Editorial

Victims' Rights

This special issue features papers on the important and controversial topic of victims' rights. All three articles explore whether the Canadian Charter of Rights and Freedoms should be amended to include rights for complainants and victims of crime. All of the authors acknowledge that such an amendment is not likely to occur given the practical impossibility of amending the Canadian Constitution. Nevertheless, their examination of the case for and against such an amendment and the possible content of such an amendment provides insight into the place of the crime victim in our criminal justice system.

Victims' rights is an interesting issue in part because reasonable people have such a wide range of views about them, and the papers in this issue reflect a diversity of approaches to victims' rights. Some argue that the very notion of victims' rights offends the presumption of innocence and challenges the rights of the accused in a system that is designed to do justice between the state and the accused. Others argue that victims have been neglected for too long in modern criminal justice systems and much can be learned from other systems that include them directly in criminal justice. Still others point out that, rightly or wrongly, some Charter rights for complainants have already been recognized by the courts and the remaining questions concern the proper ambit of victims' rights and how they should be balanced and reconciled with the rights of the accused and the public interest.

David Paciocco draws a helpful distinction between administrative rights that require the state to provide victims with information and services and legal rights that bind courts and may conflict with the rights of the accused. He argues that administrative rights do not need entrenchment in part because crime victims, unlike accused persons, are not politically powerless. He warns that making administrative victims' rights enforceable will impose burdens on prosecutors, budgets and the court system through delay and increased litigation. Professor Paciocco goes on to argue that entrenching
legal rights for victims would be dangerous because it would undermine the presumption of innocence, the idea that crime is prosecuted by the state, the role of the prosecutor, and the purpose of the Charter in restraining state power and protecting the rights of the accused.

Alan Young’s article traces the evolution of victims’ rights in Canada in the context of developments in the United States, Europe and at the United Nations, including the extensive debates about victims’ rights constitutional amendments in the United States. He notes that in many jurisdictions, victims’ bills of rights do not provide tangible remedies. One of the main benefits of including victims’ rights in the Charter in his view would be providing victims with access to the broad remedial powers of s. 24(1) of the Charter including the power of courts to supervise criminal justice institutions. Professor Young warns, however, that a victims’ rights amendment would not be self-enforcing and must overcome resistance within the justice system to victims’ rights. He concludes that “professional neutralization” of victims’ rights must be overcome by training and education.

My own article suggests that the omission of victims’ rights from the Charter was more a product of weakness of the victims’ movement in the early 1980s than immutable principles. I suggest that privacy, equality and limited procedural rights of crime victims have already been recognized by the Supreme Court and that the remaining question is whether these rights should be more generally extended to all crime victims. A right to compensation from the state would be valuable for victims, but expensive for the state. Rights to be informed about the process beg difficult questions about rights to participation in the process and the ability of victims’ rights to limit the accused’s rights without the burdens of s. 1 justification. I also caution that a victims’ rights amendment might entrench a limited vision of evolving victims’ rights and make governments less active on such issues.

To be sure, papers that focus on the issue of victims’ rights cannot comprehensively address the treatment of crime victims in the criminal justice system and by society. Nevertheless, it is hoped that this special issue contributes to the growing scholarship and public debate in Canada about victims’ rights.

This special issue on victims’ rights follows one in the last volume on the criminal trial court. The next volume will feature a special issue on plea bargaining and it is hoped that opportunities will arise in the future to publish collections of papers on important topics of criminal justice.

K.R.