

**VICTIM PARTICIPATORY RIGHTS IN PAROLE:
THEIR ROLE AND THE DYNAMICS OF VICTIM INFLUENCE
AS SEEN BY BOARD MEMBERS**

By

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Abstract

The last decade has seen an escalating demand from victims to be given a voice in the parole phase of the criminal justice system. Both the Canadian and American governments have responded to this demand by significantly expanding victims' participatory rights in parole.

This study examines victim participation in parole from the perspective of individual parole board members. Specifically, this study provides an in-depth exploration of the opinions of individual board members on victim participatory rights in parole and examines how the victim fits into and affects parole board decision-making processes, practices, and outcomes. Particular attention is paid to the analysis of individual, contextual, and environmental variables as they relate to the weighting and integration of victim information.

Results obtained suggest that victim participatory rights in a parole context are not fully understood or welcomed by some board members. Most noticeably, significant disparity was evident in how victim information was used and incorporated into parole practices and outcomes by individual board members. Further, the level of support for victim involvement in parole and the extent and method by which victim information is incorporated into parole decision making is influenced by individual board member differences such as gender. These findings and others are discussed in the context of policy implications for the future of victim participatory rights in parole.

Keywords: victim rights, parole board decision-making.

Dedication

To all of you who cared enough to keep asking: “When will the Dissertation be finished?”

On a serious note, thanks to my husband (who has yet to read my dissertation but nevertheless provided support), my daughter (who provided a completely rewarding distraction from this work), and my parents (who can’t believe it is finally done).

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Chapter 1: Introduction

Described by some as a terminal form of correctional treatment (Pogrebin, Poole, & Regoli, 1986), parole constitutes a form of conditional release that allows selected offenders to leave the institutional setting and continue to serve the balance of their court-imposed sentence in the community.¹ Generally speaking, the concept of parole is based on the belief that a gradual, supported, and controlled release of offenders helps them rehabilitate and reintegrate into society as law-abiding citizens and that, ideally, this process contributes to a safer society.

The parole board retains the responsibility and discretion for deciding when or if inmates should be paroled and the conditions of parole and parole revocation. How soon inmates are released from prison depends on the statutes that govern parole eligibility and the application of those statutes by the parole board. Canada's four parole authorities, the National Parole Board (NPB) and the provincial parole boards of British Columbia, Ontario, and Quebec, are guided by the standard criteria for granting parole cited in the Corrections and Conditional Release Act (CCRA, 1992). Section 102 of this act states that the NPB or a provincial parole board may grant parole to an offender if, in its opinion, (a) the offender will not, by re-offending, 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

¹ See Ratner (1995) for a historical review of the philosophy of parole in Canada.

reintegration of the offender into society as a law-abiding citizen (CCRA, 102). Given that approximately 72% of all Canadian inmates are granted some form of parole during their sentences, the parole board clearly serves as a major gatekeeper in the criminal justice system.²

The decisions facing parole boards are very difficult, and an error in either direction has its attendant risks. If, for example, a board errs by granting parole to an offender who then commits a serious crime, society is harmed. In addition, the reputation of the larger parole board organization and the efficacy of conditional release as a reasonable means of successfully reintegrating offenders into society is damaged. Parole board release decisions also impact the victims of offenders. For some, a release to the community of “their offender” might lead to reliving the victimization experience, fears of reprisal (which could be realized), and feelings that the justice due the offender has once again been eluded.

In addition to the risks associated with granting parole, denying it can also have undesirable consequences. If a board errs by denying parole to a person who could have become a responsible and productive citizen if released, then society loses a valuable member, the person’s family continues to be disrupted, and that individual may become more embittered and more at risk for returning to crime when eventually released. The effects of lengthy institutionalization on offenders denied parole might also become more pronounced and make reintegration as a law-abiding citizen more difficult, if not impossible. Finally, for the Correctional Service, parole board decisions to deny parole impinge on their ability to fulfil their organizational philosophy of “reintegration” of

² Average conditional release rate for temporary absences/day parole (National Parole Board, Performance Monitoring Report, July 2001).

offenders,³ may make it more difficult to achieve effective offender population management, and may ultimately result in increased monetary costs to the system.

Given the significance and wide-ranging ramifications of parole decisions, it is not surprising that parole decisions are highly scrutinized by the media, public, and victims of crime. Although there is evidence of public support for the general theoretical underpinnings of conditional release (Jamieson & Flanagan, 1986; Roberts, 1988, 1992; Samra-Grewal & Roesch, 2000), the limited research suggests that the public's attitudes toward conditional release practices have become increasingly negative. Along with judges, the most severe public criticisms of the criminal justice system are reserved for parole board decision makers (Huang & Vaughn, 1996; Roberts & Stalans, 1997). A Canadian survey conducted in 1998 found that parole boards generated the lowest levels of public confidence, with only 4% of respondents expressing strong confidence in parole authorities (Environics, 1998).

The 1999 General Social Survey (GSS) asked Canadians for the first time about the performance of the parole system. Only 15% of the population stated that the system did a good job at releasing offenders who were not likely to re-offend and at supervising offenders on parole.⁴ The primary complaints and sources of public dissatisfaction with parole appear to be related to perceptions that (a) the conditional release system is too lenient, (b) very serious or violent offenders should not be eligible for conditional release,

³ *Reintegration*, as defined by the Correctional Service of Canada includes "All activities of processes in CSC which are focused on preparing offenders for safe release, supporting quality release decision making based on comprehensive risk assessment and managing the level of risk posed by offenders in the community" (CSC, November, 1996). Practically speaking, the reintegration goal is that, by April 1, 2000, 50% of federal offenders will be serving their sentences in the community (CSC, July 1998).

⁴ It is important to caution that there are limitations to the research that has explored public opinion about conditional release. These problems include (a) the survey questions are too general and fail to validly measure the complexity of public opinion on conditional release and (b) the public's knowledge about crime-related issues is, as a whole, inaccurate (Roberts, 1988; Samra-Grewal & Roesch, 2000).

and (c) full parole is granted too early into an inmate's sentence (Cumberland & Zamble, 1992; Roberts, 1988; Samra-Grewal & Roesch, 2000).

Like the general public, many victims of crime hold negative perceptions about parole. Historically, their most significant, consistent, and substantive grievance has been that they lack standing and a voice in parole proceedings. Not surprisingly, the central aim of the crime victim movement, which has grown out of these grievances, has been achieving the right of victims to be heard regarding offenders' parole and to meaningfully participate in the parole process (President's Task Force on Victims of Crime, 2001). The right to make a victim impact statement (VIS) during a parole hearing has been rated by victims as more important than making a victim statement before sentencing and being involved in the decision about what sentence should be given (Kilpatrick, Beatty, & Howley, 1998).

Over the past two decades, both the Canadian and American governments responded to the public and to victims' rights interest groups by significantly expanding victims' rights and participation in parole processes. This expansion of the rights and roles for victims in conditional release was viewed as a means of restoring public confidence in the justice system (CCRA Working Group, 1998). In Canada, the Corrections and Conditional Release Act (1992) formally recognized the interests of victims in corrections and conditional release processes and the need for accountability to victims. In the United States, over 46 states now provide some type of legislated victim right to be heard regarding an offender's parole.⁵ Unlike the previous standard practice in which parole decisions were made "behind closed doors", without any

⁵ See Tobolowsky (2001) and Herman and Wasserman (2001) for reviews of the right to be heard regarding parole in the United States.

opportunity for observation or input from the victim, a variety of procedures are now available to victims of crime whereby they can participate in the parole phase of the criminal justice system in the majority of jurisdictions with parole systems.

The role for victims in the conditional release systems of both Canada and the United States has evolved into several common participatory forms over the past decade. These forms of participation fall into six main categories: (a) the right to be informed or notified about correctional and parole-related events and proceedings, (b) the right to be present at parole hearings, (c) the right to provide victim statements (written, videotape, or oral submission) to board members, (d) the right to access written conditional release decisions through a public decision registry, (e) the right to an order for restitution as a condition of parole, and (f) the right to be heard on matters relating to the offender's parole and have victim information considered in parole board decisions. The latter participatory right has evolved to a point where victim input regarding parole issues is now a required, rather than discretionary, factor for consideration in parole board decision-making in the majority of parole jurisdictions in the U.S. and Canada. For example, Canadian parole board members are directed by Section 101 of the CCRA, which dictates that a number of principles "shall" guide the board in achieving the purpose of conditional release. Among these principles is one that demands that the board take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information from both victims and the offender [CCRA, 1992, s.101(b)].

The last decade has seen an escalating demand from victims to exercise their participatory rights in the parole process. Canada's National Parole Board observed a 95% increase in contacts with victims from 1996 -1997 to 2000 - 2001 (National Parole Board, Performance Monitoring Report, 2001). Despite the significant increase in victim involvement in conditional release systems, the nature of the role of victims in the conditional release process and their impact on parole decision makers and decision outcomes has been the subject of surprisingly limited analysis and empirical research. Given the absence of any recent systematic study of victim participation in parole, the purpose of this thesis is to examine victim participation in parole from the perspective of the criminal justice professionals who exert the most discretionary influence over the parole decision: individual parole board members. This research will explore the opinions of individual board members on victim participatory rights in parole and examine whether and how victim involvement and information is incorporated into their conditional release decision-making tasks.

The first five chapters of this thesis provide an historical context of victim participatory rights in criminal justice and parole and explore the specific means, methods, and consequences of the victim right to be heard in parole. Chapter 2 opens with a brief review of the historical evolution of victim participatory rights in the criminal justice system. It then turns to an analysis of the rise of victim rights and participation in the Canadian and U.S. conditional release systems and outlines the practical application of victim participatory rights in parole. Chapter 3 presents an in-depth review of the evolution of the victim's right to be heard in sentencing and discusses the risks and benefits of this practice. Given the close parallels between parole board and judicial decision-making, the far more extensive sentencing research is an important empirical

resource for understanding the ways in which victim issues might impact on the parole phase of the criminal justice system. Chapter 4 reviews the benefits and risks of victim participation in parole. Ongoing debate about these issues underscores the need for a fuller understanding of whether and how victim participation influences parole processes and decision-making outcomes. This chapter also reviews the available empirical data on the impact of the victim role on conditional release decision-making. In so doing, this review will underscore the potential for the victim role to have a significant impact on the decision-making of parole board members. In chapter 5, the formal and informal properties of parole decision-making are reviewed. Some of the key informal properties (individual, contextual, and environmental) of parole decision-making are discussed, with particular attention to those factors that might affect the ways and extent to which victim participation in parole is fully realized.

Chapters 6 and 7 review the methods employed in the study, the results of the study, and an analysis of the data. Specifically, chapter 6 outlines the methodological strategy and related considerations of relevance to the development, design, and administration of the research. The data for this study were collected from actual parole board participants and the settings in which they operate. In total, 62 parole board decision makers participated in the study, representing seven different paroling authorities across the U.S. and one parole board in Canada. Chapter 7 details the results of the research in an effort to address the primary research question of how the victim fits into and effects parole board decision-making processes, practices, and outcomes. Particular attention is paid to the analysis of individual, contextual, and environmental variables as they relate to the weighting and integration of victim information.

In chapter 8, the focus of this thesis turns to a discussion and analysis of how, in the actual practice of parole decision-making, parole board members use victim information. Broader policy implications of the research are also addressed.

Chapter 2: Evolution of Victim Rights in the Criminal Justice System

Inasmuch as the impact of the participation of victims on parole cannot be fully understood unless there is a clear understanding of the objectives that motivated victim involvement in the criminal justice system, the first section of this chapter will discuss the evolution of the victim rights movement and the rationale for victims' involvement in the justice system. This review will also provide a description of the practical means by which victim participation has been accommodated in Canadian and American parole jurisdictions.

The Rise and Objectives of Victim Participation in Criminal Justice

Historically, there is little doubt that victims are the most important participants in the criminal justice process. Without their participation, the overwhelming majority of crimes would not be reported, most suspects would not be apprehended, and many court cases would not result in convictions. Despite victims' significant role in this process, the evolution of the penal system (from private vengeance⁶ to state-controlled and administered justice) resulted in a criminal justice process in which victims were

⁶ As observed by Clarke (1995), "Before there was a formal legal system, all wrongs were private wrongs. Victims and their families exacted the penalties" (p. 144).

delegated the secondary role of crime reporter or testifying witness in court proceedings. Victims of crime were treated as neglected outsiders in a system that could not function without them; the system was not accountable to them, provided no role for them, and did not necessarily serve them. This occurred primarily because the criminal justice system is an adversarial system in which the victim is not one of the adversaries (Canadian Federal-Provincial Task Force, 1983, p. 5).

This concept of crime as an offence against the state, and its attendant administration of justice and "secondary victimization,"⁷ resulted in a host of economic and psychological problems for victims and, most importantly, in victim alienation and perception of injustice (Erez, 1990). Studies of victims in several countries (e.g., Forst & Herson, 1985; Hagan, 1982; Kelly, 1984a, 1984b; Knudten, Meade, Knudten, & Doerner, 1976; Shapland, Wilmore, & Duff, 1985) have suggested that victims' grievances are more with the procedures of the criminal justice system (in particular, the lack of victim involvement in the decision-making process) than with the supposed injustice of the outcome. There have been other complaints, such as delays in the administration of justice, lack of information concerning the status of their case, and insensitive criminal justice practitioners, many of which have been addressed through various programs (Erez, 1989). However, the most consistent and substantive grievance advanced by victims has been their lack of standing and voice in the primary adjudicative proceedings in the criminal justice system.

In their pursuit of a role in adjudicative processes, victims have a broader objective than securing punishment of the offender or compensation for the harm caused

⁷ *Secondary victimization*, as generally defined in the literature, relates to the material and emotional costs that result from the victims' contact with the criminal justice system (Canadian Federal-Provincial Task Force on Justice for Victims of Crime, 1983).

them by the crime. Generally speaking, they want respect, appreciation, and recognition as an important and necessary participant in the criminal justice process (Shapland et al., 1985). Studies of procedural justice confirm that it is the control or representation component—namely, the opportunity to present their case or problem to authorities—that is a major factor determining satisfaction with justice for all parties concerned about the process: for defendants (Tyler, 1988; Casper, 1978; Casper, Tyler, & Fisher, 1988), citizens (Tyler, 1988), and victims (Kelly 1984a, 1984b). This need to be heard is a particularly prominent desire for victims. National committees established to examine the victim's place in the process in the United States have documented the importance of relationship between victim participation in the adjudicative process and their perception of justice.⁸ A common theme which emerges following consultation with victims regarding the justice system is their frustration with the traditional common law view of the victim rather than the individual victim: "Why didn't anyone consult me? I was the one who was kidnapped, not the state of Virginia" (President's Task Force on Victims of Crime, 1982, p. 9).

It has been during the past three decades that considerable public and professional interest developed about victims of crime. Most accounts of the victim movement employ a multi-faceted approach to explain its advent and exponential growth.⁹ Sebba (1996) maintains that the intensity of interest in the victim movement involves at least seven macro legal developments including (a) the rise of victimology, (b) the use of victimization surveys as a source of criminological data, (c) the rise of a

⁸ For example, in the United States, President's Task Force on Victims of Crime (1982); in Canada, Federal Provincial Task Force on Justice for Victims of Crime (1983); in New Zealand, the Victim's Task Force, established in 1987.

⁹ See Clarke (1995) for a Canadian explanation.

“law and order” mentality towards offenders, (d) the influence of feminist and other grassroots movements which have emphasized “victims”, (e) radicalism in criminological theorizing, (f) the rise of the “just-deserts” philosophy, and, finally, (g) the movement in support of informal/restorative processes of justice. Other explanations stress the significance of the empirical and clinical research demonstrating that the suffering resulting from victimization is not limited to physical and economic loss but also includes various forms of psychological distress (Erez & Tontodonato, 1990). Also influential in attracting attention to victim issues have been the various moral and penological arguments made by supporters of victims’ rights and participation in the criminal justice process.¹⁰

Demands for increased victim participation can be traced back to the 1970s with the emergence of research that exposed problems in the areas of victim satisfaction and co-operation with the justice system. A number of studies conducted in the 1970s documented that large numbers of victims and witnesses were failing to cooperate with officials in the prosecution of criminal cases in large urban courts (Cannavale & Falcon, 1976). Furthermore, the most consistent result emerging from the studies of victims’ concerns and attitudes towards the criminal justice process was victims’ frustration with and alienation from the system (Forst & Herson, 1985; Hagan, 1982; Kelly, 1984a, 1984b; Knudten et al., 1976; Shapland et al., 1985). Some criminal justice experts (e.g., Goldstein, 1982) argued that the two problems, namely, witness failure to cooperate and victim frustration with the system, were connected. Both stemmed from victims’ and witnesses’ frustration with their virtual exclusion from the adjudication process.

¹⁰ See Henderson (1985), Shapland et al. (1985), Kelly (1987), Kilpatrick & Otto (1987), and Erez (1990) for reviews.

Recommendations to address these issues stated that victims should have a greater degree of participation in order to reduce disaffection and give victims an incentive to cooperate with officials (DuBow & Becker, 1976; Goldstein, 1982; Rosett & Cressey, 1976).

By the early 1980s, a consensus seemed to emerge, and it was no longer “whether the victim should participate in the criminal justice process or not but rather, the question was the extent of that participation” (Canadian Federal-Provincial Task Force, 1983, p. 7). The policy issue then became how to accomplish this victim participation, given the variety of options available.

Initially, the victim movement’s efforts to achieve reform focused on economic concerns. Programs for compensation from the state and restitution from the offender were instituted in the United States and Canada to alleviate the financial difficulties associated with criminal victimization. Psychological counselling and other services to treat the distress resulting from the crime were also provided (McGuire, 1987; Smith, 1985). Additionally, policy directives and related programs to facilitate sharing of information with victims and updates regarding the prosecution of their criminal cases were gradually introduced. Finally, victims’ rights expanded into more controversial areas and have recently focused on the reintegration and participation of victims in the criminal justice process (Goldstein 1982; Kelly, 1987; Rubel, 1986; Sebba, 1982).

In summary, the participation of victims in the criminal justice system can be realized in a variety of ways. Sebba (1996) characterized four types of participation: indirect participation (e.g., victim impact statements); vicarious participation (e.g., victim advocacy); personal confrontation (e.g., restitution programs, victim-offender reconciliation or mediation programs) and finally, personal participation (e.g., personal

role granted to allow for oral statement at sentencing; right to participate at trial, plea-bargain proceedings, and parole hearings). The right of the victim to both indirectly and personally participate in the conditional release phase of the criminal justice system is the most recent development in the evolution of victim involvement in the criminal justice system.

Evolution of Victim Right to Be Heard in Canadian Parole

Generally speaking, up until the introduction of the Corrections and Conditional Release Act in 1992, victims played a limited, if not non-existent, role in the Canadian corrections and conditional release processes. This limited victim role was due in large part to the fact that parole boards in Canada were governed by the Parole Act. The Parole Act offered no formal recognition of victims' interests, and the Privacy Act legislation restricted information dissemination to victims. However, some Canadian parole boards were cognizant of victim issues and, in some jurisdictions, voluntarily provided selected information about offenders to their victims. For example, the National Parole Board (NPB) routinely provided information to victims under a provision in the Parole Act, which allowed the head of a government agency to disclose personal information when the public interest in disclosure clearly outweighed invasion of the offender's privacy. Generally, the disclosure of such information was based on victims' expressions of concern for their own safety.

A more formal recognition of victim rights and interests among parole boards began to take hold in the mid to late 1980s due to the work of the NPB. In 1989, the NPB

developed its first brochure targeted specifically for victims of crime.¹¹ Publishing the handbook, "Victims: Questions and Answers on Parole", was the first step the NPB took to demonstrate its recognition of victims' interest in its policies and procedures, and it acknowledged the importance to victims of case-specific information throughout the criminal justice process. In addition to describing conditional release and the NPB mandate and decision-making process, the document outlined the information victims of crime could receive, including the offender's length of sentence, the nature of the current offence, the dates of eligibility for various forms of parole, and the probable date of release on mandatory supervision. The document also clarified that victims of violent crime could receive additional pertinent information on a case-by-case basis.¹² Finally, an invitation to victims to make representations to the board¹³ was extended, and they were informed that they could attend the offender's hearing (if the offender consented).

The NPB's next significant step toward involving victims in the process came in 1990, when it released a discussion paper entitled "Victims and the National Parole Board". The purpose of the document was to assist in identifying the victims' interests that were relevant to the board. These consultations and those following the release of the government's consultation papers called "Taking Responsibility" (Daubney Report) and "Directions for Reform" aided the development of the provisions related to victims

¹¹ Mr. David Nairn, whose teenage daughter was fatally stabbed in 1983, wrote the first draft of the document.

¹² Specific types of additional information that could be disseminated to victims included the following: (a) the date and type of release; (b) the destination of the offender and whether the offender might be in the vicinity of the victim while in transit; (c) certain terms and conditions attached to the release when this might help reduce the victim's fears; (d) whether the offender is returned to custody, should that become necessary before the end of the sentence, and, (e) whether the offender has escaped custody, or has become unlawfully at large.

¹³ Specifically, the invitation to victims was worded as follows: "The Board will seriously consider any information a victim believes is relevant. In particular, Board members want to know about fears the victim may have, any long-term effects the crime might have caused, such as physical impairment, financial problems, or the need for psychiatric or psychological counseling".

that were subsequently entrenched in the Corrections and Conditional Release Act (CCRA) enacted in 1992.

It is evident that the primary influence driving the introduction of victim participation rights into the Canadian parole system has been political. The victims' rights phenomenon entered into the correctional realm in a significant and meaningful way with the coming into force of the Corrections and Conditional Release Act (CCRA)¹⁴ in 1992. For the first time, victims were formally recognized in federal legislation governing corrections and conditional release and, with this recognition, formal accountability in the corrections and conditional release system was introduced to victims of crime (the specific nature of these participatory rights is reviewed below).

