question apparent governmental benevolence.

To this end, victims' rights organizations must attempt to understand the intentions and desires of the various governmental and non-governmental officials with which they are dealing. Moreover, it is quite possible that this will assist them in translating their claims into action. To do this would involve a process by which groups would develop a historical account revealing how certain government officials came into being. That is, victims' rights organizations will have to show how and why these officials have the particular purposes they have and why the needs of their organizations have not been dealt with adequately.

Victims' rights groups like VoV and MADD have fought for victims' rights and services in the public and private arenas, but realize their achievements represent only the beginning. Advances in law and policy have set the groundwork for how victims should be treated. The challenge for victims' groups now turns to how victims will be treated. In terms of policy, the next step may be to put forth, as was attempted in the United States, a bill of rights for victims and a constitutional amendment so that the rights of all victims are entrenched.

Society has long recognized and protected the rights of offenders. Victims' groups feel the time has come for society to recognize and protect the rights of victims of crime as well. A constitutional amendment is perhaps needed in order to ensure that victims of crime be treated fairly by the criminal justice system and with the compassion and respect they deserve; that they will not be excluded from the critical stages of the proceedings; and, that they along with all of society be guaranteed the right to safety and security. Protection for crime victims by constitution rather than by statute is of great importance. The rights of the

accused are defined in the constitution and the rights of the victim should be given the same recognizable status. Moreover, a constitutional amendment will ensure that a neutral criminal justice system recognizes the rights and interests of both the victim and the offender.

A constitutional amendment may serve a pragmatic purpose. There have been countless stories of victims who tell officials that it is not worth the additional humiliation to cooperate with a system that, at times, does not pay proper consideration to the victim's work schedule; the victim's inconvenience; the victim's view of charging or dismissal; or, to the victim's opportunity to describe the impact of the crime. This lack of consideration, participation and legal standing accentuate the feelings that the criminal justice system is unfair and self-serving.

Under these circumstances, it is certainly understandable why victims react negatively to being forced to cooperate. In fact, a case can be made as to why people do not want to report being victimized. Such non-reporting can be viewed as a show of non-confidence in a system that was designed to protect the innocent and punish the offender. It

would follow then, that if crime victims were confident that they would be treated fairly by the criminal justice system, they would be more willing to report crimes and to cooperate in the process. Justice might be better served and law enforcement might become more effective.

It is the individual upon which the functioning of the criminal justice system depends. With a constitutional amendment the "deep and lasting physical and emotional impact which the crime has upon the victim, and the exacerbation of that impact as a result of the demands placed upon the victim by the criminal justice system in the pursuit of its objective" can be fully realized (RCMP, 1992: 48). The system will no longer be allowed to ignore the needs and rights of victims and others who are asked to assist the system in its functioning.

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APPENDIX A

Main Principles of the Daubney Committee

APPENDIX A

The following is a summary of the main principles adopted by the Daubney Committee and presented to the federal government regarding sentencing, conditional release, and other related aspects of corrections:

1. There must be greater community involvement and understanding at the successive stages of sentencing, corrections and conditional release;
2. Sentencing, correctional and releasing authorities must be accountable to the community for addressing the relevant needs and interests of victims, offenders, and the community;
3. Sentencing, corrections and conditional release should have reparation and reconciliation built into them - a harm has been done and should be repaired (the victim's loss must be redressed), and most offenders will be (ultimately) reintegrated into the community;
4. Sentencing, correctional and releasing authorities must provide opportunities for offenders to accept and demonstrate responsibility for their criminal behaviour and its consequences;
5. Opportunities must be provided for victims to participate more meaningfully in the criminal justice system through the provision of:
 - a) full access to information about all stages;

- b) opportunities to participate at appropriate stages of decision-making in the criminal justice system; and,
 - c) opportunities to participate in appropriate correctional processes.;
6. Educational, vocational, treatment and aftercare services must be improved and accorded greater resources at the successive stages of sentencing, corrections and conditional release, to ensure that offenders are effectively reintegrated into the community either as an alternative to incarceration or after incarceration;
 7. Sentencing and conditional release must function with public visibility and accountability in such a way as to contribute to the protection of society;
 8. To ensure sentencing disparities are not (and are not perceived to be) unwarranted, sentencing should be structured in some manner with adequate, appropriate provision for the consideration of aggravating and mitigating factors in specific cases, and with the requirement that reasons be given in all cases;
 9. Carceral sentences should be used with restraint; there must be a greater use of community alternatives to incarceration where appropriate, particularly in cases not involving violence or recidivism;
 10. Conditional release in some form should be retained with adequate safeguards to ensure that those who benefit from it have earned that privilege and that they do not constitute an undue risk to the community; and,