The Corrections and Conditional Release Act was developed in a complex and dynamic environment in Canada characterized by rising crime rates, fear of crime, concern for victims' issues and Aboriginal justice, and pressures for fiscal restraint (Report of the CCRA Working Group, 1998). Against this backdrop, the Act was portrayed as a tightening-up of corrections and conditional release and as being designed to restore public confidence in the justice system. The legislative rights granted by the CCRA have been further entrenched and extended in more recent years as a result of the recommendations made by the Standing Committee on Justice and Human Rights and the Subcommittee on Corrections and Conditional Release Act.

Victim participation in parole processes in Canada gained additional momentum when, in the mid 1990s, the Standing Committee on Justice and Human Rights held wide-ranging consultations with victims, victims' groups, and other members of the

¹⁴ The CCRA combined the Parole and Penitentiary Acts.

public about the role of victims in the criminal justice system. In October, 1998, its report entitled "Victims' Rights, Not a Veto" was released to the public.

The report made 17 recommendations aimed at providing victims with a more meaningful role in criminal justice and corrections processes. Four of the committee's recommendations have a direct impact on the Corrections and Conditional Release Act, with two having the most significant impact for parole boards. The first recommendation called for audio recordings or transcripts of NPB hearings to be made available for consultation purposes to victims, on request. The second recommendation directed that victims have an enhanced role in release proceedings, including the presumptive right to attend hearings (which had already existed since 1992) and to read an updated victim impact statement into the record in person or by audiotape or videotape. The other two recommendations touched on Correctional Service of Canada responsibilities and involved an explicit obligation for CSC to notify victims (who have indicated a wish to be kept informed) of offender escapes or transfers and of their right to stop unwanted communications from offenders. CSC is also called upon to ensure that all possible steps have been taken to prevent unwanted communication with victims from inmates in federal institutions.

In June of 1999, Bill C-79 implemented the recommendations related to the court and sentencing processes contained in "A Voice, Not a Veto". It strengthened the provisions regarding the use of victim impact statements in that judges, before passing sentence, were now required to ask if the victims had been given the opportunity to provide a statement. Sentencing could be adjourned to allow for the preparation of the victim statement if it had not already been prepared.

In May 2000, the Subcommittee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights completed its review of the legislation. The CCRA contained a requirement for a review of the legislation to be completed 5 years following its coming into force. The subcommittee released its report in a document called "A Work in Progress: The Corrections and Conditional Release Act". This report contained specific recommendations concerning victims of crimes, such as the possibility of speaking at board hearings. The recommendations enhanced those in "A Voice Not a Veto", but also called for an increase in the amount of information to be released to victims. The major recommendations of this report included allowing victims to speak at hearings, as well as increasing the amount of information released to victims.

The most recent significant development in the victim's right to participate in Canadian conditional release systems occurred on May 9, 2001, when the government announced that effective July, 2001, victims of crime would have the opportunity to read a prepared victim statement at NPB hearings.¹⁵ Although victims of crime have the right to attend and present their statements in person, they are often unable to because they cannot afford to. Federal offenders are not required to serve their sentences in the province where the offence took place and are often transferred to different provinces. Accordingly, attending a parole hearing sometimes means victims must travel great distances and/or take time off work to attend hearings. Given this situation, the Canadian

¹⁵ There are guidelines, however, that are associated with this new right for victims. The victim statement must be prepared in writing in advance and must be submitted to the board in sufficient time to allow a copy of the statement to be shared with the offender in the official language designated by the offender, at least 15 days before the day set for the hearing. The victim statement itself may be presented either at the beginning of the hearing, immediately following the formal opening, or at the end of hearing following the board members' interview with the offender or, if the offender has an assistant, after the concluding remarks of the assistant. Generally speaking, a victim must 18 or over to present a statement in person at a hearing, although exceptions are considered on a case-by-case basis. Victims under the age of 18 will be permitted to present a statement via videotape or audiotape.

Resource Centre for Victims of Crime (CRCVC) posted an online petition in June of 2001 calling upon the federal government to set up a special fund to provide financial support for victims of crime to attend federal parole hearings. To date, there has been no governmental response to this petition.

Forms of Victim Participatory Rights in Canadian Parole

For those who meet the definition of *victim* under the legislation,¹⁶ there are three primary forms of victim participation in conditional release. These include (a) the right to receive and provide information related to parole events and information specific to the offender; (b) the right to participate in parole hearings, and (c) the right to have victim information heard and considered by parole board decision makers. The right to participate in the conditional release process and proceedings, however, is conditioned

¹⁶ The Corrections and Conditional Release Act defines who will be considered a victim for the purposes of the Act. Three categories of *victim* are defined in the Act. Two of the definitions are found in Part 1, Section 2 of the CCRA, which defines *victim* as follows:

- (a) means a person to whom harm was done or who suffered physical or emotional damage as a result of the commission of an offence, and
- (b) where the person described in paragraph (a) is dead, ill, or otherwise incapacitated, includes the spouse or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care and support of that person or any dependent of that person.

As the above two definitions do not distinguish between individuals who are victims of offences for which the offender is currently serving a sentence and individuals who were victims of previous offences, sentences, and incarcerations, a third definition is found in subsections 26(3) and 142(3). It also permits offender information to be given to a person who is able to satisfy the Commissioner/chairperson that either, (a) harm (emotional or physical) was done to the person as a result of an act of an offender and (b) that a complaint was made to the police or the Crown Attorney, or an information was laid under the Criminal Code, in respect of that Act. It is important to note that the offender need not have been convicted or even formally charged but both criteria must be met for recognition as a victim.

on the victim requesting notification of the parole proceeding or the opportunity to exercise the right to be heard.¹⁷

Information Disclosure Provisions for Victims

Several of the legislative provisions of the CCRA recognize that victims' needs for information about offenders, as well as about the correctional organizations involved in the offender's life, continue after sentencing. Victims who are interested in general organizational information related to either national or provincial parole boards may request and receive information on the board's policies and procedures, as required by the Act. Specifically, Section 101 of the CCRA mandates "that parole boards enhance their effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system and through communication of their policies and programs to offenders, victims, and the general public."

A similar provision guides the Correctional Service of Canada. Section 4 of the CCRA requires that CSC "enhance its effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through communication about its correctional policies and programs to offenders, victims, and the public."

There are two classes of offender information available to victims. The first class of information, as outlined in Sections 24(1)(a) and 142(1)(a) of the CCRA, mandates that both parole boards and the Correctional Service of Canada and provincial

¹⁷ An exception, however, is the British Columbia Board of Parole, which is required to initiate contact with the victim in cases where the board is aware that the applicant's file is a "K file", or a spousal assault offence.

correctional agencies must release certain information about offenders to their victims, including the offender's name, offence for which offender was convicted, date sentence commenced, length of sentence, and eligibility and review dates for conditional release.

Victims, however, are eligible to receive additional information that is not readily disclosed to the general public. More information may be released if the chair of the parole board (provincial or federal) or the commissioner of the Correctional Service of Canada determines that the interest of the victim clearly outweighs any invasion of the offender's privacy that could result from the disclosure. This second class of information that might be disclosed to victims (as per Sections 24(a)(b) and 142(1)(b) of the CCRA) can include the offender's age, the name of the penitentiary in which the sentence is being served, the date and type of conditional release, the date of detention hearing, any condition of release, destination on release, results of appealed decisions, and whether the offender is in custody. Before releasing this information, however, the decision maker (chairperson or chairperson's delegate) must weigh the victim's interest in disclosure against the offender's privacy.

It is evident that there is a clear distinction between the two classes of offender information to be provided to victims or their families on request. The first category consists of information that is largely already in the public domain and is available in other parts of the criminal justice system, especially in the form of criminal court records. Such information as the date a sentence commences or the eligibility or review dates for various types of conditional release can be calculated based on publicly available information. This type of information is a minimal, if any, infringement on an offender's privacy. The second category of information is largely not in the public domain and, because it provides details of the management of an offender's sentence, is an

infringement of privacy rights protected by the Privacy Act. For these reasons, this type of information can only be provided to a victim after the responsible authority has applied the statutory test of balancing the interests of the victim against the privacy of the offender.

Furthermore, victims, as well as other persons who “demonstrate an interest,”¹⁸ may also access the National and/or Provincial Parole Board Decision Registry to receive board decisions and the reasons for the decisions relating to specific offenders.¹⁹ To further facilitate victims’ access to information, the NPB has provided toll-free telephone access to NPB offices, and joint victim information initiatives have been established by some regions in Canada.²⁰

There continue to be criticisms of the extent to which victims’ needs for information have been fulfilled, with many of these criticisms directed at the Correctional Service of Canada. A 1998 internal audit conducted by the Correctional Service of Canada,²¹ uncovered a number of weaknesses in the prison service’s system for keeping victims informed about violent offenders. The internal review, as reported in the National Post (February 4, 1999), found a “lack of clarity and direction” in policies dealing with matters such as the notification requirements when temporary absences

¹⁸ The NPB has instituted a very broad interpretation of this provision. The NPB customarily releases the entire decision-making with no deletions, except as required by the legislation, of information that may protect the identity of third parties, might jeopardize the safety of any person, or, if released publicly, could adversely affect the reintegration of the offender.

¹⁹ The CCRA (Section 144) required the Board to establish a registry of Board decisions.

²⁰ NPB and CSC in the Ontario Region established a shared victim information service located at the National Parole Board Regional Office in November 1995. Initially a one-year pilot project, this service continues and has now been introduced by NPB/CSC in the Board office in the Pacific Region. This service provides victims, their families, and/or their representatives with a “one-stop” contact to get information from either NPB or CSC.

²¹ The audit followed the results of two corrections boards of investigation, which were convened following murders committed by parolees in 1997 in the provinces of British Columbia and Nova Scotia. These boards of investigations specifically reviewed the failure to notify victims.

from prison are granted to inmates. The auditors also found a “lack of national direction, confusion relating to roles and responsibilities associated with victim identification and notification, a seeming lack of priority accorded victim services, and failure to apply legislation and policy effectively”. The audit recommended the establishment of a special registry of victims to help officials promptly notify victims when their attackers escape from prison, jump parole, or are released from the institution.

Victim Participation in Parole Hearings

The 1992 CCRA represented the first legislated authority to permit victims to attend Canadian parole hearings as observers. Previously, victim observers were permitted to attend parole hearings but this right was conditional upon the offender’s granting permission. The offender’s veto was a means of respecting the offender’s privacy rights. Under Section 140(4) of the CCRA, the board has authority to place the public’s right to knowledge above the offender’s interests and “shall...permit a person who applies in writing to attend a hearing relating to an offender”, with some stipulations to ensure the safety of all concerned and that the conduct of the hearing was not impaired. After taking into account the offender’s views, the board is mandated by the legislation to allow observers (including victims) unless one or more of the following factors is evident:

1. The hearing is likely to be disrupted or the ability of the board to consider the matter before it is likely to be adversely affected by the presence of that person or of the person in conjunction with other persons who have applied to attend the hearing.

2. The person's presence is likely to adversely affect those who have provided information to the board, including victims, members of a victim's family, or members of the offender's family.
3. The person's presence is likely to adversely affect an appropriate balance between the person's or the public's interest in knowing and the public's interest in the effective reintegration of the offender into society.
4. The security and good order of the institution in which the hearing is to be held is likely to be adversely affected by the person's presence.

Notwithstanding the legislated right of victims to attend parole hearings, in practice, provincial and federal parole boards in Canada differ in the means and extent to which victims are permitted to directly participate in the parole hearing. With respect to the NPB, up until July 1, 2001, victims were permitted to attend parole hearings as "observers" only,²² meaning that they were not allowed to present oral submissions at the hearing of an inmate applying for parole. With the change in policy in 2001, victims of offenders are now permitted to attend the hearing and present their victim statement orally or by video or audiotape. In contrast, the provincial parole board of British Columbia had been permitting victims to address board members and the offender in person at the parole hearing since 1996. The other two provincial parole boards (Ontario and Quebec) have generally disallowed or dissuaded victims from attending the parole hearing because of privacy issues. However, the Ontario Parole Board does permit interested victims to speak with the board members who will decide the case and express their concerns or provide any information they feel is relevant. Specifically, the Ontario Parole Board is interested in knowing about the effects experienced by the victim of the offence, present concerns about the offender, and any opinions about the

²² Victims who want to observe hearings are given priority over other applicants.

offender's possible release on parole. This information will be considered along with other information the board members have before them to make a decision. This right for victims to provide input to the voting board members, however, is a policy and is not legislated.

Provision of Information from Victims

When an offender is committed to a penitentiary, the Correctional Service of Canada (CSC) is required²³ to take all reasonable steps to obtain, as soon as is practicable, all relevant information and documents about the offender, as well as the circumstances of the offence and details of the sentence imposed by the court. More specifically, they are to obtain relevant information from the victim, the victim impact statement, and the transcript of the judge's reasons for sentencing. This information is to be integrated into the offender's file and, along with other information, is to be used by the CSC and the NPB for various institutional placement, assessment, and release decisions. As well, the principles in the CCRA (para. 4b) that guide the Correctional Service specify that the sentence be carried out with regard to "all available information that is relevant to a case including the stated reasons and recommendations of the sentencing judge, other information from the trial or the sentencing process, the release policies of and any comments from the NPB, and information obtained from victims and offenders".

The law now allows victims the right to provide updated and/or ongoing information to CSC and/or national and provincial parole boards concerning the

²³ As per Section 23 of the Correctional and Conditional Release Act (para. 23(1)(e)).

offender:²⁴ the offence and events leading up to it, as well as specific details of the offence; the consequences of the offence, such as lasting effects of physical injuries or psychological stress; and any on-going contact by the offender, such as threatening letters, phone calls, or messages through acquaintances. This information can assist the CSC in making decisions about an offender's placement, treatment, and release.

Information from the victim *must* be considered by parole boards, as mandated in Section 101 of the CCRA, which outlines the principles that shall guide the Board and the provincial parole boards in achieving the purpose of conditional release. Specifically, Section 101(b) mandates that parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender.

With respect to guidelines as to how board members incorporate victim information into decision-making practices, the NPB provides some further direction in their policy circular on victim issues. Specifically, the circular, "Information from Victims" (Policy 10.3, 2001), states that relevant victim information can help the board assess the following:

1. The nature and extent of harm suffered by the victim.
2. The risk of re-offending the offender may pose if released.
3. The offender's potential to commit a violent crime, particularly in cases qualifying for accelerated review. The views of the victim are helpful if,

²⁴ Victims who provide information are advised that the information will be shared with the offender to enable him or her to be aware of the information that will be used in making decisions. This sharing of information is a fundamental principle of the Canadian justice system.

for example, they provide information about threatening or previous violent or abusive behaviour.

4. The offender's understanding of the impact of the offence.
5. Conditions necessary to manage the risk which might be presented by the offender.
6. The offender's release plans—possible repercussions must be carefully assessed if the victim is a family member or was closely associated with the offender. If the offender intends to return to an integrated, small, or isolated community, board members must weigh the support and control available to assist reintegration. The views of the victim are of assistance if release would place the offender near the victim.

As legislation does not specify what information can be provided by victims, many parole board policies have implemented restrictions on the content of victim information by developing policies or "guidelines" as to what should be written for presentation to board members or read orally to board members at the hearing. For example, the NPB has prepared a document, "Guidelines for Writing Victim Statements to be Read at National Parole Board Hearings", for distribution to victims. The following suggestions about what they may want to address are given to the victims:

1. The continuing impact of the crime for which the offender was found guilty, since sentencing. This could include information about the physical, emotional, medical and financial impact of this crime on yourself, your children and family members, others who are close to you, and how you have tried to deal with these problems.
2. Concerns that you may have for the safety of yourself, your family, or the community with regard to the offender should he or she be released, explaining why you believe there may be a risk.

The NPB guidelines suggest that the victim statement should be "concise" and "should not take more than 10 minutes to read." Examples of information that would not

be appropriate for victims to provide to the parole board are also detailed.²⁵ Similarly, the B.C. Board of Parole policy (7.5.3) imposes restrictions on the victim's input by requiring that the written or oral statement be limited in scope to (a) the effect of the crime at the time; (b) the continuing effect of the crime; and (c) recommendations and conditions for the board to consider regarding the safety and security of the victim and community.

Participatory Rights of Victims in the U.S. Parole System

During the past decade, the majority of states in the U.S. have made extraordinary progress in establishing fundamental rights for crime victims. A 1998 review by the Office for Victims of Crime revealed that every state had passed victims' rights statutes, and 29 states had incorporated victims' rights into their state constitutions. With respect to the right to be heard regarding parole, over 40 states now grant eligible victims that right in parole decision-making—in writing, orally, or both. In addition, most adult and juvenile correctional agencies and paroling authorities include a reference to crime victims or victim services in their mission or philosophy statements that address their overall goals.²⁶

²⁵ For example, the guidelines state as follows: "Board members do not substitute their judgment for that of the sentencing judge. It is, therefore, not appropriate for your statement to comment on the sentence imposed by the court, details of the offence, accusations about other offences in relation to the offender, and inappropriate language may not be included. It would also be inappropriate to comment on whether conditional release should be allowed".

²⁶ For example, the 1996 National Victim Services Survey of Adult and Juvenile Corrections and Paroling Authorities (conducted by the National Victim Center as part of the Promising Practices and Strategies for Victim Services in Corrections project) found that 66% of paroling authorities included reference to crime victims or victim services in these statements.

The victim's right to be heard regarding parole is typically available to victims who meet legislative definition of victim or is restricted to victims of designated crimes or crime categories only. Some states impose additional restrictions on crimes for which victims are eligible to be heard in the parole process. For example, Iowa and Maryland restrict victims' right to be heard in the parole process to victims of "violent crimes" (Tobolowsky, 2001). As well, in the majority of states, the right to be heard is conditional in some manner. The most frequently imposed condition is the requirement that a victim must request notification of the parole proceedings or the opportunity to exercise the right to be heard. A related requirement is that crime victims maintain up-to-date address information with notifying authorities (Tobolowsky, 2001).

One of the key parole participation rights extended to victims offered by the majority of U.S. states is the opportunity to participate in parole through formal written notification measures, both with respect to information about the offender, the date of the parole hearing, and the nature of the decision itself. In their study of U.S. parole board process and practice, the 1994 Association of Paroling Authorities found that 15 jurisdictions (28.8%) notified all victims that a parole hearing had been scheduled. In 34 jurisdictions (65.4%), notice was provided only if the victim so desired. Three of the jurisdictions surveyed did not notify the victims of an upcoming parole hearing. It was found that once a parole board had made its conditional release decision, it notified the victim in over 90% of the jurisdictions. Automatic notification of the board's decision was provided in only four jurisdictions (7.7%), while in 42 jurisdictions (80.8%), the victims were notified of the board's decision only if they indicated they wished to be. In one state, the victim was given notice of the board's decision only if the inmate was to be paroled. In the remaining five states (9.6%), no notice of the board's decision was given.

Aside from victim rights regarding general notification of parole eligibility and hearing dates, the majority of states also permit the victim to give input for board members' consideration in oral or written form, or both. Some states allow a victim to provide input through videotaped statements. In addition, victim impact statements that have been prepared prior to sentencing are often transmitted by the court system to paroling authorities. It is important to note that, in practice, state procedures differ as to when and how victim input is presented to decision makers. The California Board of Prison Terms provides victims with an opportunity to make a statement to the hearing panel in a number of ways—by writing to the board, attending the hearing, submitting an audio- or videotaped statement, appearing by videoconferencing, or being represented by counsel at the hearing.

Other states allow victims to meet with the board members who are scheduled to vote on a case of concern prior to the hearing in a “victim conference” (e.g., New York State Board of Parole). The Ohio Parole Board holds a “victim conference day” once a month to allow victims to voice their concerns about an offender in an interview with a parole board staff member. Similarly, the New York State Board of Parole, though not permitting victims to attend the parole hearing, allows them to submit video- and audiotape information to the board members, as well as written materials for consideration in the parole decision.²⁷ Victims are permitted to meet with the voting board members prior to the parole hearing. This meeting is fully recorded and the information is transcribed, and the information is not shared with the offender.

²⁷ Information obtained from Tony Champion, Assistant to the New York State Board of Parole via telephone correspondence.

The content of victim information also varies from state to state, but generally is similar to the guidelines for victim content utilized by Canadian parole boards. Some states specify the content broadly: Kentucky, for example, allows victims to comment on “all issues” related to the prisoner’s parole. Other states specify a content area, but do not limit victim input about the designated area. For example, Pennsylvania provides that the victim’s statement “may include” information concerning the continuing nature and extent of physical, psychological, or emotional harm or trauma from the crime; any lost earnings or ability to work; or the crime’s continuing impact on the victim’s family. Several states expressly allow a victim to state an opinion regarding the offender and whether he should be released on parole. Colorado gives a victim the right to attend parole proceedings and to reasonably express his or her views concerning the crime, the offender, and whether or not the offender should be released on parole, and, if so, under what conditions (Tobolowsky, 2001).

In addition to differences in the means by which victims provide information to parole board members, practices differ amongst states in what victim information is shared with the offender. Unlike in Canada, where victim information is shared in the majority of circumstances, in 32 U.S. jurisdictions (61.5%), victim input is considered confidential. In seven jurisdictions (13.5%), inmates can obtain the information. In 12 U.S. jurisdictions (23.1%), such information may be obtained only if the hearing is conducted as a public (open) meeting. The degree of confidentiality afforded victim information in the majority of U.S. paroling authorities differs significantly from that in Canada. Canadian paroling authorities are required to share victim information with

offenders unless exceptional circumstances exist.²⁸ As well, another significant difference from Canadian parole board practice is the fact that many U.S. parole boards also allow members of the general public to provide information that will be considered in decision-making. For example, the California Board of Prison Terms has the following directive on public comment: Any person may submit information to the board concerning any prisoner or parolee and the offences. The board does consider, in deciding whether to release a prisoner on parole, all information received from the public.²⁹ Similarly, the Indiana Parole Board permits individuals who have information or comments either for or against an offender to write or meet in person with them or one of the members who will be voting on the case.

An important difference from the right to be heard in parole in Canada is the fact that several states provide express remedies to victims if there has been a failure to obtain the authorized victim input prior to a parole decision. This remedy primarily involves a reconsideration of the parole decision following consideration of the victim information. Overall, the vast majority of both U.S. and Canadian Parole Boards afford victims the opportunity to stay informed and to provide input into the release decision-making process.

²⁸ Technically, the National Parole Board and the Correctional Service of Canada are required by law to disclose to the offender any information that will be considered during the decision-making process under the CCRA. The Canadian information sharing requirements, based on the rules of natural justice, demand that all information that will be considered by the board be shared with the offender at least 15 days before the rendering of the decision. The victim's statement, therefore, must be prepared in advance and shared with the offender. Exceptions to this sharing of information, however, are often made and include situations such as jeopardizing the safety of a person, the security of a correctional institution, or an ongoing investigation. In those cases, a gist of the information must be prepared and shared with the offender. Generally, information cannot be used if it is not disclosed to the offender; however, in extraordinary cases where a gist would connect the information to the source and jeopardize his or her safety, the board can decide to use the information without sharing it in any way (National Parole Board, 1996).

²⁹ Quoted from California Board of Prison Terms website at www.opt.ca.gov/victimservices.

Chapter 3: The Evolution of the Victim's Right to Be Heard in Sentencing and Its Impact on Sentencing Outcomes

Although victims' right to be heard in the sentencing phase of the adjudication process has been one of the most widely adopted victim rights, it has also been the most controversial and resisted victim-oriented reform. It has been the subject of extensive debate and research among legal commentators, policy advocates, and social scientists. Because of the dearth of substantial research on the impact of victim participation in the parole process, a review of the debate about their participation in the sentencing phase, as well as of the research on the impact of victim statements on sentencing outcomes and victim satisfaction, has been undertaken. Because the dynamics of the decision-making process in the sentencing phase are similar to those in the parole process, certain insights and conclusions can be drawn from the research on the sentencing phase that are relevant to the issues involved in the involvement of victims in parole decision-making.

Victim Impact Statements: Reviewing the Controversy

First used in California in 1974 and legislated in Canadian law in 1988, victim impact statement legislation has been one of the most far-reaching legal reforms

accomplished by the victims' movement. Through the victim impact statement, victims are offered the opportunity to relate (to the judiciary) a description of the financial, social, psychological, and physical consequences of the crime perpetrated against them and also to express their feelings about the crime, the offender, and a proposed sentence (Hoffma, 1983; McLeod, 1986).

It was expected that giving victims the opportunity to provide information to the judiciary would address the concerns presented by supporters of victim rights on a variety of penological, moral, and practical grounds. Supporters of victim participation rights anticipated, for example, that input from victims about the harm they experienced would enhance the effectiveness, proportionality, and accuracy of sentencing (Erez, 1990, 1996; Lamborn, 1987; Rubel, 1986; Young, 1987). It was also envisioned that victim participation through victim impact statements would make the judicial process more democratic and reflective of the community's response to crime and would preserve the dignity of the victim (Henderson, 1985, pp. 1003-1005). In addition, it was foreseen that allowing victim statements would increase victims' desire to cooperate with the criminal justice system, thereby enhancing system efficiency (Davis, 1983; Goldstein, 1982; McLeod, 1986). Victim input would guarantee that judges would be aware of the degree of injury that victims sustained, and, consequently, restitution or compensation orders would increase (Shapland, Villmore, & Duff, 1985). It was also believed that involvement of the victim in the process would remind judges, juries, and prosecutors that behind the "State" is a real person with an interest in how the case is resolved (Kelly, 1987). In the United States, the President's Task Force on Victims of Crime (1982) summarized the need for victim input into sentencing, citing fairness, justice, and penological concerns:

Victims, no less than defendants, are entitled to their day in court. Victims, no less than defendants, are entitled to have their views considered. A judge cannot evaluate the seriousness of a defendant's conduct without knowing how the crime has burdened the victim. A judge cannot reach an informed determination of the danger posed by the defendant without hearing from the person he has victimized. (pp. 76-77)

Another hypothesized positive impact of the victim impact statement involved expanded rehabilitative possibilities for both offender and the victim. It was asserted that rehabilitation was promoted when the offender, through the impact statement, confronted the reality of the harm he or she caused the victim (Talbert, 1988). As well, the opportunity to voice their feelings was viewed as necessary for victims' psychological healing, for a reduction of their feelings of inequality relative to the offender (Kilpatrick & Otto, 1987), and for the restoration of victim welfare (Erez, 1990).

For each proposed positive outcome of the victim impact statement, however, there were numerous disadvantages envisioned by opponents of the introduction of the victim into the sentencing process. Seemingly trivial concerns were expressed over the potential for delays and additional expenses for an already overburdened court system if victims were allowed to participate (Carrington & Younger, 1979). Objections were also raised from various courtroom personnel relating to fears that their roles in the criminal justice system would be negatively affected. Prosecutors, for example, objected to victims' participation in sentencing because they feared that their control over the case would be eroded and the predictability of the outcome reduced (Davis et al., 1984). The judiciary argued that victim input would undermine the court's insulation from unreasonable and unacceptable public pressures (Keisel, 1984; Rubel, 1986). Among the strongest objections to victims' input in sentencing, however, was the possibility that

it might increase sentencing disparity, harsher sentences, and arbitrariness in the sentencing process (Hall, 1975; Ranish & Schichor, 1985).

About the potential for unnecessarily harsher outcomes for the defendant, it was argued that the additional input of victim-related information might result in the refusal of bail or its being set at a higher level, a custodial sentence instead of probation, a longer term of imprisonment than would otherwise have been imposed, a restitution order, or the refusal of parole or clemency (Bandes, 1996).³⁰

Similar criticisms were raised in legal academic circles where victim input rights were criticized for their presumed alliance with or exploitation by “get tough” or “law and order” campaigns. The anguish of the victim, it was argued, had been mobilized, exploited, or mistranslated into support for the conservative ideology (Henderson, 1985) and to produce a structure of criminal law and procedure that closely resembled the “crime control mode: so antithetical to liberal thought” (Henderson, 1985; Viano, 1987). Overall, bringing the victim back into the process was seen as another attempt to accomplish the goal of harsher punishment (Henderson, 1985). Gains for victims, it was argued, would result in unreasonably longer sentences for defendants (Hernon & Forst, 1984), an argument the American Bar Association (1981) concurred with.

In addition to a perceived relationship between victim participation and harsher punishment, concerns were raised about the sentence disparity. Inviting victim input, argued Hall (1991), “pushes us further away from the ideal of even-handed sentencing”

³⁰ The concerns related to disposition impact receive some empirical support in public opinion studies that have investigated the influence of victim harm on criminal justice issues such as crime seriousness and sentences. For example, Douglas and Ogloff (1996) found that severe harm to the victim resulted consistently in increased preferred maxima compared to mild harm. A possible interpretation for the partial effects of locus and stability is that severity of harm to the victim may have been a more salient variable. Research demonstrates that emotionally provoking stimuli may have stronger, longer, and more insidious effects than pallid information (Bell & Loftus, 1985; Niedenthal, 1990; Ogloff & Vidmar, 1994).

(p. 238) and thus victim participation measures should be carefully evaluated in light of the disparity of treatment phenomenon. Sentence disparity, it was argued, would occur when similar cases were disposed of differently, depending upon the availability or thoroughness of the victim impact statement (Hall, 1991) or the “resiliency, vindictiveness, or other personality attributes of the victim” (Grabosky, 1987, p. 147).

In addition to the potential for harsher sentences and sentence disparity, concerns were also raised about the negative effect victim impact statements might have on victims' health and welfare: Victim input, it was argued, might aggravate victims' psychological wounds as they relive the crime experience (Reeve, 1993, in Erez & Roeger, 1995, p. 366), or victims might not want the offender to be fully aware of the harm he or she caused them (Australian Law Reform Commission, 1987). Furthermore, providing victim impact materials might create or heighten expectations about how their input would affect sentencing decisions (Fattah, 1986), possibly leading to embitterment and resentment if victims subsequently felt their statements had been ignored (Henderson, 1985).

The major objections to victim input, however, and arguably the most compelling, are based on ideological and moral grounds. Opponents of participatory rights express the concern that rights gained by the victims are rights lost to the defendant. Bringing the victim into the process, they argue, means a reversion to the retributive, repressive, and vengeful punishment of an earlier age (Sebba, 1985). The victim statement perceived as a “document of revenge” is illustrated in the following comments from an incarcerated offender (Brown, 1998):

Perhaps I am swayed by my own sense of guilt, or am naïve in my belief that people are basically good, but I still desire to find that the words and actions of the victim's parents are not motivated by evil, that they would not promote

continued suffering just so others might hurt with them, or that they imagine the murder of their son to be of so little moment or significant that they think it is necessary to assign some greater evil purpose to his death. Yes, it is impossible that they act in ignorance, upon misunderstood or misread facts blurred by time and emotion, but their desire for vengeance is certain, and the tool for its achievement has been provided by the State in the guise of a healing balm [the victim impact statement] that actually serves to torment and perpetuate suffering, and is more debilitating than restorative. (p. 26)

Nussbaum (1983) made a similar point in arguing that a characteristic of primitive forms of justice is a lack of concern for the particulars of retribution, such as the existence of mitigating circumstances or whether the person who pays for the wrong was the one who committed it. She sees victim impact statements as a vehicle for venting society's crude passion for revenge.

A related argument is made by Bandes (1996) who argues that introducing these statements, which are driven by a thirst for undifferentiated vengeance, shifts the focus away from determining the moral culpability of the defendant, a particularly dangerous practice in cases where the death penalty is contemplated. He asserts that this offends a bedrock moral principle:

Rules concerning life and death should not operate like lotteries...when our society is choosing which heinous murderers to kill and which to spare, its gaze ought to be carefully fixed on the harm they have caused and their moral culpability for that harm, not on irrelevant fortuities such as the social position, articulateness, and race of their victims and their victims' families. (p. 398)

The concerns expressed by Bandes (1996) receive some validation in the research, which has found that a number of personal characteristics (e.g., race and gender) of the victim and observer, unrelated to the actual or reported facts and circumstances of the crime, may seriously prejudice observers' attributions of responsibility to both victim and assailant (see, for example, De Winter & Winkel, 1993; Krache 1988). Furthermore, research suggests that stereotypes influence decisions at

virtually every level of the legal system (Maynard, 1982, 1984), with victim stereotypes being among the gestalt of characteristics that have been found to exist (see chapter 5 for a review).

In addition to the argument that victim impact statements increase the potential for stereotyping to affect sentencing outcomes, critics also argue that victims' statements are stories that should not be told because they block the jury's ability to hear the defendant's story and evoke emotions that do not belong in the adjudication process (Bandes, 1996, pp. 392-393). These statements evoke not merely sympathy, pity, and compassion for the victim (sometimes at odds with the true emotional needs of the victim), but also a complex set of emotions directed toward the defendant, including hatred, fear, racial animus, vindictiveness, undifferentiated vengeance, and the desire to purge collective anger. These emotional reactions, notes Bandes (1996), all have a crucial common thread: "They all deflect the jury from its duty to consider the individual defendant and his moral culpability" (p. 395).

Another troubling consequence of victim impact statements is suggested by Bandes (1996). Rather than encouraging empathy for the victim and victim empowerment, he argues, victim impact statements may actually disempower, dehumanize, and silence victims: "Victim impact statements" he asserts, "offend human dignity—the victim's as well as the defendant's" (p. 405). Specific concerns surround the complexity of victimization³¹ and raise possibilities that repugnant calculations of the

³¹ Bandes (1996) suggests that the suffering of crime victims may take many different forms, and it is difficult and dangerous to generalize about what victims experience, what victims want, or what is best for victims (p. 405).

victim's worth may enter into the sentencing process.³² To the extent that victim valuation does occur, notes Bandes (1996), "it will often be very difficult to detect because much of it will take place sub rosa" (p. 408). Thus, victim impact statements may play on our unconscious prejudices and stereotypes, introducing them into the sentencing process with the sanction of the state (Bandes, 1996, p. 408). Victim impact statements illustrate concretely the ambiguous nature of the term *empathy*, the dangers of arbitrariness and prejudice inherent in encouraging empathy without sufficient structural safeguards, and the undesirability of empathy unaccompanied by critical reflection. "Not everyone is equipped to hear every voice. We feel empathy most easily toward those who are like us" (p. 399), Bandes observes. As for people from ethnic, religious, racial, and economic backgrounds unlike our own, there is a pervasive risk that our ability to empathize will be inhibited by ingrained assumptions about them. We all have limited perspectives and a limited ability to empathize with those who do not share our life experiences and values (p. 399).

Notwithstanding the persuasive arguments for disallowing their use in the judicial system, victim impact statements were adopted in many jurisdictions, especially in common law countries including Australia, Canada, and the United States. In view of their popularity, as well as the problems raised in the literature, one would assume that the statements' contents have had at least some effect upon decision-making, case disposition, and victim satisfaction rates. Research in the judicial realm, however, has

³² Bandes (1996) argues that victim impact statements permit, and indeed encourage, invidious distinctions about the personal worth of victims. In this capacity, they are at odds with the principle that every person's life is equally precious, and that the criminal law will value each life equally when punishing those who grievously assault human dignity. It encourages a view that some murder victims are necessarily more valuable than others (p. 406).

revealed substantial disagreement as to the extent to which these statements have influenced these issues

Assessing the Effects of Victim Impact Statements on Court Outcomes and Practices

The fundamental question about whether the predicted evils associated with victim participation practices, such as “disparate sentencing of similarly situated defendants” (Hall, 1991, p. 235) and harsher sentences for defendants will occur has attracted extensive research and shown mixed results. Generally speaking, earlier studies were more likely to attribute a higher degree of importance to victim harm in the sentencing decision than the more recent empirical undertakings.

Among the earlier studies, Edward Green’s analysis (1961) of a large sample of convictions in the Philadelphia criminal court in 1956 and 1957 attributed considerable importance to victim harm in the sentencing decision. Similarly, Hogarth (1971) in his landmark study of the sentencing philosophy of Ontario magistrates found that the seriousness of crime, as measured by the Selling-Wolfgang scaling system (which emphasizes the amount of harm inflicted), was a predictor of both the type of sentence imposed and the duration of institutional sentences (pp. 347-349). However, when a sample of magistrates was asked by Hogarth (1971) to specify what information was relevant in their sentencing decisions, only 29% responded that information on the “degree of personal injury or violence” was essential, and 12%, that the “amount of damage or loss to property” was essential. Of the sample, 42% and 59%, respectively, stated that this information was nonessential. The magistrates attributed greater

importance to the information regarding the offender's culpability, in particular the degree of planning and premeditation involved in the commission of the offence, with 63% stating that this information was essential. The author commented that "most magistrates consider the 'moral quality' of the criminal act to be more important than the actual harm incurred by the victim" (p. 233). Thus, the significance of victim harm for the sentencing court emerged in these early studies as more related to the degree of intention to do harm than to the actual harm inflicted.

Several studies in the 1970s and 1980s more specifically explored the hypothesis regarding the relevance of victim harm on the sentencing decision, and the results of these studies were mixed. Myers (1979), in her study of 205 dispositions following trials in Indiana, found that harm sustained was not a significant variable in whether a prison sentence was imposed. Hernon and Forst (1983), in their study of how various legal practitioners used information about victim harm in their decision-making, found that judges' sentencing decisions were affected by victim harm only in the case of knife assaults. On the whole, however, the results supported a conclusion that harm to the victim had little effect on sentencing decisions.

Some support for the impact of victim information on sentencing decisions, however, was found in Hillenbrand and Smith's (1989) national telephone survey of prosecutors, judges, and probation officers. Study results indicated most judges and prosecutors perceived that victim impact statements improved the quality of justice by, for example, influencing restitution awards or by having some impact on the length or type of sentence.

Finally, Erez and Tontodonato's (1990) correlational study of 500 Ohio felony cases compared sentencing in cases with and without victim impact statements, after

controlling for a number of common, potentially confounding, variables (e.g., charge seriousness, defendant's criminal record). They found that cases in which a victim statement was taken were more likely than those without a statement to result in a prison sentence than in a probationary term. Further, the victim participation variable, presence of the victim in court, was found to affect prison length. They accounted for this finding by noting that those victims who come to the sentencing hearing tend to be involved at many phases of the trial process, thus providing a constant reminder to the judge of the severity of the crime and the pain suffered by the victim (p. 468). A second analysis of the data, however, showed no association between length of sentence and whether an impact statement was submitted.

In contrast to the earlier studies, research results throughout the 1990s have generally found no significant evidence that victim impact statements put defendants in jeopardy or resulted in harsher sentences. Davis et al. (1990), in a New York City study using an experimental design, found no evidence that using victim impact statements puts defendants in jeopardy or results in harsher sentences. In a study of the New York Supreme (Felony) Court, Davis and Smith (1994) assigned almost 300 felony robbery, nonsexual assault, and burglary victims to one of three experimental groups in which victim impact statements were (a) prepared and given to criminal justice officials, (b) prepared but not disseminated, and (c) not taken. Researchers found that there were no statistically significant differences between the three groups. The statements did not produce sentencing decisions that reflected more clearly the effects of crime on victims. Furthermore, the researchers did not find much evidence that, with or without impact statements, sentencing decisions were influenced by the effects of crime on victims once the charge and the defendant's prior record were taken into account.

Similar results were found in a subsequent research study in South Australia. Specifically, Erez and Roeger (1995) found no support from quantitative data analysis that the introduction of the victim impact statement had an overall harshening effect on sentencing, nor did it confirm any of the victims statements' presumed benefits—an increase in restitution or compensation orders. Furthermore, interview data showed that respondents were “able to list only a very few instances in which they believed a victim impact statement had an effect on the sentence, resulting in a more lenient or severe sentence” (p. 374). The cases in which victim impact statements had an effect on the sentence, according to the respondents interviewed by Erez and Roeger, represented the exception rather than the rule.

Similarly, Henley et al.'s (1994) survey of prosecutors and judges in the New York courts found that even though judges felt that victim statements helped them become aware of restitution needs (see also, Shapland et al., 1985), for the most part, judges and prosecutors mostly paid only lip service to victim input despite their sympathy for victims. In particular, prosecutors speculated about problems that may arise from discovery issues and from victim exaggeration of monetary loss, injury, or psychological harm. They thought that, in most cases, the victim impact statement simply stated the obvious; the information that they contained could be inferred from the charge. Although judges did not identify any operational problems (such as slowing down the process) or report challenges of victim input by the defence, they expressed doubts about the victim statement's potential to change, in any way, routine dispositions in “quick pleas”, which are the majority of the cases in criminal court.

Erez and Roegers (1999) also found only a limited effect of victim impact statements in their later study in South Australia. They interviewed 42 members of the

legal profession to explore legal professionals' handling of victim input: how they assessed, processed, weighed, listened to, or incorporated victim impact information in their decisions, and what kind of experiences they reported regarding the effect of victim input on court processes and outcomes. The researchers found that there was agreement among the legal professionals interviewed that victim input had not increased sentence severity. Practitioners from all groups did not think that the reform had substantially changed sentencing patterns and dispositions. At best, they thought, the effect was only marginal. Given that practitioners could only provide a few examples of cases in which victim input led to a more severe or more lenient disposition, the researchers concluded that in a statistical aggregate, this phenomenon would not appear as an effect. The researchers found that a "rich and varied repertoire of strategies was used by the legal profession to maintain their autonomous status, circumvent external demands to consider victim input, and justify overlooking concrete presentations of harm" (p. 19). In particular, they found that built-in organizational incentives to exclude victims, or proceed with minimal input from them, maintain and reinforce the traditional criminal justice approach to victims as an "extraneous party" (Erez, 1994), if not sheer "troublemakers" (Kury et al., 1994). Overall, their studies confirmed the previously unsubstantiated hypothesis that victim reform had not increased sentence punity (Erez, 1990; Sebba, 1996).

In an effort to account for the consensus that victim impact statements appear to have had no significant impact on court outcomes and sentencing severity, commentators have offered a variety of explanations. Sebba's (1996) summary of these explanations included the possibility of implementation problems—for example, statements not being taken or being rendered perfunctory due to lack of relevant detail

or officials' having established ways of making decisions that did not call for explicit information about the impact of crime on victims. That is to say, the "established ways" related to the kind of information deemed legally relevant are resistant to innovation. Other explanations include the possibility that judges may have paid limited attention to the degree of victim harm on the assumption that this had been considered at the earlier stages of the criminal justice process, such as the prosecution decision or the probation officer's recommendation (Myers, 1979), that victim impact statement material is viewed as relatively unimportant compared to other information in the case (in particular, culpability and the prior record of the offender) (Erez & Roeger, 1995), or that the increasing presence of guidelines or determinate sentencing structures might be a factor in restricting variances allowed for victim factors. Lastly, some researchers point to the hostile environment in which victim participation rights have been initiated and the excuses, justifications, and organizational incentives that criminal justice personnel have employed to resist victim input and ignore the mandate to incorporate victims in proceedings (Erez, 2000).

Effects on Victims' Satisfaction with Justice

In light of recent research evidence that victim input has no significant impact on sentencing, the impact of the victim right to be heard on victim satisfaction must be also considered. The empirical data on whether the right to submit an impact statement increases victim satisfaction and feelings of "inclusiveness" in the justice process are not encouraging. Generally speaking, the early finding by Erez and Tontodonato (1989) that the completion of victim impact statements resulted in greater satisfaction with

sentences has not been replicated in more recent research efforts. The bulk of more recent research efforts concur with the sentiment expressed by Erez et al. (1991) that "the victim impact statement practice investigated neither engenders such nor overcomes victims' sense of being outsiders in the justice system" (p. 54).

In their examination of the effects of impact statements on victim perceptions of involvement and satisfaction with the justice system in New York, Davis and Smith (1994) found no strong support for the idea that these statements are an effective means of promoting victim satisfaction with the justice system. There was no indication that impact statements led to greater feelings of involvement, greater satisfaction with the justice process, or greater satisfaction with dispositions.

Similar results were found in Erez, Roeger, and Morgan's (1997) study of victim harm, impact statements, and victim satisfaction with justice in an Australian sample. Their analysis of factors that influenced victim evaluation of justice did not clearly identify the victim statement as one of the factors that increased satisfaction with criminal justice outcome or process. In fact, it had a marginal effect on representation or process control, a component of procedural justice, which is experienced in a context that provides complainants with a perception of being heard and their input considered. The victims, in reporting varieties of harm and serious effects of the crime on their lives, found that presenting their side to decision makers at best marginally increased victim satisfaction with justice. In some cases, filing a victim impact statement was found by the researchers to have a negative effect on their evaluation of justice: "Victims who recalled providing input but who thought their input was ignored were disappointed and consequently their satisfaction with justice was lower than those who did not have unfulfilled expectations" (Erez et al., 1997, p. 56).