11. All participants in the criminal justice system must put greater emphasis on public education (Daubney, 1988: 5-6).

APPENDIX B

Letter of Introduction To:

Victims of Violence
Mothers Against Drinking Drivers
Citizens United for Safety and Justice
People to Reduce Impaired Driving Everywhere
Parents Against Impaired Driving

Raymond A.J. Lonsdale
214 Arlington Avenue
Ottawa, ON K1R 5S9

November 1988

To Whom it May Concern:

I am a student in the Criminology Masters Program at the University of Ottawa. My thesis topic is "Victims' Rights Organizations and Daubney: A Response?" which I am doing under the supervision of Dr. Irvin Waller.

Victims' rights organizations have come a long way in the past fifteen years and promise to be an even greater force in the 1990s. The study I am undertaking will first examine legislative changes advocated by victims' rights organizations and the impact of these changes on the criminal justice system. Secondly, the paper will examine the Daubney Report: its development, what it says with respect to victims, the extent to which victims' needs are dealt with, and whether the recommendations are an adequate response to these needs.

To accomplish this, I am in need your assistance. I would greatly appreciate receiving any leaflets, policy briefs, or other information on future courses of action from your organization. I expect to contact you again in the near future with a questionnaire I have developed concerning your organization.

I would be happy to receive any comments regarding my thesis or to answer any questions you may have concerning this study. I look forward to hearing from you and your organization.

Sincerely,

Raymond Lonsdale

APPENDIX C

Victims' Rights Organizations - Questionnaire

I would appreciate your assistance in providing information in the following areas:

Name/Address of Organization: _____

Number of Members: _____

Contact Person: _____

1. Do you have a Newsletter? Yes _____ No _____

2. What is the organizational structure of your organization?
(If you find it easier to attach a copy of your constitution, please do so.)

3. What are the goals of your organization? (Please Explain)

4. What are the objectives of your organization with regard to:

a) the Criminal Justice System:

b) Sentencing:

c) Mandatory Supervision:

d) Legislation(either changes to existing or new legislation):

e) Other:

5. Does your organization do any lobbying of the federal and/or provincial government? Yes _____ No _____

6. Please explain:

7. Please describe your past legislative efforts:

8. Have any of your efforts been sponsored or endorsed by legislative committee? Yes _____ No _____

9. If yes, which one(s)?

10. Please describe your current legislative efforts as they relate to victims' rights:

11. Does your organization view the Daubney Committee as an important step in recognizing the needs and concerns of victims and victims' rights? (Please explain)

12. Was your organization satisfied with the recommendations of the Daubney Committee as a response to your concerns in your role as advocates for victims' rights? (Please Explain)

13. Comments/Additional Information (Attach Extra Sheet if Required):

Thank you for your time and consideration in completing questionnaire. If you would like to see the final outcome of the project, please indicate below:

Yes _____ No _____

APPENDIX D

Drinking and Driving Legislation

APPENDIX D

As directed by the Criminal Code, drinking and driving convictions carry the following penalties:

First conviction

- minimum \$300 fine
- minimum three month licence suspension

Second conviction

- minimum 14 days imprisonment
- minimum six month licence suspension

Third or later

- minimum 90 days imprisonment, and conviction
- minimum one year licence suspension

The maximum sentences for impaired driving offenses are:

For impaired driving or refusing to give a breath or blood sample or having care or control of a vehicle while impaired or with a blood alcohol content ("BAC") over 80mg %:

- five years imprisonment
- three year licence suspension

For dangerous operation of a motor vehicle:

- five years imprisonment
- three year licence suspension

For impaired driving, for dangerous operation, and for criminal negligence causing bodily harm:

- ten years imprisonment
- ten year licence suspension

For impaired driving or dangerous operation causing death:

- fourteen years imprisonment
- ten year licence suspension

For manslaughter and for criminal negligence causing death:

- life imprisonment
- permanent licence suspension