The findings of limited satisfaction with the right to be heard in sentencing may lend some support to the hypothesis that frustration effects—negative reactions to apparently fair procedures—occur only when the procedure is weak; that is, when it is easy to suspect the procedure is a sham (Lind & Tyler, 1988, p. 207). Some critics have commented that the current victim statement practice is an acceptable compromise to both sides of the debate concerning victim input because it has successfully created the appearance of victim participation while, at the same time, in effect preserved the time-honoured tradition of excluding the victims from the system (Erez & Roeger, 1995). If this assumption is true, victims are likely to feel alienated and distrust the system—the antithesis of the goals of the victims' rights movement.

Of course, the victim's right to be heard will have little consequence on victim satisfaction or sentencing outcomes if the right is not exercised by victims or made available by the criminal system. Studies conducted in the 1980s often showed significant gaps between the formal provision of this right and its being exercised. In a nationwide U.S. survey conducted by Hillenbrand and Smith (1989), only 27% of victims reported having made victim-impact statements, and 50% of victims reported having been consulted and advised of their right to make a statement. Low rates of victim participation are described in the studies of Erez and Tontodonato (1990) and Walsh (1992), both conducted in Ohio, where participation rates were considerably higher but still represented less than half of the eligible victims. Low rates of participation have also been found in Canada. A 1992 study (Roberts, 1992) involving the assessment of victim impact statements in British Columbia found that statements were only completed in 2 to 6% of cases, and then only filed in 1 to 2% of cases proceeding through the system.

More recent U.S. studies, however, show some reduction in the gap between availability and exercising the right to submit impact information to the judiciary. A 1995 U.S. study involving over 1,000 crime victims in two "strong" and two "weak" victim states, Kilpatrick et al. (1998) found that victim interest in making an impact statement before sentencing remained high, with 82% of surveyed victims indicating this right was "very important". Of those victims who received notice of the sentencing, almost 75% of victims said that they attended the sentencing hearing. In both "strong" and "weak" states, 93% of victims given the opportunity to make an impact statement indicated that they did so. Despite the strength of victim interest to participate in sentencing proceedings, only 72% of victims were informed of their right to make an impact statement.

It is evident that there are still gaps between the availability and exercise of the right to be heard. The preferred explanations for why victims have failed to take full advantage of their rights to be heard at sentencing include unawareness of their right due to lack of notification, discouragement or the absence of active encouragement by criminal justice personnel, reluctance to expose their suffering to adversarial challenge, and actual choice of non-participation (Roach, 1999; Tobolowsky, 2001). Criminal justice officials have given resource limitations as a common reason for their being unable to fulfil their responsibilities (Kilpatrick et al., 1998), as well as ongoing resistance by criminal justice officials to victim participation (Erez & Laster, 1999; Henley et al., 1994).

Overall, the extent to which either the diverse fears or the positive advantages predicted in relation to victim participation in sentencing have been fully realized continues to remain open to debate, and many questions regarding their impact remain unanswered. Although the effect of victim participation on sentencing (and to a lesser

extent on the policing and prosecutorial stages³³) has attracted a great deal of research scrutiny, the impact of victim participation in another part of the justice system, corrections, has received less research attention. The chapters to follow will examine the available research on the risks and benefits of victim participative avenues in conditional release systems, many of which are similar in nature and potential consequence to those raised in the sentencing research.

³³ See Williams (1976) for a review of the early research on how the victim influences police, prosecution and court practice, processes, and decision-making, and Sebba (1996) for a more recent summary of the victim's relationship with each of the main decision-making bodies in the criminal justice system (police, prosecution, court).

Chapter 4: A Risk-Benefit Analysis of Victim Participation in Parole

Although there has been much less analysis of victim impact in the parole process, than in the sentencing process, policy advocates and researchers who have examined the impact in parole have raised many of the same issues as have been advanced about victim participation in sentencing. Their arguments, too, have weighed such potential advantages as increased victim well-being and satisfaction, more informed parole decision-making, and attainment of parole goals, against concerns about parole system efficiencies, interjection of inappropriate factors into parole decision-making, and a risk of disparate decision-making and higher rates of parole denial. This chapter will review the potential benefits and risks of victim participation in parole and examine the available research on the impact of victim participation in parole, with particular attention given to the significance of the opinions and orientations of individual parole board decision makers.

Benefits of Victim Participation in Parole

The benefits of victim participation in parole have long been recognized and advanced by victim organizations. It is argued that the right to submit a victim impact statement is important to assist in victims' healing and in their regaining a sense of

control following victimization, as well as to satisfy their needs related to being equal participants in the criminal justice system. The Canadian Resource Centre for Victims of Crime (1998) claims that the "therapeutic effect that victim impact statements can have for victims who decide to present them cannot be overlooked" (p. 31), as, for some, it can form part of the healing process. A related argument is made by the U.S. National Victim Centre: "Victim impact statements often validate the victim's role in the criminal justice process and may aid in the victim's ability to recover from the devastating aftermath of crime" (Alexander & Lord, 1994, p. 25). It can be empowering for victims to have a voice in the process that determines when, and under what conditions, offenders are to be released. It is argued (Kilpatrick & Otto, 1987) that this perception of having some degree of control empowers and strengthens the victim of crime and represents an important step in reducing crime-related psychological harm.

Equally important, from the perspective of the victim, is the desire to see that justice is done. Presenting victim impact information is one way the victim can provide information to the parole board to aid them in determining an appropriate punishment for the crime committed—beyond sentencing to the actual amount of time an offender serves for his crime. Some argue that this practice serves the victims' need for vengeance; others, that it serves a legitimate demand for accountability from both the offender and the criminal justice system. About this question, the President's Task Force on Victims of Crime (1982) offers this point of view: "The victim, no less than the defendant, has a real and personal interest in the imposition of a just penalty. The goal of victim participation is not to pressure justice, but to aid in its attainment" (p. 73).

Finally, it is argued (Alexander & Lord, 1994) that victim demands for involvement in conditional release practices are based on their quest for status in criminal justice proceedings and a voice equal to that of the offender:

In principle, a victim should be afforded at least the same guarantees as the defendant. The law provides the defendant with the right to present to the court, correctional and paroling authorities information as to why a certain sentence be imposed, or why parole or an early release should be granted. As such the law should justly afford victims the same right for full disclosure as to the impact of the crime. (p. 25)

Supporters of victim involvement in parole contend that, besides serving victims' needs for wellness and justice, victim input and involvement in parole promotes more informed and accurate parole decisions. The view advanced is that victim impact statements provide the parole board with information necessary to their making sound risk assessment judgments about the offender. Victims may, for example, provide information that may not be available in the inmate's file. In this regard, the Canadian Resource Centre for Victims of Crime (1998) contends that "an account from the victim of the impact the offence had can allow the board to question the offender on information they may not have had before them" (p. 40).

Furthermore, with information provided by victims, the parole board's ability to assess an inmate's readiness for parole or parole risk is improved because the victim can provide an accurate account of the actual crime that occurred, which often differs from the crime to which the offender was sentenced (e.g., reduced charges as a result of plea negotiations). As well, the victim's account of the impact of the crime presented at parole hearings is important because it can assist the board in assessing the offender's understanding of the offence (The Canadian Resource Centre for Victims of Crime, 1998). A related benefit stems from the ability of victims to update the emotional,

physical, and financial effects of the crime that may not have been known at the time of sentencing.

Finally, victim statements are important to the probation, correctional, and parole process for practical reasons relating to whether special release conditions should be imposed to protect the victim or assist in risk management of the offender in the community (Alexander & Lord, 1994). Given that the protection of society is deemed the paramount principle of parole board decision-making in most jurisdictions,³⁴ the participation of the victim can assist paroling authorities to fulfil their mandate.

Victim participation in parole can also be viewed as consistent with the rehabilitative and reintegrative goals of parole in some situations.³⁵ First, if the parole authority concludes that an offender might fully repent and accept responsibility for criminal behaviour when faced with direct evidence of his moral guilt, the impact statement and victim presentation at a parole hearing could provide some of the best direct evidence of the harm caused. As well, victim information might assist parole boards in assessing the extent to which the offender has integrated central objectives of treatment programming; namely, does the offender accept responsibility, show empathy for his victims and remorse for his wrongdoings, and understand fully the wide-ranging impact of the consequences of criminal actions? These four insights (responsibility,

³⁴ The purpose of conditional release in Canada, as stated in the Corrections and Conditional Release Act (CCRA, S.C. 1992, Chapter 20, Section 100), is "to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens. In pursuing this purpose, parole boards are guided by legislated principles set out in section 101 of the CCRA that give precedence to the protection of society.

³⁵ The rehabilitative and reintegrative goals of parole are concerned with reforming offenders and ultimately eliminating their criminal behaviour. Such reform efforts generally fall into one of three categories: repentance, by helping the offender recognize and accept his moral guilt and consequences of his actions, by encouraging involvement in treatment programming to address "risk areas" linked to criminality, and by providing supervised support and assistance in the community to reintegrate.

empathy, remorse, and consequences) are often seen as indicators that an offender is on the path towards rehabilitation, and, thus, may be assessed as having the potential for successful reintegration into the community. One offender (Brown, 1999) describes the potential rehabilitative and reintegrative benefits of victim impact information as follows:

As the perpetrator of the crime that fractured their lives, I believe that it is critical that I be aware of, and understand, the consequences of my wrongful actions, for it is only through recognition, understanding, and acceptance of responsibility for those consequences that contrition can nurture the certainty that such actions shall never be repeated. If my edification was an objective of the [victim impact] letters submitted to the parole board, then it was achieved, for in reading their words I was saddened, remorseful and sickened by the suffering I caused. (p. 2)

Offenders are not seen, however, as the only beneficiaries of the rehabilitative effects of victim participation; these effects are likely to extend to victims as well. For example, seeing and hearing the victim at a hearing, observed Roberts (2001), might remind the offender of the consequences of his crime and could provoke an apology from the offender. Such an apology may have a restorative effect on both parties. Other benefits for victims include the ability to directly observe the offender paying his debt to society and to hear how the offender has been rehabilitated, both of which may increase the victim's potential to overcome negative images of the offender. Thus, "if the offender is reminded of the impact on the victim, and the victim has an opportunity to see the offender in custody, this may form the basis for some steps towards restoration" (p. 11).

In addition to the potential for victim participation to contribute to reintegration and restoration of the relationship between the offender and the victim, informal and formal communications between victims and paroling authorities may contribute to the parole board's ability to achieve public safety. Herman and Wasserman (2001), in

arguing for the value of victim involvement in offender re-entry, observe that many victims will know, often sooner than anyone else, whether the offender has complied with parole conditions. They would be able to tell parole officers whether offenders have contacted them without permission, paid restitution on time, attended mandatory treatment or courses, or told the truth about any other conditions of release.

Encouraging victims to volunteer relevant information may contribute to the effectiveness of supervision, especially in stalking or domestic violence cases in which offenders are particularly likely to deny or minimize their behaviour (American Probation and Parole Association, 1999, in Herman & Wasserman, 2001, p. 356).

Risks of Victim Participation in Parole

Contrary to what proponents of victim participation in parole contend the benefits of victim involvement will be, opponents argue that among the most significant risks this practice poses is that victim involvement may be inconsistent with the rehabilitative and reintegrative purposes of parole. This is particularly likely if victim participation is based on seeking revenge and retaliation against the offender. In such cases, victims are not interested in the objective of safe reintegration, but, rather, in ensuring the offender's continued incarceration, which they hope to achieve with their recitation of graphic reminders of the harm visited upon them by the offender.

Although there are few studies that have examined victim motivation and satisfaction rates with participation in parole, the research to date supports the view that a majority of crime victims who participate in parole proceedings are generally more

punitively oriented and opposed to parole.³⁶ Villmoare and Neto's (1987) study of a group of primarily family members of murder victims who provided oral or written input to a California parole board found that most were providing input to try to keep the offender in prison by emphasizing the nature and impact of the crime. Parsonage et al. (1992) analyzed 100 Pennsylvania parole cases in which oral or written testimony was offered and found that significant proportions of the victims described the crime's continuing physical, financial, and psychological impact and their ongoing fear of the offender and his release. In their statements, 73% strongly objected to the offender's parole release. Given the desire of most victims for continued incarceration, it is reasonable to ask whether a legitimate corrective process such as parole can continue to function if the tangible benefits of the process, or incentives for participation, may be withdrawn altogether, not because of the offender's failure to achieve or unwillingness to participate, but because of the caprice of the vengeful (Brown, 1998). Furthermore, it may be difficult to achieve rehabilitation if the offender is never permitted to move beyond the mistakes of the past.

Critics of victim involvement in parole also question whether the victim voice is relevant to the legislative criteria that structures parole board decision-making. They contend that the victim's voice is largely irrelevant to the paramount question of whether the offender's current behaviour makes him an appropriate parole risk. In this regard, the Daubney Committee (1988), which considered, but ultimately did not support, allowing victims to participate in parole hearings in Canada, reasoned that "the victim would be unlikely to be in a position to contribute to the Parole Board's task at hand—

³⁶ This is in contrast to research on victim's expectations with respect to the outcome of a trial or sentencing which has generally supported the view that victims of crime were not more punitive than the general public (Erez, 1994; Erez & Tontodonato, 1990).

that is, assessing what an inmate has done to prepare for an eventual return to the community" (p. 64).

Generally speaking, in a majority of jurisdictions, the legislation of parole boards mandates that they be concerned with two issues: Whether the individual would pose a danger to the community if released and whether releasing the offender on parole would facilitate his reintegration into society.³⁷ Victim information concerning the degree of harm incurred and the crime's continuing impact on their lives may be irrelevant to the paramount question of whether the offender's current behaviour makes him an appropriately manageable parole risk. Individual board members might reasonably believe that it is more relevant to focus their risk assessment on the development, advancement, rehabilitation, and reintegration of the offender, than on the offender's past transgressions and tragedies of the victim's past. As well, it is important to not lose sight of the fact that the concept of parole is based on the belief that a gradual, supported, and controlled release of offenders helps them rehabilitate and reintegrate into society as law abiding citizens. It is, then, entirely possible that some board members might concur with a member of the judiciary (in Talbert, 1988) who had this to say about the relevance of victim information:

It would be difficult to find anything less relevant to the circumstances of this offence or the character of this defendant than testimony concerning the reactions of family members of his unfortunate victims...This court has consistently condemned the admission of evidence that the deceased left a spouse and a family, inasmuch as such evidence has no relationship to...the punishment to be inflicted upon him. (p. 199)

³⁷ Canada's four parole authorities, the National Parole Board and the Parole Boards of British Columbia, Ontario and Quebec, are guided by the standard criteria for granting parole cited in the Corrections and Conditional release Act (1992). Section 102 of the CCRA which states that the National Parole Board or a provincial parole board may grant parole to an offender if, in its opinion (1) the offender will not, by re-offending, present an undue risk to society before the expiration according to law of the sentence the offender is serving, and (2) 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 (102).

Furthermore, victim participation at parole hearings might interfere with the board's ability to conduct a sound risk assessment. Specifically, the victim's presence might cause the offender to be nervous, anxious, and reluctant to speak fully and truthfully about past transgressions. The focus of the hearing might also change from that of the rehabilitative achievements of the offender to that of apologies to the victim.

Finally, the most significant concerns about the victim right to be heard in parole relate to the potential for shifting the focus away from legitimate parole decision-making factors to inappropriate considerations of victim retaliation, vengeance, and sympathy, resulting in disparate decision-making and higher rates of parole denial. Roberts's (2001) summary of the primary criticisms of victims having a say in Canadian parole hearings reflects these general themes. He cites the following concerns: Would board members (who lack the legal training to consider only relevant evidence) be capable of making rational release decisions without being overly influenced by what might be a very emotional statement from the victim? Would victim involvement unduly prejudice board members against granting parole? And would problems arise if victim statements at parole hearings were a replication of those presented at the sentencing hearing?

Of course, from the perspective of the victim, the proposition that victim impact information would result in harsher penalties for offenders is not necessarily a distasteful outcome. As asserted by the Canadian Resource Centre for Victims of Crime (1998), "Critics should remember that victims do not chose to be victims, but criminals chose to be criminals....If a victim's information makes it more difficult for an offender to get parole, that flows directly from the offender's actions" (p. 5).

In addition to the potential for the victim gaining a virtual veto over parole, the unstructured and ambiguous nature of the current criteria guiding the use of victim

information for conditional release decision-making contributes to the potential for the overweighting of victim information, as well as disparity in how the victim is incorporated into parole board decision-making. In parole board work, as in other criminal justice work, members do not always have a set of formal rules which provide an adequate decision-making base for organizing their conduct. Bittner (1970) put this succinctly:

The domain of presumed jurisdiction of a legal rule is essentially open-ended. While there may be a core of clarity about its application, this core is always and necessarily surrounded by uncertainty....No matter how far we descend on the hierarchy of more and more detailed formal instruction, there will always remain a step further down to go, and no measure of effort will every succeed in eliminating, or even meaningfully curtailing, the area of discretionary freedom of the agent whose duty it is to fit rules to case. (p. 4)

Parole board members receive minimal specific direction about how information from victims is to be weighed and incorporated into the conditional release decision-making process.³⁸ This ambiguity in how victim information is to be utilized is problematic insofar as these ambiguous criteria may result in an unwarranted reliance upon the decision maker's own possibly inaccurate and/or biased cognitive processes, individual characteristics, and judgments and interpretations of the case at hand. In many ways, many of the criticisms that were directed towards first-generation offender risk assessments (e.g., subjective assessment or clinical, professional judgment of risk) apply to the use of victim information in conditional release decision-making. The most serious weakness of this approach is that the rules for collecting information and formulating interpretations of the "data" are subject to considerable personal discretion. Correctional agencies may provide policy manuals and procedures as guides to what

³⁸ Both B.C. Parole Board and National Parole members are advised in policy statements or procedural manuals that "the use of information from victims is governed by the principles stated in the Corrections and Conditional Release Act, including that the protection of society is paramount and the requirement to consider all information that is relevant to the case" (Section 101).

information is important and where to place the emphasis, but these guidelines are often vaguely defined. As a result, correctional officials can easily overlook or overemphasize information based on personal knowledge of criminal behaviour (which may or may not be correct) (Bonta, 1996).

There already exists sufficient empirical evidence showing that parole decision makers weigh and consider information differently according to their own personal orientations and biases. In their small-scale but intensive study of parole and parole decision-making in two British prisons, Morris, Beverly, and Vennard (1975) found that even when allowing for differences in the type of cases under review, panels varied greatly in the amount of consideration they gave to cases, as well as in the weight attached to specific criteria.³⁹ Thus, similar to Hogarth's (1971) finding that "one can explain more about sentencing by knowing a few things about a judge than by knowing a great deal about the facts of the case" (p. 350), Kingsnorth (1969) and Wilkins, Gottfredson, Robinson, and Sadowsky (1969) concluded that the decision to deny or grant parole is more dependent upon the characteristics of the decision maker than upon characteristics in the case file of the parolee.⁴⁰ Accordingly, in a relatively unstructured decision-making situation, like that which exists in parole decision-making, there is a considerable degree of latitude for individual decision makers' subjective perceptions or attitudes (e.g., biases) to affect the decision being made. The addition of victim

³⁹ The finding of differential weightings depending on the individual decision maker should not be surprising. A variety of sociological and psychological literature argues against the traditional notion that information, in whatever source it is presented, has a single meaning. Psychologist Edward Sampson (1985) suggests that reading is a dialogue rather than an observation, a conversation in which the understanding of the text changes with the encounter (in Howard & Allen, 1989, p. 28). No two people read the same document. As noted by Howard and Allen, there is overwhelming evidence that words, sentences, and complete texts are susceptible to a wide variety of meanings.

⁴⁰ The impact of the individual decision maker on decision-making is reviewed further in Chapter 5.

information and interests to the decision-making process is likely to add further to the potential for individual disparity in how the information is incorporated. Though limited in scope, some research has explored the influence of the victim as a factor in parole decision-making.

Effects of Victim Participation on Conditional Release Decision-making

Historically, victim participation has been viewed as influential on parole board decision-making in so much as victim participation was narrowly defined as board members taking into consideration the views of the public and public opinion when rendering parole decisions. Concern over public sentiment and opinion has long been recognized by researchers as an ingredient in the decision-making mix of parole boards and courts,⁴¹ an ingredient long viewed as contributing to disparity and having little or nothing to do with an individual's readiness for release. In the words of Kastenmeier and Eglit (1975), "Notwithstanding the possibility of a man's readiness for release in terms of his own personal make-up and even gauged by the measure of public safety, concern about public opinion may deter an affirmative decision to release" (p. 96).

With respect to research on the impact of public opinion on parole, California parole board members, when questioned individually by Atiken (1975), acknowledged

⁴¹ Judges have long recognized the legitimacy of public opinion as a decision factor. Cook (1979) integrated public opinion in two ways in a political model of sentencing practice. For sentences in different geographical areas at the same point in time, opinion focusing on a particular case may explain an outlying data point in an empirical analysis (p. 248). Some comparative disparity may be due to short-term public reactions of outrage over a crime or series of similar cases. Secondly, to understand sentence policy over time, public opinion about a type of crime is an important predictor. Public opinion on the Vietnam War explains 84% of the variation in national aggregate sentences from 1967 to 1975 (p. 248).

that they considered outside influences such as political climate and letters from prosecutors, judges, or victims, in addition to the original crime, behaviour in prison, and attitude of the inmate. Further, the impact of public perception and opinion was observed in Morris et al.'s (1975) small-scale but intensive study of parole and parole decision-making in two British prisons. The researchers observed that the two elements, "risk" and "desert", emerged repeatedly in discussions of parole cases. The risk element included not only the risk to the public, but also to the image of the parole board should the offender re-offend upon release. Board members, in their study, seemed prepared to recommend parole in "borderline cases" where the high risk of reconviction was decreased by a short period on parole, thus suggesting that it was the image of parole that was, in essence, being protected (not necessarily a bad thing if the system is reliant upon public support in order to continue at all), rather than the protection of the public or the prevention of crime (p. 81). Similarly, Kastenmeier and Eglit's (1975) research on parole boards found that the external public opinion factor represented a rationale for the board's reluctance to utilize parole prediction techniques that attempted to limit their discretion. In particular, board members held the opinion that parole decision-making was by its very nature an individualized process and some felt that "some of the factors involved in decision making—such as concern for public opinion—are simply not statistically quantifiable" (p. 90).

Research has validated the hypothesis that public opinion influences decision-making in other correctional agencies linked to parole boards. McCleary's (1976) research on parole officers found that case decisions were often determined by organizational demands not necessarily related to the rehabilitation of parolees or to the protection of society. He found that decision-making factors included concern for public

opinion, the reputation of the correctional agency, and the belief that a “good” parole officer was one who does not embarrass the department of corrections.

Research has also found that political considerations can effect decisions. For example, the opinions of a sentencing judge, a prosecuting attorney, or a vocal press can affect the paroling process when they have implications for the political power base held by a parole board member (Inciardi, 1973). Pogrebini et al. (1986) observed that despite the public posture of the Colorado parole board, their decisions were affected by external politics and considerations of community reaction. They cited, for example, the following case involving a parole hearing for a well-known Colorado beer producer:

The inmate’s eligibility for parole sparked controversy across the state. In fact, the TV media were present in the room during the parole board hearing. In this case external pressure by the community and the district attorney of Denver no doubt influenced the board’s decision to deny parole. The study found that had the board relied on the parole guideline matrix that had been developed, the inmate would have been eligible for parole two years prior. (p. 152)

The potentially negative impact of both public opinion and the involvement of the victim on parole decisions has also been found in studies that have explored inmate understanding of the factors that influence parole board decisions. In Ohlin’s (1951) study of parole prediction methods in the United States, inmates believed that in cases of well-known crimes, the protests of public feeling, as expressed in the press, influenced the parole decision unfavourably: “I don’t suppose I have much chance to get a break. Every time I come up for a hearing, the newspapers raise a big squawk and back comes another denial” (p. 25). Furthermore, Ohlin (1951) found that inmates generally perceived that unfavourable letters from the victims, their relatives, or friends provide sufficient grounds for an unfavourable action: “I know who’s keeping me in here

all right—it's that girl's old man. He keeps rapping me all the time. If he'd just let up once, I'd get out" (p. 25).

With respect to the impact of victims specifically on the parole board decision to grant or deny parole, there is limited research. The research that has been conducted exclusively on paroling authorities in the United States suggests that their input could have a significant effect on the parole decision outcome. A national survey of U.S. parole authorities, reported in 1991, showed that parole officials in almost every state considered the use of victim impact statements and information in parole decisions to be important. Parole authorities in 24 states indicated that victim input in their parole decisions was "very important", that it was "somewhat important" in 6 states, and that it was "important" in 19 states (Bernat et al., 1994). Similar results were found in a subsequent 1994 survey of all paroling authorities in the United States (Association of Paroling Authorities, International). Over half of the paroling authorities (i.e., 24) rated victim input as "very important", while 20 authorities rated it as "important". Out of the different types of information input that parole boards received, victim input ranked ninth among the most critical factors.⁴²

McLeod's (1989) research involving interviews with parole authorities in 34 U.S. states found that most interviewees indicated that victim statements were either given the same amount of weight as other factors or were given a "great deal" of weight. One interviewee noted that parole denial ranges from 40% to 50% in the absence of victim statements, but up to 80% when statements are submitted. Most interviewees agreed

⁴² Parole board members rated the following factors (in order of descending importance) as consequential in deciding whether to grant parole release: (a) offender's current offence, (b) history of prior violence, (c) prior felonies, (d) firearm, (e) prior incarceration, (f) prior parole adjustment, (g) prison disciplinary record, (h) psychological reports, and (i) victim input.

that personal appearances by victims (at or before the hearing) had a greater effect on parole decisions than written victim statements. Similar results were found in a 1995 study of victims in two “strong” and two “weak” U.S. victim rights states, with 75% of surveyed criminal justice personnel in the two strong states and 100% of personnel in the two weak states stating that a victim’s statement impacts the parole decision (Beatty et al., 1996, in Tobolowsky, 2001, p. 246). A related research finding in the U.S. has been that of disparity in how victim information is weighed in decision-making. A 1987 study by Carol Shapiro addressed victim concerns throughout community correctional programs in the U.S., including parole. She noted several areas of concern with the use of victim impact information by probation and parole including the important finding that the weight of victim impact statements seemed to vary from court to court and paroling authority to paroling authority.

Although survey research in the United States supports the view that victim input has had a significant impact on parole decision-making, the impact of the victim on parole in Canada has yet to be subjected to empirical study. Though there is no published research on this topic in Canada, the NPB and Correctional Service of Canada staff, as part of the legislated 5-year review of the Corrections and Conditional Release Act (CCRA), conducted an internal study of their experience with the observer provisions of the Act (1992). This study explored whether the decisions made by parole board members were influenced by victim/observer presence.⁴³ The majority of the

⁴³ Perceptions about the impact of observers on decision-making were received from 57 board members in 1993, and from 60 CSC staff members representing 38 institutions in 1996. It is important to note, however, that observers encompass more than just the presence of “victims” at hearings. In the spirit of openness and accountability, a variety of interested parties are permitted to attend and observe parole hearings. These parties are inclusive of victims but also members of the public, media, and those interested for educational purposes.

National Parole Board members surveyed indicated that they did not believe their decisions were influenced. However, eight board members indicated that they believed the presence of observers had had an impact on decisions. One commented that the effect was “subtle, but there nonetheless”. While no elaboration was offered by board members as to the nature of the subtle impact of observers on parole board decisions, surveyed correctional staff perceived victim presence as having a negative influence on the decision.

Furthermore, approximately half of the surveyed board members indicated that the presence of observers did have another kind an impact on the process of decision-making: They spent more time on case preparation and tended to speak more about the available information at the hearing. Their responses indicated that they recognized the opportunity provided at the hearing to make sure everyone present understood the process and the context of the decision-making and achieved a full, broad sense of the case so decisions would be seen to be thorough and reasonable. When victims who have submitted information are present, board members commented that they usually ensure that the information is referred to in the course of the hearing so that the victims know it has been received and taken into consideration.

Similar numbers of surveyed Correctional Service of Canada staff felt that the presence of observers influenced decision-making and the decision-making process. Specifically, almost half (17 of 36) of those who offered an opinion indicated that the decision-making process was affected, with about 20% of respondents commenting that the hearing was managed more formally and the review was more careful and thorough.

In addition, another finding in relation to the impact of victim participation relates to the trend of fewer offenders on parole. Grant (1998) found that the use of day parole

declined by about one third (32%) after the introduction of the Corrections and Conditional Release Act in Canada. The author concluded that at least some of the decline in day parole use must be the result of changes implemented by the CCRA or at the time of the CRRRA, as well as the increased accountability of board members for their decisions (decision registry) and the involvement of victims. Similar sentiments have been expressed by paroling authority staff in the United States. An Ohio Parole Board staff member pointed to the impact of victims' participation and the fact that they had attained "a vocal part in the criminal justice process" (Evans, 1998, p. 68) to account for the decrease of inmates' parole release rates from 60% in the 1970s to little more than 20% in the late 1990s.

A U.S. study adds further evidence to the proposition that victim input in parole decision-making results in parole refusal. Parsonage et al. (1992) compared 100 randomly selected Pennsylvania parole cases in which oral or written testimony had been offered with another 100 cases in which no such testimony was offered. In their victim testimony, significant proportions of victims described the crime's continuing physical, financial, and psychological impact and their ongoing fear of the offender and his release. In their statements, 73% strongly objected to the offender's parole release. A third of the victims indicated dissatisfaction with the criminal justice system's handling of their cases, sometimes expressing anger at their exclusion from earlier stages of their case's processing. Overall, the researchers found that parole was refused in 43% of cases in which the victim presented oral or written testimony, as opposed to 7% of the control group cases. The differences in parole refusal persisted after researchers took into account the nature of the crime, the offender's potential for recidivism, and other typical parole release decision-making variables. Although the parole refusal rate in the

control group was consistent with the state parole guidelines' recommendation of a 10% refusal rate, the refusal rate exceeded the policy guidelines' recommendations by 33% in the victim testimony group. In further analysis, the researchers found that the presence of victim testimony was the most significant variable associated with parole refusal decisions, even more significant than the inmate's unfavourable institutional performance, the number of prior convictions, and the fact that the victim suffered physical injury. Not surprisingly, within the victim testimony group, a victim's expressed opposition to parole was significantly related to parole refusal. Because of the significant effect that victim testimony had on these parole decisions, the researchers urged the authorities to clarify the purposes for which victim input could be considered, to incorporate these purposes objectively into the parole guideline structure, and to provide safeguards to assure the reliability of the information conveyed.

Although the empirical research regarding the impact of victim input concerning parole is limited, it indicates a much more significant potential impact from the exercise of this right to be heard than has been established regarding sentencing. As more victims are informed of and seek to exercise their right to be heard in parole,⁴⁴ the potential for higher rates of parole denial is evident. Thus, victim participation has the potential to limit and/or change the parole board's traditional role as major gatekeeper of the criminal justice system. Accordingly, an examination of victim participation in parole is a necessary empirical undertaking.

⁴⁴ A research project conducted in 1995 by the U.S. National Centre for Victims of Crime, involving 2,245 crime victims, found that almost 40% of victims in "strong" victim right states were not informed that they could make an impact statement at the parole hearing. Even fewer victims, 38%, were informed of their right to be heard with respect to parole in "weak" victim right states.

Chapter 5: Informal Properties of Decision-making: Individual, Contextual, and Environmental

This chapter begins with a review of the two connected levels of parole decision-making, referred to as the *formal* and *informal properties*. It explores some of the key informal properties related to the individual, contextual, and environmental purview of parole board decision-making, with a particular focus on how each of these factors might affect the means by and extent to which victim participation in parole is fully realized.

The process of decision-making and the formal and informal factors that make up parole board decisions attracted intensive research scrutiny in the 1960s through the early 1980s, with most of the research having in common criticisms of conditional release decision-making. As in studies of judicial decision-making, the conclusions from studies on parole boards have been critical of both decision-making practices and outcomes, which were characterized by unchecked discretion, variability, inconsistency, and disparity.

Stanley (1976) characterized parole board decisions as being made on highly subjective grounds and with inconsistent rationales for release or continued incarceration. Hakeem's (1961) study of the parole decision-making ability of contrasted groups found that both a group of laymen and a group of parole officers who examined case histories had essentially the same ability to predict parole outcome. This led him to assert that habits, tradition, and guesswork constituted the rationale behind many

widespread practices in parole. A similar observation was made by Carney (1968) who felt that parole decisions tended to be based on common sense and hunches of parole members or other administrative personnel. Parole decision-making, observed Thomas, (1963), "is not cut and dried but rather a guessing game of no mean proportions" (p. 175). Correctional officials themselves candidly admit that parole decisions are sometimes based on "a lot of gut feelings about when the guy is ready. The criteria are not very well enunciated" (Serrill, 1975, p.24).

Offenders also appear to be convinced that decisions about parole are largely subjective. Ohlin (1951), who interviewed offenders for his study of parole prediction methods in the United States, found that offenders perceived parole decisions to be a matter of whim and therefore completely unpredictable:

I sure wish I knew what makes them hand out a parole. Guys I figure are a cinch to make it get turned down and some no-good jokers will make it every time. I figure they must throw the sheets in front of a fan and the ones that land right side up get a parole. (pp. 25-26)

Another common, and related, theme is the lack of clear criteria to guide the decision-making task. The Canadian Task Force on Release of Inmates (1972) identified a number of shortcomings in the Canadian parole system including the fact that there has been no clear statement in the law or by the Board as to the criteria for granting parole and little is known about the extent to which decisions taken adhere to consistent principles. Thus, the task force found, "Neither inmates nor members of the board are able to articulate with any certainty or precision what positive and negative factors enter into the parole decision" (p. 8). As noted by the Task Force, "Apparent disparity leads to increased uncertainty for the inmate and is undesirable per se" (p. 8). Echoing this opinion, Maslach and Garber (1982) commented that the lack of clear guidelines for

making parole decisions has forced board members to rely on their own subjective criteria and expertise, which adds a weighty personal responsibility to the decision-making process (pp. 339-340).

The Parole Act left a great deal of freedom to Canadian parole boards in making their determinations. In 1977, the chairman of the NPB admitted to a legislative committee (House of Commons Standing Committee, 1977) that the statutory criteria under the Parole Act⁴⁵ “are wide enough to drive a truck through, and they are really not that much help...But essentially, when you come right down to it, what the alchemy is by which you come to the decision of yes or no is subjective judgment, sure. It is a value judgment made by the board members” (p. 15).

Even when the criteria for parole were known, as Hawkins (1971) found in his study of parole board decision-making, there was little consistency between the stated criteria used by parole board members and their behaviour. O’Leary and Glaser (1972) found that in assessment of risk, parole board members may look to a variety of sources depending on their own experiences, education, and beliefs. For example, they describe how, in training sessions with parole board members, when the same case history was presented to the trainees, it was not at all unusual to have estimates of the probability that the same offender would succeed on parole varying from 25% to 75%.

Given the research that has emphasized the shortcomings of parole decision-making, the hypothesis that parole decision makers are skilled experts in human behaviour, capable of weighing all relevant data fairly, objectively, and intelligently has

⁴⁵ Section 10 of the Parole Act provides that the board may grant parole if it considers that (a) in the case of a grant other than day parole, the inmate has derived the maximum benefit from imprisonment; (b) the reform and rehabilitation of the inmate will be aided by the grant of parole; and (c) the release of the inmate on parole would not constitute an undue risk to society.

come under scrutiny, and there is a growing recognition of the complexity of parole decision-making. There appear to be two separate, yet undeniably connected, levels by which parole decisions are made and rationalized by decision makers. These levels could be termed the *formal* and *informal* properties of parole decision-making.

The formal properties of parole decision-making comprise the written structure and rules of application developed to mandate and guide decision-making. Specifically, this includes the legal standards (which should be the most influential in decision-making and which cover rules, regulations, statutes) and risk assessment policies. In recent years, there have been clear statements in law as to the criteria that must be considered in the granting of parole. Parole guidelines, both legislatively dictated and in board policies, are an attempt to address aspects of parole that have long been construed as important problems, such as unwarranted disparity in parole decision-making and unfettered parole discretion (Canadian Task Force on Release of Inmates, 1972). These guidelines set out formal decision-making criteria in order to accomplish formal policy goals. In most parole boards in both Canada and the United States, these goals include an assessment of the risk the offender might present to the community and the protection of society. In their pursuit of these goals, parole boards in most jurisdictions are now required to consider and incorporate victim input into conditional release decisions.

The informal properties of parole decision-making include both extra-legal characteristics and actual "properties in use". Extra-legal characteristics are those that technically should not impact on the decision-making process such as the individual characteristics of offenders and decision makers (e.g., race, sex, socioeconomic, and social characteristics), the context, and the environment in which decision-making takes

place. *Properties in use* refer to the ways in which board member decision makers actually use the formal and informal properties of decision-making on an everyday basis. These properties in use are, of course, reciprocally embedded in local board contextual factors (Eisenstein, Flemming, & Nardulli, 1988).⁴⁶

Informal Properties of Decision-making

An abundance of literature supports the notion that informal or extra-legal factors affect the severity of imposed sanctions in both non-guided decision-making situations and, in many cases, in situations where guidelines specify that such characteristics are legally irrelevant (Albonetti, 1997; Farnworth & Horan, 1980; Frazier & Bock, 1982; Hagan, 1974; Hill & Pfeifer, 1992; Lizotte, 1978; Pfeifer, 1990; Pfeifer & Ogloff, 1991; Unnever, Frazier, & Henretta, 1980). Among the most significant of these informal or extra-legal factors are (a) characteristics of the individual decision maker, (b) contextual or situational factors, and (c) environmental factors. These factors can also have an impact on the extent to which specific decision-making variables, such as victim participatory rights, are incorporated into parole decision-making.

⁴⁶ The terms *formal* and *informal properties* are borrowed from Peyrot (1995), whose study of the interpretive use of the Minnesota Multiphasic Personality Inventory (MMPI) as a diagnostic tool by clinical psychologists distinguished between the formal properties of the MMPI and the tests' actual "properties in use". The formal properties are seen as a set of statistical, predictive properties and formal guidelines for how the MMPI should be used in clinical diagnoses. *Properties in use*, a concept from ethnomethodology, refer to how clinicians actually use MMPI test results in a flexible manner according to the exigencies of the situations, perceived client needs, conflicting clinical goals, and psychiatrists' and clinical psychologists' conflicting interests.

Individual Board Member Characteristics

Given the wide discretionary powers afforded to parole board members, it is evident that nothing and no one equals them in their power to affect the disposition of parole cases. The decision to deny or grant parole has been found to be more dependent upon the decision maker's characteristics than upon the information available about the case of the potential parolee (Kingsnorth, 1969; Wilkins, Gottfredson, Robinson, and Sadowsky, 1973). Given a set of similar legislation and policy constraints, it is generally recognized that different decision makers will respond differently to case factors and information and potentially arrive at different decisions. The significance of the idiosyncrasies of the individual in criminal justice decision-making, which was first underscored in seminal works on the judges and sentencing,⁴⁷ has continued to be demonstrated in a variety of research that has explored the significance of individual-level variables in decision-making processes at all levels of the justice system (see Carroll, Perkowitz, Lurigio, & Weaver, 1987, for a review).

Underscoring the significance of the individual in parole decision-making tasks is research that has found, for example, that parole board members differ in how they rank and weight the factors they consider when releasing an offender on parole and on how they used the available information (Conley & Zimmerman, 1982; Gottfredson & Ballard, 1966; Hassin, 1984; Hoffman, 1972; Rogers & Hayner, 1968; Sacks, 1977; Scott, 1974). The most significant individual characteristics that might influence the extent and means by which victim information is incorporated into parole decision-making tasks include

⁴⁷ For seminal works see Green (1961), Hogarth (1967, 1971) and Hagan (1975). More recently, Carroll, Perkowitz, Lurigio, and Weaver (1987) summarize the research on sentencing into several types of individual differences that are believed to generate or predict variation in sentences, including (a) sentencing goals or penal philosophies, (b) attributions about the causes of crime, (c) ideology, and (d) personality.

gender, political orientation, length of tenure, and opinion about victim participatory rights in parole.

Board Member Gender

Although there has been no empirical study of the effect of gender differences on decision-making among parole board members, there has been considerable debate and, to a lesser extent, empirical study about the impact of women in the judiciary. In particular, it has been hypothesized that women judges will be more liberal or compassionate and thus sentence offenders more leniently, that women judges will be particularly harsh towards rapists and other defendants convicted of sexual assault because of same-sex identification with victims, that male judges will be more paternalistic and thus sentence female defendants more leniently, and that the life experiences of female judges lead to greater concerns about sexism or racism and will result in more equitable decision-making (Steffensmeier & Hebert, 1999).

The empirical evidence exploring whether women and men differ in their administration of justice is both limited and inconclusive. Allen and Wall (1993, 1990) found little evidence to support the notion that women justices were fundamentally different in their approach to legal issues, although women justices were more likely to be the most outspoken advocates for women's issues in their court and voice extreme and dissenting views in criminal and economic cases (Coontz, 2001). In a study of gender and voting behaviour on U.S. courts of appeals, Davis et al. (1993) tested whether women voted differently from their male counterparts in ways that would reflect a tendency to emphasize rights of inclusion rather than individual rights and found only partial support for the notion of a "different voice" for women judges. Steffensmeier and

Hebert (1999) found important gender differences in sentence severity and in the effects of defendant characteristics and prior record on judicial decision-making (e.g., greater contextualization among women judges), suggesting that the life experiences of women judges differ from those of men judges and will influence their organizational decision-making. Similarly, Coontz's (2000) study of state trial judges in Pennsylvania found that although litigant characteristics did not affect judicial decisions, the gender of the judge did. Specifically, in almost half of the decisions rendered in hypothetical cases, statistically significant differences emerged when the gender of the judge was considered.

The large body of research that has explored gender-based differences in how emotion is expressed, experienced, and recognized⁴⁸ supports the hypothesis that female board members might be influenced by victim information in unique ways. It has been found, for example, that women experience fear and sadness more often (Brody, 1984) and that those emotions are more actively and accurately labelled by women than by men (Bonebright, Thompson, & Leger, 1996; Webb & VanDevere, 1985). The socialization of emotional perception and response research findings have shown that females are socialized to be more responsive to the feelings of others (Fuller, 1963) and are encouraged to more freely express emotionality in general (Brody, 1985). As well, females have been found to be better than males at identifying facial expressions and vocal affect for the perception of fear and sadness (Bonebright et al., 1996) and are more sensitive than men to nonverbal cues (Briton & Hall, 1995). Accordingly, these results taken together suggest that women may be more sensitive to victim information

⁴⁸ See Bonebright, Thompson, and Leger (1996) for a review.

and that this sensitivity might reflect either a socialized or inherent gender-based behavioural pattern.

Aside from the research on differences in emotional responsiveness, feminist scholars assert that women do bring a different perspective to the law and that this matters because they seek different outcomes from legal processes than do their male colleagues (MacKinnon, 1989; Menkel-Meadow, 1990). Conventional law, feminist scholars maintain, embraces a male perspective that tends to emphasize separation, individual rights, and abstract rules. In contrast, a feminist jurisprudence examines how women's unique experiences affect perspectives on the law itself and legal processes (Coontz, 2000). Research on legal decision-making has found that women (including women officeholders and judges) slant more toward a particularistic style of policymaking and that this learning reflects women's greater concern for preserving the relational webs of life, their sensitivity to the variable needs of others, and their tendency to be problem solvers (Gilligan, 1982; Steffensmeier & Hebert, 1999). Sherry's (1986) examination of the decision-making of a female U.S. Supreme Court Justice observed that her opinions reflected concern for the rights of individuals as members of communities rather than as autonomous beings. Other gender differences have been observed in that, compared to their male counterparts, women officeholders have been found to be more concerned with the substance of policy and legislation than with abstract precepts (Darcy, Welch, & Clark, 1994; Diamond, 1977). Kathlene (1989) accounted for gender differences in decision-making by asserting that men's social orientation emphasizes formal external recognition gained through competition and male morality. Accordingly, decision-making for men was seen to be more subordinated to rules and universal principles of justice that are equated in terms of fairness,

objectiveness, and the impersonal application of laws. Thus, it could be hypothesized that male parole board members may view victim information as more of an extra-legal variable which does not figure prominently into the statute criteria that guide parole decision-making. Female board members, however, might regard victim information as being more significant because of their tendency toward inclusiveness and consideration of others.

The unique experiences of women, particularly as victims, might also suggest that female board members have a greater sensitivity to victim information and involvement in the conditional release process. Statistics indicate that domestic violence, specifically abuse by an intimate partner, is pervasive. Walker (1985) states that approximately 50% of women are battered at some time in their lives by their partners. The victimization research has also been consistent in showing that female victims of various types of crimes suffer more than men (see Ministry of Solicitor General of Canada, 1992, for a review). Personal experience with crime has also been found to be a significant predictor of negative attitudes towards conditional release (Samra-Grewal & Roesch, 2000), and fear of being victimized has been found to correlate with more punitive attitudes towards sentencing (Spratt & Doob, 1997). Kaukinen and Colavecchia (1999) also found that respondents who had experienced victimization, those who were fearful in their neighbourhoods, and those who perceived crime to be increasing were all more likely to be dissatisfied with the courts' treatment of victims and accused persons. Thus, the unique experiences of women as victims might contribute to female board members having a heightened sensitivity to victim issues in a parole decision-making context.

Aside from influence of prior victimization, it has also been hypothesized that apprehension about victimization, combined with differences in gender role socialization, results in women being more moralistic and likely to feel more threatened by challenges to norms and laws than men (Steffensmeier & Allan, 1995). Steffensmeier and Hebert's (1999) study of gender differences in sentencing found that women judges were more affected by recidivism risk and were more particularistic in their sentencing decisions than men judges. Specifically, indicators of future criminality and risk to the community, such as prior record and defendant's age, were seen to contextualize the sentencing decisions of women judges more than the decisions of men judges. In accounting for the finding that women judges were seen as more influenced by indicators of risk to the community, the researchers hypothesized that this may stem from their status as "tokens" and their greater concern about prospective criticism of their sentencing decisions. The researchers observed that despite recent increases in the number of women judges, they continue to be greatly outnumbered by men judges. As tokens in skewed groups are vulnerable to performance pressure and because their "differentness" is highly visible, women judges may feel that they are always under scrutiny and must perform well. Thus, they may put in extra effort and take greater notice of constituents' criticisms about the consequences of their sentencing decisions. They also may be more concerned about the impact of offender recidivism on the court's standing in the community.

Board Member Political Orientation

Although there has been no research exploring the influence of individual political orientation and political culture⁴⁹ on parole board decision-making, some studies, comparing sentencing decisions from courts located in different states or different courts in the same state, found a positive relationship between the political conservatism of the court's jurisdiction and longer sentence lengths (Huang, Fin, Ruback, & Friedmann, 1996; Nardulli, Fleing, & Eisenstein, 1988; Waltman & Bowers, 1993). Furthermore, Almond and Powell (1978) maintained that political culture, influenced by ongoing social, economic, and political activities in a setting, can affect individuals not only in their political roles and demands but also in their responses to laws.

Given the association between conservatism and "tougher sentences", it is probable that parole board members who have a more conservative political orientation would be more welcoming of the victim into parole practices and support a greater weighting of victim information in their conditional release decision-making processes. Involvement of the victim in the criminal justice system has been pushed most feverishly by those with a conservative political ideology.

Board Member Length of Tenure

The numbers of years of experience individuals have with parole board work or in the criminal justice system prior to board appointment might reasonably be thought to affect how they use victim information in decision-making, given the research that has

⁴⁹ The concept of political culture that, among its other defining attributes, is associated with measures of conservative and liberal political ideology was initially introduced into political analysis by Gabriel Almond (Grossman & Sarat, 1971, p. 179). Almond (1956) defined *political culture* as "the pattern of individual attitudes and orientations toward a politic among members of a political realm which underlies and gives meaning to political actions" (p. 396).

demonstrated how length of service has affected decision-making in other fields. For example, studies on sentencing have found differences between new and experienced decision makers in how they use information in decision-making. Lawrence's (1988) analyses of the cognitive processes involved in sentencing revealed that penalties sought by experienced and novice magistrates differed. His detailed analyses of on-line verbal protocols revealed inferences in the processes by which two experienced magistrates and a novice magistrate gave meaning and weightings to case details.

Other research has found that experienced criminal justice agents tend to accumulate knowledge and expectations of the typical attributes of cases, classifying them into known categories of "normal cases" (Sudnow, 1965). As a case becomes typified, it is treated in more routine ways. "Seriousness" becomes routinized, institutionalized, and built into the typification, as it were, rather than standing as an experiential feature of the case for the worker (Emerson, 1982).

Heumann's (1978) research on the socialization of criminal court personnel exemplifies these experiential processes in that a new prosecutor would be "outraged" by the facts of a case that an experienced attorney would appraise as routine (and not particularly serious) and hence as appropriately plea bargained to some standard reduction. A similar process would likely occur for parole board members in that as they become integrated into local office culture, familiar with its procedures and accustomed to the shape of their caseloads, they might come to see and treat offences that had earlier struck them as "outrageous" in more neutral, routine, and "lenient" ways.

It is possible that victim information might become more significant to board members who have spent many years on the board and had unfortunate experiences with parole decisions that have resulted in negative consequences for society (e.g., re-

offence by a parolee they released). Accordingly, their concerns for their own and the parole board's reputation, as well as for public safety, might lead them to demand that victim information be paid attention to more seriously. On the other hand, sensitivity to victim information might decrease as board member tenure increases due to "seriousness" of case factors, resulting in victim harm becoming routinized.

Board Member Philosophy and Opinions

Clearly, the cognitive dimensions of parole board decisions are themselves inherently multi-dimensional, and they become even more complex when they are applied to individual sets of case details. The discretionary decision-making of parole board members has been understood as conforming to the general dynamics of attribution theory and information processing theory (Carroll, 1978, 1980; Carroll & Burke, 1990; Carroll, Galegher, & Wiener, 1982; Carroll & Payne, 1976, 1977; Carroll, Wiener, Coates, Galegher, & Alibrio, 1982). This research has found that the attitudes, values, ideologies, and opinions of individual decision makers are critical to parole decision outcome. Specifically, the series of studies by Carroll and his associates found that parole decisions are based on a combination of evaluations of prior conduct and predictions of future conduct, with the balance between evaluative and predictive aspects depending on the perceived role of the parole decision in the criminal justice system and on the personal ideologies of individual decision makers.

The prominent role of personal orientations and frames of references was also demonstrated by O'Leary and Hall (1976) who concluded that six frames of reference or value systems commonly provide orientations to parole decision makers in their tasks. As noted by Gottfredson and Gottfredson (1988, pp. 232-233), the paroling objectives

implied by these frames of reference may conflict, just as the purposes of sentencing may be in opposition. While paroling authorities generally share these concerns, there are individual differences in the emphasis given to the various perspectives. It is clear that there is much room for conflict among parole board members, but it is also likely that individual members will have their own internal conflicts as they struggle to reconcile the conflicting demands that their roles place on them (Gottfredson & Gottfredson, 1988, p. 233).

In addition to parole board decision makers' holding differing frames of reference, subtypes of parole decision makers have been identified as important in explaining the interplay of personal philosophies and biases in information-gathering mechanisms that may affect parole decision-making. Gottfredson, Wilkins, and Hoffman (1978) sub-typed four categories of parole decision makers: the *sequentialist*, the "ah, yes!", the *simplifier*, and the *ratifier* decision makers.

The first subtype, the sequentialist, stems from Gottfredson et al.'s (1978) analogy between parole decision-making and the statistical technique of step-wise regression (which finds the most powerful predictor for a particular dependent measure and then proceeds to search for others that add information and increase the prediction power in a sequential process). These authors suggest that when sequentialist parole decision makers are presented with numerous case factors and asked to arrive at a decision, they choose their own most powerful predictor. Although the individual "does not have any prior knowledge of which item has the greatest power to discriminate...he has experience and a personal viewpoint which leads him to prefer a particular order in which the information is presented" (p. 110). The second type, the "ah, yes!" decision maker, searches for certain patterns in cases. Thus, once enough features of a

particular “pattern” are noticed, the search for additional (perhaps disconfirmatory) information ends. The third type, the simplifier, begins with a prejudiced view, one that is either strongly sympathetic (e.g., “anything against this person?”) or strongly punitive (e.g., “anything in favour of this person?”). This initial bias affects the subsequent search for and integration of data insofar as disconfirmatory evidence is ignored. Finally, the last type, the ratifier, employs a predominate strategy that consists of finding information in congruence with what has been stated or recommended by some person with whom the decision maker can associate (e.g., psychiatrist, warden, or probation officer). Although none these subtypes have been empirically validated, they are useful in accounting for discrepancies and limitations in parole decision-making, as well as for delineating the specific types of biases or information-gathering mechanisms that may affect parole decision-making.

The significance of personal philosophy and ideology in judicial decision-making is similarly underscored in seminal works on the judge’s contribution to sentencing (see Hogarth, 1967, 1971, 1975). Carroll et al. (1987) summarize the research on sentencing into several types of individual differences that are believed to generate or predict variation in sentences, including (a) sentencing goals or penal philosophies, (b) attributions about the causes of crime, (c) ideology, and (d) personality. Gibson (1978) discovered that judges’ definitions of their roles shaped their use of information when their penal attitudes exerted their influence. In particular, he noted, “Absence of attitude-behaviour consistency could be explained by judges’ beliefs about what variables can properly be allowed to influence their behaviour” (p. 917). Gibson divided his sample of judges into two groups: one that narrowly defined their function on legal details and another that placed greater emphasis on extra-legal factors.

Similarly, Hogarth (1971) found that judges favouring rehabilitation rely more on the recommendations of probation officers; minimize the severity of the crime; consider more factors about the offender; and focus on the offender's remorseful attitude, lack of premeditation, history of pathology and background, and need for treatment. Judges favouring more punitive goals consider more factors about the offence and criminal record, negative attitude towards authority and lack of remorse, and focus on culpability for the offence. Furthermore, by associating with judges similar to themselves, judges fall prone to false consensus effects whereby they tend to believe that most other judges agree with them regarding sentencing goals (Ross, 1977).

Given the prominence of personally held philosophies in discretionary decision-making, it is evident that the opinions, attitudes, and values held by individual decision makers regarding the appropriate role of victims in conditional release processes and decision-making are important. Board member opinions about victim roles and the ramifications of their participation in conditional release can provide insight into the means and extent to which victim participatory rights are influential in the parole phase of the criminal justice system.

Stereotyping

Crime stereotypes are evident in decision makers' cognitive schemata and are cognitively useful because they simplify the world. Reliance on them makes information processing more efficient (Lurigio & Carroll, 1985), particularly for tasks such as complex legal decisions (Bodenhausen & Lichtenstein, 1987). They have been found to be especially useful in an overloaded court system, with its constraints of time and resources, as they allow court actors to readily differentiate exceptional from routine

cases (Sudnow, 1965; Lurigio & Carroll, 1985). Once internalized, schemata resist change (Ross & Anderson, 1982).

A large body of research has also found that stereotypes influence decisions at virtually every level of the legal system. For example, stereotypical conceptions of the offence have been found to affect decisions regarding law enforcement (Irwin 1985; Sampson, 1986), defence (Maynard 1982), prosecution (Stanko, 1981), conviction (Farrell & Swigert, 1986), and sentencing (Walsh 1985). Furthermore, the subjective interpretation of the offence in combination with the stereotypical conceptions of the offender appears to be critical to understanding legal outcomes (Farrell & Holmes, 1991). Stereotypic conceptions have been found to act as guiding imageries for decision-making action in the treatment of skid-row residents by patrolmen (Bittner, 1967), in police encounters with juveniles (Piliavin & Briar, 1964), and in responses to shoplifters (Steffenseier & Terry, 1973). Swigert and Farrell's (1977) study of the processing of homicide defendants found that critical legal decisions regarding bail, the assignment of counsel, and plea-bargaining were based upon the extent to which the person involved conformed to popular criminal stereotypes. These research results imply that interpretive schemes having similar features will be found in all bureaucratically organized enterprises where large numbers of clients or cases are processed. "Where caseloads are high", observes Waegal (1981), "continued interaction is not anticipated, minimal information is available and the body of knowledge used by the agent is imprecise—stereotypes tend to become an operative and binding basis for decision making" (p. 24). In the words of Farrell and Holmes (1991): "Regardless of factual circumstances, stereotypical thinking colors perception of and ultimately shapes objective reality in legal decisions" (p. 538).

Stereotypes related to victims and victim characteristics have been found to influence criminal justice decision-making. A series of studies focusing on victims of sexual assault has found credibility extended to victims to vary with the race of the victim,⁵⁰ victim self-presentation,⁵¹ and stereotypical beliefs held about rape victims.⁵² In cases of spousal assault, the pivotal role of victim stereotypes in police decision-making is also evident. A series of studies on the handling of cases of spousal assault found that police officers consider the victims' actions and characteristics and are less likely to take formal action when wives' actions deviate from what they consider to be appropriate (Ferraro, 1989a, 1989b; Waaland & Keely 1985). Stalans and Finn (1995), in their research on how prior knowledge impacts on officer's interpretation of wife assault situations and subsequent responses, demonstrated that though officers try in good faith to be impartial decision makers, categorical knowledge systems often shape their interpretations and lead them to use informal methods when wives violate societal norms. Their findings, consistent with schema theory, indicate that content knowledge about mental illness and wife assaults shapes interpretations when a specific case

⁵⁰ For example, De Winter and Winkel (1993) found that white victim support workers regarded a black rape victim as less credible and more responsible for her fate compared to other white victim support workers who were shown a white rape victim. In fact, both victims were one and the same person, who was cosmetically transformed to appear black.

⁵¹ Koppelaar and Winkel (1986) demonstrated a relationship between non-verbal aspects of the victim's self-presentation and biased attributions about the victim. They showed subjects a videotaped interview with a rape victim (an actress) who presented exactly the same case either in an extremely emotional manner or in an emotionally restrained manner. Subjects who saw the emotionally restrained version described the woman as less careful, more responsible for the rape and less credible (reported in Koppelaar, Lange and Van De Velde, 1997:62).

⁵² Krache (1988) investigated the effects of stereotypic beliefs about rape in observers and of information about the victim's pre-rape behaviour. Subjects were presented with a rape account in which the victim's pre-rape behaviour was either role-conforming (finished work at her office) or role-discrepant (had a drink on her own in a pub). Both behaviours were irrelevant with respect to subsequent events. She found that subjects high in stereotypical beliefs about the definition and cause of rape (Burt, 1980) attributed more responsibility to the victim and less responsibility to the assailant when the victim had engaged in role-discrepant behaviour prior to the rape. Best and Demmin (1982) likewise found that rape victims who conformed to the stereotypical female role model were perceived to be less responsible than women who did not.

shares features with the exemplar or typical member. Stereotyped images of mentally ill people, for example, informed officers' neutral assessments and produced a systematic bias toward a reluctance to use arrest and shelters for injured hallucinating wives.

Perceptions about the worthiness of victims have also been found to vary depending on particular victim characteristics and stereotypical notions of victims. For example, Myers and Hagan's (1979) study of the discretionary judgements of prosecutors found that "the troubles of older, white, male, and employed victims" are considered more worthy of public processing, a finding which suggests that certain types of victims affect the allocation of prosecutorial resources (p. 448). Stereotypes about victims assist prosecutors in the sorting of serious cases (those deserving full prosecution) from less serious ones (Swigert & Farrell, 1976).

Stanko (1981), in her exploration of prosecutors' use of victim stereotypes during the screening and charging stage of serious felony prosecutions in the U.S., found that an essential element in the charging decision is the determination of perceived victim credibility. A victim must be credible in the eyes of not only of the prosecutor, but also the judge and jury. Emerging from her study was the stereotypical quality of the attribution of victim credibility: "Prosecutors assume that judges and juries...will find certain kinds of victims' claims credible and acceptable, others not. It matters less that a victim with a prior record may have been robbed and beaten than that a jury may be dubious about such a claim, or merely unsympathetic to the victim. Prosecutors may rely on such stereotypes because of their own ideologies, but may also be influenced by stereotypes...The result may be that victims' quest for justice is often determined more by stereotypes than by the actual harm rendered against them by their assailants" (p. 238).

Stereotypical notions of various victim characteristics and, in particular, victim motivations with respect to their interests in parole participatory rights (e.g., all victims desire vengeance, all victims are against parole, all victims exaggerate the harm caused) can affect the manner in which individual board members perceive and utilize victim-related factors in parole tasks. Accordingly, exploration of the presence and nature of victim stereotypes amongst parole board decision makers is an important undertaking.

Contextual and Environmental Factors

Notwithstanding the significance of the impact of individual parole board member characteristics and personal philosophies on decision-making tasks, it is also acknowledged that human behaviour is heavily influenced by contextual factors both from within the immediate criminal justice system decision-making environment (Mischel, 1968) and from outside influences such as the local legal and political culture, the structure of institutions, and the socio-political make-up of the community (Nardulli, Eisenstein, & Fleming, 1988).

What has been called the “black box” approach to decision-making research, in which decision makers are regarded as the repositories for information independent of the social context in which they receive and act upon it, has long been criticized by advocates of a social interactional perspective (e.g., Dallos & Sapsford, 1981). The social interactional perspective suggests that decisions in criminal justice settings are the outcome of a social process involving a number of actors. Therefore, to understand that process and its influence upon decision outcomes, consideration of the contributions of working relationships among organizational personnel is necessary. Generally, works

focusing on contextual factors in criminal justice decision-making have drawn upon organizational frameworks,⁵³ symbolic interactionism,⁵⁴ and processual order theory.⁵⁵

A number of studies on judicial decision-making have emphasized that individual-level variables and interactions are imbedded in and influenced by the specific social contexts in which processing takes place (Feely, 1979; Gottfredson & Gottfredson, 1988; VanKoppen & Ten Kate, 1984). For example, contextual analyses of criminal courts have focused upon such things as caseload characteristics (Huang et al., 1996; Rumgay, 1995; Sudnow, 1965), the norms of courtroom work groups (composed of the judge, prosecutor, and defence attorney), and the influence of sponsoring organizations on the composition and goals of those work groups. Eisenstein and associates (1977, 1988), Flemming, Nardulli, and Eisenstein (1992), and Ulmer and Kramer (1998) found that the contexts of local “court communities” and the formal and informal case-processing norms of courtroom workgroups were at least as important as formal laws and state-level policies in determining “contours” of criminal justice. Norrie (1986) characterized judicial decision-making as “situated reasoning” in which the social context sets up the conditions and constraints under which the individual sentencer acts. Homel and Lawrence (1992) found that sentencing disparities reflect both individual factors (personal schemas of judges) and court context variables. Specifically, they found

⁵³ See Nardulli, 1979, and Nardulli, Eisenstein, & Fleming, 1988, for reviews of seminal works that apply an organizational analysis to the study of criminal justice organizations. Organizational approaches seek to elaborate upon the context of decision-making. A common feature of organizational analysis is its emphasis upon the context of criminal court decision-making.

⁵⁴ Symbolic interactionists argue that the impact of larger scale structures, processes, and policies depends on specific local contextual contingencies and the agency of collective and individual acts (Blumer, 1990).

⁵⁵ See Ulmer and Kramer (1998) for a review of key characteristics of processual order theory. A key aspect of processual order theory emphasizes how larger scale processes and structures shape the situations in which collective and individual actors construct interpretations, make decisions, and act, and how such definitions and actions produce consequences for larger scale processes and structures (p.249).

substantial contributions of both court context and individual sentencing style to the determination of penalties in drunk-driving cases. Disparities due to court effects, noted the researchers, were directly comparable with Hood's (1972) findings concerning "the pervasive influence of the bench" (p. 143) in sentencing motoring offenders. Paralleling Hood's observations of the sharing of penal policy by magistrates on the same bench and the subtle influences of clerks and senior magistrates in establishing court traditions, Homel and Lawrence (1992) also found that court interactions suggested that functioning sentencing practices were likely to be shared, or informally negotiated, in busy, centralized courts. The kind of professional collegiality that Hogarth (1971) had earlier identified generates informal sentencing policies court by court, as microcosmic social climates influence locally acceptable court practices. The court climate impacts individual magistrates because the sentencing processes are situated in a unique context (Norrie, 1986) and come to partially reflect that context's dominant tendencies, though without obliterating the magistrates' individuality (Homel & Lawrence, 1992).

In the parole context, both contextual and environmental factors have been recognized as significant to decision-making. A review of conditional release statistics reveals that parole release rates have also been found to vary according to location of release (Hann & Harman, 1986). Similarly, NPB statistics (Performance Monitoring Report, 2000-2001) reveal variation in the grant rate depending on the region of release. For example, the Atlantic region had a regular day parole grant rate of 79% in 2000 to 2001, which was 1% higher than the Ontario region (78%) and 8% higher than the next highest regions (71% in the Prairie and Pacific regions). The Quebec region had the lowest regular day parole grant rate in 2000 to 2001 at 59%. Although there is little published empirical research to account for these differences, research on the

contextual influences on sentencing has found a positive relationship between political conservatism of the court jurisdiction and longer sentence lengths (Huang et al., 1996; Nardulli et al., 1988), and rural courts sentence offenders to longer periods of incarceration than do urban courts (see Huang et al., 1996, for a review of contextual influences on sentence lengths).

In addition to the impact of larger environmental factors, the more immediate contextual factors of observers at hearings and reference groups (criminal justice professionals who typically provide information to assist board members in their decision-making) have also been identified as contributing to decision-making disparity in a parole context. These factors are important contextual variables to specifically review given their immediate potential to influence the extent to which victim issues are consistently incorporated into or influential on parole decision-making tasks.

Observers

There are a number of ways in which the presence of hearing observers and, in particular, victim(s) and/or victim representative observers might influence the decision-making process of parole board members. The board members might directly be influenced by the presence of victim observers or indirectly by the offender's response (e.g., verbal and non-verbal behaviours) to the victim observers. The ways in which board members are influenced by victim presence or through offender responses to victim presence has implications for how influential the role of victims might be on parole decision-making.

Victim presence might, for example, cause board members to engage in a more comprehensive and focused risk assessment than would normally occur when the victim

is not present. An enhanced focus in the hearing on criminal history and the harm caused the victim might reinforce the seriousness of the case and, consequently, work towards a parole denial. It is also conceivable that, in the presence of observers, board members might place greater emphasis on their legislated requirement to be accountable for protecting the public. A focus on public accountability and public safety might influence the nature of board decision-making to the extent that offence seriousness, criminal history, victim impact, and risk to the community become the decision-making factors that are weighted more heavily than offender rehabilitation and plans for community reintegration. If victim presence affects individual board members in the ways outlined above, it would be evident that victim participation in parole has a significant influence and could result in higher rates of parole denials.

In addition to having an effect on board members, the presence of observers might also affect the offenders' presentation of their cases and, thus, board members' ability to collect relevant information for risk assessment purposes and decision-making. For example, in an already stressful hearing experience, the presence of the victim might increase offenders' discomfort and emotionality, negatively influencing their cognitive processes and ability to present their cases to the board. As well, with victims present, offenders might be more likely to be preoccupied with verbalizing their expressions of remorse, empathy, and responsibility to such an extent that it could interfere with their ability to answer board questions in a focused manner. At the same time, those offenders who do not express remorse, empathy, or responsibility in relation to their victim(s) might be evaluated in a negative light. Finally, the presence of the victim at the hearing might influence offenders to downplay any achievements related to their rehabilitation and minimize the positive nature of their plans for the future or

readiness to assume living in the community. Overall, if victim presence at the hearing should influence offenders in the ways outlined above, then it could result in victims' achieving a role which grants them a virtual veto over parole.

Reference Groups

Several research studies have demonstrated that decision processes in criminal justice involve interpersonal social transmission of information and recommendations across several actors. Konecni and Ebbesen (1982) found that judges based their sentencing decisions primarily on the recommendations of probation officers and their bail decisions, on the recommendations of the prosecuting and defence attorneys. In short, the courtroom workgroup (Jacob, 1978) of people who cooperate to process cases (judge, attorneys, probation officer, court clerk) is a decision unit. However, judges insist that they make the decision themselves and, for hypothetical cases, will pay much less attention to what the attorneys have recommended (Konecni & Ebbesen, 1982). Only in the studies of actual decisions does the impact of the workgroup become evident. In the pursuit of efficiency and working harmony, judges accede to recommendations that they otherwise might have overruled.

The potential significance of reference groups on both individual action and decision-making is also underscored in research on police decision-making. Mastrofski and Park's (1990) field work research on police decision-making emphasized the influence of the following reference groups in officer decision-making: the department's formal hierarchy, the officer's peer group, and the community. It has been demonstrated that officers select courses of action based in part on their anticipation of how these forces will react (Aronson et al., 1984; Brown, 1981). Brown (1981) suggests that

officers vary in the extent to which they are susceptible to organizational responses. Those with ambitions for promotions or assignments or other rewards are more susceptible than those with little or no ambitions.

In the parole context, research has found that the recommendations and opinions that flow formally or informally from others are significant to parole decision-making (Carroll, 1993; Carroll, Wiener et al., 1982). The most significant reference group factors include the following:

1. Make-up of voting board (e.g., who you are working with).
2. Parole board chair and correctional service directives.
3. Public opinion.

The make-up of the parole board potentially could affect the manner in which victim participatory rights become incorporated into specific parole decisions. Pogrebin et al.'s (1986) research on the Colorado parole board observed that the overriding factor in parole decisions was not the relative merits of the inmate's case but the structure of the board itself:

In instances in which there was disagreement between board members, the "position" taken by the most senior board member usually prevailed. Although mere "seniority" may not be the explanatory factor, it was evident that the most senior people "took charge," directing and dominating the deliberations. In fact, obvious deference was shown to more senior board members. This was a normative feature that typified the interaction and actions of each dyad. When parole board members were close in seniority, more disagreements were observed and the disagreements were more intense ...

We are comfortable saying that "decisions" the board reached were affected by the composition of the mini-parole board teams as much as they were by the characteristics of the case under review. What is troublesome is that this reflects a de facto policy in which parole is based in part of the peculiarities of individual cases and in part of the whims and caprice of parole board members. (pp. 150-154)

It is probable that particular combinations of teams of board members might prove to be more or less favourable to victim issues in parole.

The views of the parole board chair on victim participation rights in the parole process could also impact strongly on individual board member decision-making. This could happen in a variety of ways: through board chair recruitment of board members with a like-minded perspective on victim issues, training organized by the chair, performance appraisal procedures, and informal processes such as in-house meetings and casual conversations.

The potential for senior management personnel of parole boards to influence the decision-making of individual board members has received increasing scrutiny in Canada due in part to the recent media attention surrounding the allegations of a National Parole Board (NPB) member. Specifically, Mr. Jean Dugre, a 10-year veteran NPB member with the Board's Montreal office, went public in October of 1999 with allegations that senior managers at the Board were interfering in the parole decisions of individual board members. Mr. Dugre alleged that in one instance, the regional vice-chair of the Board tried to take an offender's file away from them when they indicated they were leaning towards an early release. Mr. Dugre made similar allegations of interference from the vice-chair in other cases.⁵⁶

Finally, a variety of research has found public opinion to be influential in many decision-making arenas (see Roberts & Stalans, 1997, for a review). Public opinion is often taken into account by judges when they render their decisions (e.g., Gibson, 1980); similarly, local community values and the political culture of the community affect

⁵⁶ Reported in National Post, October 11, 1999, "Dispute erupts over decisions by parole board."

sentencing decisions (Eisenstein et al., 1988; Huang et al., 1996; Ulmer & Kramer, 1998). As well, policy makers and legislators often enact particular laws in response to public opinion (Flanagan, Gasdow, & Cohen, 1992; Gottfredson & Taylor, 1984). Furthermore, public opinion is deemed important in shaping reforms that define which particular offenders should receive parole (Roberts, 1988).

Pollsters have long argued that the impact of public opinion is greatest on those issues that are highly visible and controversial (Glick & Pruet, 1985; Kuklinski & Stanga, 1979). Fear of crime and concern for public safety are among the most important controversial issues to Canadians. Canadian data on public opinion regarding the legal system are consistent in their findings that the public perceives the criminal justice system as being too lenient (Doob & Roberts, 1988) and the parole system, as relatively ineffective in releasing offenders who are not likely to re-offend.⁵⁷

Parole board decisions are among the most controversial of decisions made in the criminal justice system, and these decisions are becoming increasingly visible to the public, given recent legislative and policy changes that are designed to enhance the boards' public accountability.⁵⁸ Increased visibility of decisions has had repercussions on the decision-making process in other parts of the criminal justice system. For

⁵⁷ The 1999 General Social Survey (GSS) asked Canadians for the first time about the performance of the prison and parole system. Just over one quarter (26%) of Canadians felt the prison system was doing a good job at supervising/controlling prisoners, while only 14% felt the system was good at helping prisoners become law abiding. As for the parole system, approximately 15% of the population stated that the system did a good job at releasing offenders who were not likely to re-offend and at supervising offenders on parole.

⁵⁸ For example, in 1992, the National Parole Board established a decision registry that enables members of the general public, victims included, to request and receive copies of board decisions in individual cases. Motivated by the new legislative requirements to disseminate decisions and related information regarding board practices, the NPB also reorganized internal operations and implemented a new victims' division within each of the regional offices. This division is responsible for meeting all legislative and policy requirements relating to victim involvement in conditional release matters inclusive of information-sharing provisions as well as facilitating the sharing of victim impact information with board members.

example, Nardulli (1979), in his research on criminal courts, observes that the visibility of a decision is important because it has implications for the impact of different types of factors in decision-making: "The greater the visibility the greater the impact of environmental-level considerations, all other factors considered equal" (p. 128). To the extent that board members believe that public opinion represents an appropriately weighed factor in their decision-making, it is likely that they might lean toward a more favourable view where victim participation in parole is concerned.

In conclusion, it is clear that informal properties related to the individual, contextual, and environmental levels impact on parole decision-making tasks and influence how victim participatory rights are likely to be implemented at a practical level. Even though each of these influences impacts on decision-making processes and outcomes in various criminal justice arenas, it is evident that individual-level factors demand particular scrutiny in a parole decision-making context, given the vast discretionary powers afforded to individual parole board members. With the introduction of victim participatory rights in parole, a necessary undertaking is exploring how these rights relate to decision-making processes and practices at the level of the individual parole board member. It is important to explore in depth the view of board members regarding the appropriate roles for victims in the conditional release system, as well as how board members reportedly facilitate victim participatory rights in their decision-making, as these viewpoints provide some insight into the potential for victim participation to exacerbate the variability, inconsistency, and disparity that has historically been inherent in parole decision-making.

Chapter 6: Research Methodology

The following discussion outlines the methodology used in this study. It includes a description of the research strategy, board member participants, and the procedures employed.

Research Strategy

The following multi-faceted methodology, which included both qualitative and ethnographic approaches, was selected for exploring parole board members' opinions related to victim participatory issues in parole and their handling of victim input in the actual practice of their decision-making.

1. Questionnaire, which was completed by Canadian and U.S. parole board members (see Appendix C)
2. Observation of parole hearings (Canadian board sample only)
3. Semi-structured interviews, which were conducted with voting board members before and after observed parole board hearings (Canadian board sample only)

Following the Campbellian tradition, the choice of a multiple method strategy best served the theoretical and practical interests of this study (Campbell & Stanley, 1966). This approach has gained increasing prominence among researchers engaged in the

study of criminal justice decision-making.⁵⁹ As well, the choice of a multi-method strategy to investigate parole board decision-making was also based on the belief that no one methodology is best and that using a combination of methods, each with differing sources of bias, was the most fruitful research strategy.

A qualitative methodology was deemed a more valid approach to the study of the impact of the victim in parole board decision-making than that of a strictly quantitative methodology. As in many classic sociological and anthropological studies, the primary aim of this research was to gain an understanding of victim participation impact on conditional release decision-making, rather than measurement. Furthermore, the study of parole board decision-making through qualitative research techniques (interviewing and observation) was also thought to offer greater contributions at a policy and practical level.⁶⁰

Qualitative research has a two-fold advantage in processes of policy and practical influence: One advantage relates to influencing practitioners who are the researcher's research subjects and the second, to influencing practitioners who are the wider audience for the research findings (Bloor, 1997). In respect to practitioners who are research subjects, qualitative researchers can call upon their pre-existing research relationships with them as a resource for ensuring an attentive and even sympathetic response to their research findings. A close personal and working relationship, based on

⁵⁹ See Grenberg, Ruback, and Westcott (1982) and Greenberg and Ruback (1992) for examples of multi-method approaches to the investigation of victim decision-making; Runggay (1995) for multi-method approach to the empirical study of custodial decision-making in a magistrates' court.

⁶⁰ One of the most effective policy researchers in the field of sociology was Erving Goffman, whose ethnographic portrait of "total institutions" (Goffman, 1961) helped reshape a generation's summary understanding of the human quality of life in mental hospitals and prisons. Goffman's writings, which were cited prominently in federal court cases that recognized constitutional objections to aspects of involuntary confinement, gave officials a respectable source of authority for policy changes that were, no doubt, multiply determined.

social contact that has been built up over weeks and months, is likely to ensure that not only will practitioner research subjects have a particular interest in the findings (because of the identity of the researcher as much as a particular interest in the research topic), but they may also be willing to devote an unusual amount of time and effort to discussing the findings. When the researcher has become a person for whom the subjects have a special regard as a result of long familiarity, then it should come as no surprise that they will have an interest in implementing the researcher's suggestions on changes in practice. In effect, the qualitative researcher becomes a part of his or her local practitioner collective and trades on that position to disseminate research findings (Bloor, 1997).

The qualitative researcher can also provide rich descriptions of everyday practice that enable practitioners to juxtapose their own practices with the research description. There is, therefore, an opportunity for practitioners to make evaluative judgments about their own practices and experiment with adopting new approaches described in the research findings. Qualitative studies of everyday practice, particularly ethnographies, offer sufficiently detailed descriptions of practice to act as a spur to judgment and experimentation. As Shaw (1996) observes, they can provide a paradigm or exemplar for practitioners seeking to reflect upon and modify their work practices. Practitioners may not always have the autonomy to develop new services to new target populations of clients, but all practitioners have the autonomy and discretion to modify their everyday work practices. In seeking the chimera of policy influence, sociologists rather neglected how research findings can address social problems through the encouragement of modifications and developments in practitioners' everyday practices (Shaw, 1996).

Participants

Three of four Canadian parole boards⁶¹ and a random sample of 20 of 29 American parole boards with victim participatory rights provisions in either their policies or legislation were formally invited (written, verbal, email) to participate in the study.⁶² The final sample included one Canadian parole board and six American parole boards.⁶³ Fifty-two parole board members (48 regular parole board members and 4 board chairs) participated in this study by completing a written survey. An additional 10 parole board members participated via an interview and/or permitting observation of their parole hearings and decision-making processes.

The identity of specific parole boards and individual parole board members who participated in this study will not be revealed. In the interest of securing valid data and protecting confidentiality and anonymity, the researcher guaranteed parole board members that the identity of specific parole boards and individual board member respondents would not be revealed under any circumstances. Furthermore, participants were advised that the final survey results would be presented in an aggregated (grouped) format without any reference to the responses from specific boards or individual board members. Board member participants were also aware that there were

⁶¹ The provincial parole board in Quebec was excluded due to the language barrier.

⁶² These paroling authorities were distinguished by the fact that they were directed by state, provincial, or federal victim rights legislation and board policies/directives to include the victim in their parole practices (e.g., proactive process for informing victims of upcoming parole hearing dates and solicitation of their impact statement, victim permitted to provide impact and other desired information to the board, victim permitted to meet directly with board members, victim permitted to attend hearings as either an observer or to provide verbal statement to the board).

⁶³ Eleven American parole boards had initially agreed to participate in the study. Of the 11 U.S. boards that were sent research materials for distribution, board members from 6 U.S. parole boards sent completed questionnaires back to the researcher.

numerous parole boards participating in the research, thus lessening the possibility that any particular parole board could inadvertently be identified.

Board member recruitment and participation in the study, as well as subsequent data collection, was also facilitated by the researcher's "insider research" status.⁶⁴ Specifically, the researcher was a member of a parole board at the time the research was conducted. All research subjects were advised of the researcher's insider status through either the written introduction to the survey or verbally at the beginning of the interview and participant observation process. What Riemer (1997) termed "opportunistic research strategies" (p. 467) such as using one's own "at hand" knowledge, unique biographies, and situational familiarities as sources of research ideas and data, was methodologically profitable. As a number of writers have argued, the best qualitative researchers are those who are already "empirically literate", that is, already familiar with the phenomenon and setting under study (Bruyn, 1966; Miles & Huberman, 1984; Reinharz, 1984; Roseneil, 1993). If the investigator already "fits" into a particular environment and is familiar with its social organization, there is a certain level of "in-built, face-level trust" between researcher and researched (Riemer, 1997, p. 474). This familiarity was important in ensuring familiarity with the "language" of the social setting⁶⁵ and enabled the researcher to avoid meaningless and irrelevant questions and to probe sensitive areas with greater ease.

⁶⁴ Roseneil (1993) coined the term *insider research* to describe a research endeavour that utilizes the insider's personal experience and unique life history for research purposes.

⁶⁵ As proposed by Bruyn (1966), language is used in the broadest sense in that it encompasses not only words and the meanings they convey, but also non-verbal communications such as facial expressions and bodily gestures in general.

Representativeness of Board Member Sample

While a representative sample of parole boards and individual board members with victim participatory policies was initially sought, a cautionary note is necessary given the resulting board sample for this study. First, only one of three invited Canadian Boards and 6 of 20 invited U.S. Boards participated in the research. While the sample of 23 parole boards were similar in terms of their inclusion of victim participatory policies, where is no information available about the specific characteristics of boards or individual members who chose not to participate in the research. Accordingly, the researcher was unable to compare participating and non-participating boards and their individual board members to ascertain the presence of significant differences between these two groups.

Further, while combining the Canadian and various U.S. parole board samples for data analysis purposes was necessary to facilitate both member participation and anonymity, it also introduces potential sources of sampling error. Clearly, there are any number of differences between countries and/or individual parole boards which may represent extraneous variables (e.g. differing political cultures, variations in board member procedures/policies). This therefore limits the ability to conclude that the sample is representative of all board members within a particular parole board or country.

Notwithstanding the above caveats, the sample is assessed as sufficiently representative of the board member population as it pertains to the general research objective of exploring board member reviews and usage of victim information in conditional release decision-making.

Procedures

Questionnaire Materials

The purpose of the questionnaire for board members and board chairs was to explore their opinions about and experiences with victim participation in conditional release and the impact it has on conditional release decision-making. The questionnaire research packages for both the Canadian and U.S. board members were identical and included two separate questionnaires: one designed for the parole board chair and the other, for board members (Appendix C). As required for ethical approval, all subjects were provided with an explanation of the research being conducted (Appendix C) and the necessary consent forms (Appendix B).

Observation of Parole Board Hearings

Observing parole hearings was a useful method for assessing the means and methods by which victim information was integrated into the interview and decision-making exercises of board members and the potential effects of the victims' presence and/or their presentations made at the hearing.

The researcher observed a small sample of 12 parole hearings conducted by members of a Canadian parole board. These 12 hearings were conducted over a 6-month period and involved three separate hearing days and three different teams of two board members (board members worked in pairs on each hearing day). All three board member pairs had equal representation of genders: one male member and one female member for each of the panels. In terms of racial composition, four of the board

members were White, one was Aboriginal, and one, Indo-Canadian. Two of these hearing days involved male offenders and one, female offenders.

The selection of hearings was facilitated by a coordinator of parole hearings for the parole board under observation. The coordinator was directed to alert the researcher to hearing days that were characterized by a mix of "victim" and "non-victim" interests. *Victim interest* hearings were defined as occasions where the victim was scheduled to appear at the hearing (either as an observer or to give an oral statement to the board) or cases in which victim information was available for consideration by the board (e.g., victim impact statements, written submissions to the board, victim requests for parole conditions). *Non-victim interest* cases were those in which victim information was not available in the parole board member's file or victims did not appear at the hearing. Board members were not advised that the researcher would be present as an observer until the day of the hearing.

Over the course of the 6-month research period, only 6 hearing days were identified as meeting the research requirement of possessing a mix of hearings that contained victim and non-victim issues. Out of the total of 12 parole hearings observed, five contained victim issues. Four contained significant victim information (e.g., victim impact information present in the file materials) and at one, the victim was present and made an oral presentation. The remainder of the seven parole hearings observed contained no identified victim issue or interest. Even though the number of hearings with victim issues was small, it still permitted some comparison between hearings with victim information and hearings with no obvious victim interests represented.

In addition to the observation of hearings, on two of the hearing days, the researcher was allowed to sit in during the pre-hearing deliberations of the board (where

discussions and analysis of important case factors took place before the formal hearings among the board members) and the actual decision-making deliberations of the board members (following the hearing where board members weigh and discuss the factors influencing their decision and ultimately arrive at their determination to grant or deny parole). The two pairs of board members also agreed to “think out loud” both during the pre-hearing deliberation phase and the deliberation phase following the hearing. The opportunity to observe the board members undertaking file study, case analysis, deliberation, and decision-making processes was an usual circumstance and one which would not have been granted had the author not also been a member of a parole board in another jurisdiction.

The potentially obtrusive nature of a research observer was an important issue to be addressed. Substantial literature exists on the threat of reactivity when using participant observation generally and with criminal justice agencies, in particular (see Manning, 1977; McCall, 1975; Reiss, 1967, 1968; Webb et al., 1966, in Mastrofski & Parks, 1990). As Foster, Bell-Dolan, and Burge (1988) have noted, awareness of being observed can create changes in the behaviour of those observed. If such changes occur, then any conclusions based on those observations will be at best suspect and possibly invalid (Repp et al., 1988). Obtrusive assessment or observation, then, may create a reaction in those observed, and, thus, there is always the question of the extent to which individuals modify their behaviour in the presence of the observer.

Reactivity concerns were minimized to some extent due to the researcher’s insider status as a board member of another parole board. This status allowed for two of Bruyn’s (1966) six indices of “subjective adequacy” to be immediately achieved. These indices include *language* (the more familiar the researcher is with the language of the

social setting, the more accurate will be his or her interpretations of that setting) and *intimacy* (the greater the personal involvement with the group and its members, the more the researcher is able to understand the meanings and actions they undertake).

Furthermore, debriefing interviews and board member checks were also conducted.

Routine debriefing following observation also assisted in assessing the extent to which researcher presence was viewed by board members as influential, as well as in assessing the validity of observations. As performed by Mastrofski and Parks (1990) in their research on police discretion and decision-making, it was found that debriefing “only systematizes what most police do anyway with observers who do not debrief: They talk about the events just observed, provide their own account of the matter, and justify their actions” (p. 485). Similarly, Scott and Lyman (1967) found that research subjects demonstrated a strong need to proffer such information when they think their actions might be interpreted by others as inappropriate, strange, or otherwise unaccountable. The impact of debriefing was measured by Mastrofski and Parks through a post-observation anonymous survey of observed officers. Survey results indicated that 95% of those observed indicated that their behaviour was never or rarely influenced by debriefing (p. 487).

The use of board member “checks” was also employed. Among the strategies by which ethnographers manage bias are “member checks” and “triangulation” (Morrill & Fine, 1997). In member checks, participants are asked to assess the plausibility of the ethnographer’s interpretations and conclusions. The recognition by members of a setting that an ethnographer’s interpretations are plausible reconstructions of the members’ own experiences enhances the authenticity of an ethnography and helps to control for

research bias. Member checks in this study were usually conducted after each parole hearing, or, if this was not possible, were made at the end of the hearing day.

Board Member Interviews

The purpose of board member interviews (Canadian Board sample only) was to explore how individual board members processed, weighed, listened to, and incorporated victim information into their decisions and the kind of experiences they recalled regarding the effect of victim input on decision-making processes and outcomes. Two specific interviewing strategies were employed with selected board members: (a) pre- and post-hearing interviews and (b) in-depth interviews.

Pre- and Post-Interviews

Pre- and post-parole board hearing interviews were conducted in relation to 12 separate parole decision cases, involving three separate pairs of parole board members (Canadian Board sample only). The interview format for both pre- and post-interviews was relatively unstructured and generally focused on various open-ended questions relating to victim issues in conditional release decision-making or relating to queries about the significant decision-making factors bearing on their decision to grant or deny parole. Board members were interviewed as a team. Group interviewing was viewed as advantageous as it allowed members more time to reflect and to recall experiences; also, something that one member mentions can spur memories and opinions from others. Moreover, by allowing moments of not having to talk, of being able to listen to others, group interviewing gives each member the opportunity to rethink and amend any initial account that, upon reflection, seems to need amplification, qualification,

amendment, or contradiction. In addition, board members may not agree with one another on matters of opinion, providing instances of interchange between contrasting perspectives (Lofland & Lofland, 1995, p. 21).

The length of the pre- and post-hearing interviews varied between 10 to 30 minutes. In the interests of representing the subject's opinions in writing as faithfully as possible, field notes were taken during and immediately after the interview to ensure a detailed and valid representation of interview information and dynamics. In most instances, there was a short stand-down period prior to each hearing in which additional note taking could take place.

The post-hearing interviews, conducted immediately following the hearing, represented a replication of data collection methods utilized by Mastrofski and Parks (1990) in their studies of police behaviour and decision-making. Mastrofski and Parks recommended asking criminal justice actors to describe their cognitive processes, rather than trying to infer cognition from observed behaviour. They describe their technique for getting data on police cognition as follows: "We suggest that as soon as possible after an encounter's conclusion, observers ask officers to describe the decision process they have just completed—what they perceived, thought, and felt during the course of the encounter" (p. 479).

Furthermore, the validity of self-report recollections is believed to be enhanced if they are elicited as close in time as possible to the recollected material (Carroll & Johnson, 1990, p. 36), as research has demonstrated that reliable distortions can occur in the recall of events and experiences from the distant past (Tulving, 1991). These memory issues are likely to be problematic when studying parole board decision-making given the significant number of hearings on the same day, which contain similar case

details. The strategy of interviewing following a decision-making exercise, referred to as a “debriefing interview” (Mastrofski & Parks, 1990), was also viewed as assisting in accessing difficult-to-observe stimuli that may influence decision-making. In their study of police decision-making, Mastrofski and Parks found that seemingly arbitrary factors in decision-making, such as “officer mood”, were discovered by the researchers in their debriefing sessions with officers. Other factors such as reference group influence (e.g., peers, organization) may also be discovered through debriefing.

In-Depth Interviews

In addition to interviews conducted pre- and post-hearings, a small sample of 4 board members also participated in a more expansive, in-depth interview that lasted between 30 and 40 minutes.

The depth interview schedule included open-ended questions about the content and quality of victim impact information the board members had seen and their perceptions of specific victim impact effects on conditional release decision-making. The instrument also sought the board members’ opinions about the role of victims in the criminal justice process and the need for victim impact information and involvement in conditional release systems. Throughout the interview, respondents were asked to provide specific examples and reasons for their answers. Respondents were also asked questions about their professional background, length of experience with the board, and their penological philosophy.

Even though interviewing approaches in general are vulnerable to the criticism that respondents’ answers are likely to be altered in the direction of social acceptability, it is important to know what board members believe acceptable answers to be, and if

conformity to group norms is important to them, then their actual behaviour in decision-making may reflect their “idealized”, rather than their “real” selves.

Data Analysis Techniques

The open-ended questionnaire and interview items were qualitatively content analyzed to determine the most frequently elicited (e.g., consensual responses). Closed-ended questions were quantitatively analyzed via the SPSS statistical software package. The SPSS exact test option was used for calculating significance levels of cross-tabulations. Specifically, the Monte Carlo method was employed as the data set was small, the tables were sparse and/or unbalanced, and the data failed to meet several of the underlying assumptions necessary for reliable results using the standard asymptotic method.

Chapter 7: Results

Parole Board Member Characteristics

The demographics of the 48 parole board members who participated in the survey component of the research were as follows: age (70% were over 50 years of age), gender (70.5% were male), marital status (71.4% were married), race (73% described their race as white), educational level (90% had post-secondary credentials), political orientation (83.3% reported to be moderate to very liberal), and length of tenure (55%, under 3 years; 21%, 4 - 7 years; and 5%, over 7 years). Demographic data were not collected with respect to parole board chairs.

The demographics of the 10 board members who participated in the interview and participant observation component of the research were somewhat more diversified in both race and gender. Specifically, 2 of the 6 board members were members of a racial minority (Indo-Canadian and Aboriginal), and 3 of the 6 board members were women. Of the 4 board members who participated in the interview component of the research, 2 were women and 1 was a member of a racial minority. All 6 board members possessed post-secondary credentials and all had tenures under 3-year durations. Political orientation and marital status data were not collected.

Overall, of the 62 board members who participated in this study, 39.6% of the data collected were from Canadian parole board members/chairs, and 60.4%, from American parole board members/chairs.

Research Questions

The following research questions are analyzed in chronological order.

1. How do parole board member decision makers view the role and involvement of victims in conditional release?
2. Do parole board members perceive any dangers or drawbacks with victim involvement in conditional release?
3. Is victim information and involvement viewed as relevant and influential in the practices and decision-making exercises of parole board members?
4. How, in actual practice and in what ways, is victim information and involvement integrated in parole decision-making?
5. Is there a greater likelihood of parole denial because of victim participation in the conditional release process?
6. What individual characteristics of board members, if any, have an influence on opinions and decision-making on victim issues?
7. Are there contextual or environmental factors that influence decision-making and the significance assigned to victim information in decision-making?

Research Question 1:

How do parole board member decision makers view the role and involvement of victims in conditional release?

As mentioned in a previous chapter, the addition of victim interests, issues, and information adds yet another subjective dimension to a highly discretionary and complex decision-making exercise. It is important to explore what board members believe are appropriate roles for victims to play in the conditional release system, as these views provide some insight into the degree to which victim participation represents an influential variable in parole decision-making.

When board members were asked whether victim needs were better addressed at the front end of the criminal justice system (e.g. police and sentencing) than at the parole stage, 46% of board member respondents agreed (see Table 1).⁶⁶

Table 1. Member Opinion on Timing of Victim Participation in Justice System

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Disagree	17	35.4	36.2	36.2
	Neither Agree or Disagree	8	16.7	17.0	53.2
	Agree	22	45.8	46.8	100.0
	Total	47	97.9	100.0	
Missing	System	1	2.1		
Total		48	100.0		

Furthermore, even less support was found for having victims speak at parole hearings (see Table 2).⁶⁷ A majority (64.6%) disagreed with the practice, and only a quarter of them (25%) expressed agreement with it. A further 10.4% were ambivalent (answering neither *agree* nor *disagree*).

Table 2. Member Support for Victims Speaking at Hearings

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	12	25.0	25.0	25.0
	Neither Agree or Disagree	5	10.4	10.4	35.4
	Disagree	31	64.6	64.6	100.0
	Total	48	100.0	100.0	

⁶⁶ Question #21 on questionnaire read as follows: "Victim needs are better addressed at the front end of the criminal justice system (e.g. police and sentencing) than at the conditional release stage."

⁶⁷ Question #19 on questionnaire read as follows: "I am in support of victims speaking at parole hearings."

With respect to what role board members felt the victim should play in the parole stage,⁶⁸ seven general "roles" for victims emerged from the analysis of survey and interview data (representing data from 50 board member respondents). These seven roles are outlined below, with representative comments from board members (survey and/or interview data) presented for illustrative purposes.

Victim Roles in Conditional Release

1. Victim as provider of information concerning offence impact.

This role for victims viewed the victim as primarily a provider of information regarding the impact of the crime.

I think the victim should come participate in the hearing to let the board know what they went through and how their life has been affected as a result.

Give the board actual circumstances of the crime and emotional impact of the crime.

Inform the board as to the facts and physical emotional trauma caused by the inmate.

It is important for the board and the applicant to understand the past and current impact that this crime has had on the victims. Therefore, presence at the hearing is best but it depends on the crime and how this will affect the victim.

...in those special cases involving heinous crimes it is very relevant to personally speak (telephonically or in person) with the victim. The total impact of the crime and the resulting consequences should be seriously weighed in the release decision.

I believe they should be given an opportunity to provide their opinions and feelings. The impact the offence has had on their life.

⁶⁸ Question 8 read as follows: "Based on your experience as a parole board decision maker, can you comment on what role you feel the victim should play in conditional release (parole) decision making."

2. *Victim as provider of information relating to parole conditions.*

This perceived role for victims was quite restrictive in that the victim was viewed as an appropriate participant in conditional release in relation to providing information or direction as to reasonable and necessary conditions of parole.

The victim involvement should be open to the extent they are allowed to attend the hearing, have an opportunity to address the board, provide requests for conditions of supervision and review of file information.

Provide board perspective on: personal safety concerns, how can the safety concerns be addressed, anticipated future relationships to parolee.

Requesting consideration for no contact with offender.

Role in terms of describing impact of offence—any concerns regarding release that we can address via conditions.

Victim information can be used to ensure the details of a release plan are relevant to the behaviours of concern.

The presence of the victim should be seen as an opportunity for both victim and offender to acknowledge the crime of the past, that is, the injustice and pain to the victim, and the conviction and penalty to the offender, and to face the reality of the present and future, specifically the offender will soon be released, on parole or end of sentence, and will return to society. The hearing provides an opportunity to define rules for an orderly return to society through parole, with restrictions, treatment and supervision. Having both victim and offender in the room to participate in the discussion and involved in the defining of these rules can be of significant benefit to both parties.

3. *Victim as provider of information relevant to risk assessment.*

This role for victims was more expansive than viewing victims as merely providers of information and/or sources of justification for parole conditions. This role saw victims as direct contributors to the board members' assessments of an offender's risk.

Our role, representing the community should try to ensure that we are objective when making our decisions—We are not retrying the crime but

need to hear from the victim to help us make a fair decision re: will this offender commit further crimes, etc.

I feel victim information is very important. I prefer victims to attend hearings as they (offenders) seem to be more truthful.

Provider of information relevant to assessing offender's risk to the community. Information relevant to their protection in community.

The presentation of the information provides an opportunity to the board to assess empathy and attitude of the offender for the victim(s). While this is not a criteria for release, this assists the board in assessing risk.

In addition to the survey data, interview data with board members also revealed a belief that an offender's response to the victim's presence and information is significant in assessing risk. The following is an example of this belief in the words of one female board member:

The response given by the offender [after the victim's oral statement is read at hearing] is very telling and important for the board members. Is the offender still controlling and manipulative, still minimizing? Or, is there remorse? I know remorse is not supposed to be a factor for decision-making. Regardless, the response by the offender to the victim is very important and board members are very cognizant of this.

4. Victim as provider of any information for board consideration.

This role for victims saw requiring no restrictions on the information they provide.

Victims should be able to provide whatever information they wish to the board. Victims should be able to participate fully in hearing process.

In _____ there is a victim notification system that is designed to provide the victim or his/her family opportunity to communicate their concerns to the board. There is also a monthly "victims conference" day each month to allow a "face to face" discussion with a parole board staff member.

The victim should be allowed to communicate their opinions, feelings and attitudes freely with decision-makers. This does not always have to be done in a face-to-face interview. The victims are the best source of information concerning the long-term effects. Once communicated, their information becomes another factor to be considered in relation (not in conflict) to all of the other factors.

5. *Victim as provider of direction on parole decision.*

This role for victims has the potential to more directly influence decision outcomes in that victims' opinions about release are encouraged and considered relevant.

They should have the opportunity to present their feelings, emotions and philosophy as to what should happen to defendant.

Provide opinion about release.

Victims have more impact that they think they do—we get package of signatures (against release) and it can have an enormous effect.

Parole Boards have a great deal of discretion in many jurisdictions, more than sentencing judges. Victim participation helps direct and channel this discretion.

Provide information about offender (if applicable) and opinion about parole release.

The victim role is very important. The victim represents the community and is the victim. Their views, feelings, apprehension are paramount, in terms of possible release.

6. *Victim role as fulfilling restorative justice objective.*

This role for victims establishes them as part of a restorative justice process, which is perceived as offering unique reconciliation or rehabilitative benefits to both offenders and victims.

The victim should express how the offence has affected him/her: at the time, presently and in the future. Establishes parameters for contact and possible restorative measures.

I do support the concept of victim offender mediation and I would like to see that avenue explored as part of conditional release. I am in favour of the victim having the opportunity to tell the board how he/she has been affected by the crime.

Victim information is part of the overall number of assessments and submission. While it is important, it is not vital. I believe that the board has in the past and continues to make good decisions without victim

participation. Victim inclusion relates to the restorative aspect of the criminal justice system. I believe that our processes must be open and accountable.

Interviews with board members also focused on the theme of the potential for the ends of restorative justice to be achieved through the parole phase of the sentence. For example, one female board member advised that the “more victims find out about chances for reconciliation the better. This can happen through the parole process.” She also specifically recalled her experiences in two hearings in which the victim was present. She described the following benefits:

The offender had avenue [at the hearing] to explain he was sorry. Often advice given by lawyer is not to say anything during trial. The court demeanour is what the victim sees—no remorse.

Some victims come and cry through while hearing. In the end, the hearing and emotions from the victim may have helped to change—maybe motivate the offender to change. I had one offender who had negative attitude. Maybe victim being there would help make a change.

Another female member of the board also felt that the “victim has a right to a voice in the process” and to be “heard and considered by the board”. Specifically, she stated:

There is a need to be a more holistic approach to reintegration—to healing. My background is in this area—I have seen the pain of victims. Hearing is an opportunity, not for counselling, but for some healing for the victim and the offender. Victims must have a say in the hearing process. It cannot just be about offenders. There are two parties involved.

7. *Victim has restricted or no role in conditional release.*

This role for victims represents a relatively restricted one in terms of the potential for victim information to be of direct influence on decision-making practices.

Victim has a right to input but not right to deny offender successful reintegration. Protection of entire community in long term enhanced by parole and this must be considered.

Background information only.

Our role, representing the community should try to ensure that we are objective when making our decisions—We are not retrying the crime but need to hear from the victim to help us make a fair decision re: will this offender commit further crimes, etc...

For other board members, the role for victims is even simpler: There is no place for them in conditional release.

No significant role (for victims in parole)—(victim involvement) should be at outset of court process.

The emotional or psychological impact on the victim is seldom relevant to the parole criteria. Economic impact on the victim may be relevant but parole cannot usually address such issues.

Research Question 2:

Do parole board members perceive any dangers or drawbacks with victim involvement in conditional release?

Board members and chairs were asked in either a survey or interview format whether they perceived any dangers or drawbacks associated with victim participation in the parole stage of the justice system.⁶⁹ Forty-four out of 48 surveyed board members, all 4 board chairs, and a further 6 out of the 10 interviewed board members responded to this question. A minority of surveyed and interviewed board members (9 of 50), but a majority of parole board chairs (3 of 4) reported seeing no significant dangers or drawbacks and offered positively phrased comments in support of victim participation:

Victim participation is necessary.

I firmly support victim participation at parole hearings written or in person.

⁶⁹ Questionnaire question (#9) and interview question read as follows: "Over the past several years, victim rights issues and victim participation in the criminal justice system have attracted increasing attention. In your opinion, are there any dangers or drawbacks associated with victim participation in the parole stage of the justice system?"

In general can be positive/constructive.

No, victim involvement helps to ensure offender accountability—facilitation of empathy.

Due to the fact that victims were overlooked for many years in the criminal justice process, their input is deemed essential and important to the decision-making process—I see no negatives associated with their inclusion.

Parole Boards have a great deal of discretion in many jurisdictions, more than sentencing judges. Victim participation helps direct and channel this discretion.

_____ is one of the few states that was proactive in the area of allowing victims to be heard. I can see no dangers or drawback in victim participation so long as it is kept in proper perspective.

The majority of surveyed and interviewed board members (82%, 41 out of 50) and 1 of the 4 board chairs voiced opinions about the potential dangers or drawbacks that victim participation in parole posed. A content analysis of both survey and interview data with board members revealed the following eight categories of concern.

1. Negative motives of victims.

A commonly perceived drawback with victims' involvement in parole was their potential to overwhelm board members with negative feelings toward the offenders, identification with the victims, and the negative roles they might play in diminishing the board's ability to process other relevant evidence, such as evidence of offender rehabilitation.

The board can be victimized by victim's voice of rage.

Yes. Victims often have secondary motives. They may have attitudes and values that run counter to conditional release philosophies. They may be seeking revenge or be vindictive.

Victims' rights and participation in the criminal justice system are peripheral. That applies also to the parole stage. So long as they are peripheral they are no danger to the system. If victims begin to have a place in the system,

vengeance, punishment and condemnation will have to be reviewed to ensure a balance of fairness.

The victim could be overstating the case for revenge.

Retrying the case. Attempts at retribution.

Yes. Victims tend to be vengeful/angry at offender—hindrance to reintegration.

In ____ pleas from victims and their advocates are considered but cannot be the controlling factor in the release readiness process.

There is also a danger of the victim thinking they can dictate what the process is.

No dangers or drawbacks so long as the final decision(s) are made by the board, not the victim or an advocate for victim's rights.

Many victims often have the attitude that no amount of remorse is enough. Not enough is done for victims **and** helping them deal with the issues—there should be more done—more services for them.

She came (to the parole hearing) to offer more shame and punitive impact. This is the opportunity for the victim. The victim couldn't do it at the Court so they do it at the parole hearing. This is a negative about victim involvement.

2. Victim re-victimization if offender granted parole.

This concern involved the potential for victim re-victimization in cases where, for example, an offender is granted parole against the wishes of the victim or a victim has to participate in a hearing with an offender who is in denial and unrepentant.

Victims can get hopes up that offender will not be released if victim says "no". Board can't only consider victim issues in making decision. Often offender is ready for release and no threat to community.

My concern for the victim surrounds their readiness to participate in a hearing where the offender is not remorseful or doesn't take responsibility for their behaviour. I am always concerned that the victim will be left feeling re-victimized. I believe the victim needs some type of counselling to prepare them for possible outcomes. My hope is that the victim will feel empowered when they leave the hearing.

Heightened expectation that offender will not be released if victim is opposed. Negative perception of parole process can result.

The drawback that I do see especially in cases where an advocacy group hunts down the victims (whom have moved on with their life and are now being asked to relive the past for the sake of keeping the offender incarcerated) and it's a part of their part they have buried deep...I do believe this victimizes them again.

The danger associated with victim participation is that they run the risk of being or feeling victimized again if the board decides to release the offender.

Interview data with one board member pair also revealed another type of victim re-victimization that did not emerge from the survey data. A male board member described how participation in parole can result in re-victimization for the victim due to having to face their home community:

It is a burden for victim who attends (the hearing), they have to go back to the community and defend the decision (if decision is to release).

The board member described the following reason for his position:

At one hearing the victim's sister attended [victim killed in car accident] and she felt our decision to release was fair [victim attended the hearing]. The community, however, was outraged. The board received over 5,000 signatures to deny release.

The victim had to go back and keep her thoughts to herself about her feelings. She now felt okay with release but her whole community felt differently. She must now live with the burden of feeling differently about the decision to release. She has to defend and answer questions. This promotes emotional turmoil for many victims. Those who don't attend the hearing [e.g., the community who was outraged] don't understand what went on at the hearing and don't have that insight.

The board member explained that after this particular hearing, the board members made a special effort to speak with the victim after the hearing and give her advice on how to deal with the community.

3. Negative impact on offender.

For some board members, perceived dangers associated with victim involvement centred on the potential negative impacts on the offender. These ranged from the possibility that the presence of victims could hamper offenders' performances in their parole hearings to influencing offenders' decisions to waive or postpone their hearings altogether.

I feel the victim may feel threatened by the presence of the offender, and vice versa. The victim may over or under dramatize the situation, thereby giving false information affecting the decision. Interviews with the victim should/could be separate from the interview (with offender).

Yes, offender can respond poorly in interview. More on edge than usual. Hard to question under these circumstances.

Inmates often feel uncomfortable with their involvement. This isn't necessarily a negative or drawback per se. Offenders can waive hearings and/or refuse to attend.

Survey results indicated that just over 29% of board members believed that offenders postponed or waived their hearing because of victim presence (Table 3)⁷⁰ and approximately 27% (Table 4)⁷¹ opined that the presence of the victim at the hearing has a negative impact on the offender.

⁷⁰ Questionnaire question #17 wording as follows: "Based on my experience as a board member, I have found that offenders postpone/waive their hearing because of the presence of the victim."

⁷¹ Questionnaire question #18 wording as follows: "The presence of a victim at the hearing has a negative impact on the offender."

Table 3. Member Opinion that Offenders Postpone or Waive Hearing Because of Victim Presence

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Disagree	13	27.1	27.1	27.1
	Neither Agree or Disagree	18	37.5	37.5	64.6
	Agree	14	29.2	29.2	93.8
	Not Applicable	3	6.3	6.3	100.0
	Total	48	100.0	100.0	

Table 4. Member Opinion that Presence of Victim at Hearing Has Negative Impact on Offender

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Disagree	10	20.8	20.8	20.8
	Neither Agree or Disagree	24	50.0	50.0	70.8
	Agree	13	27.1	27.1	97.9
	Not Applicable	1	2.1	2.1	100.0
	Total	48	100.0	100.0	

Some interview data with board members also revealed opinions about the potential for victim presence to impact negatively on the offender. A male board member describes his experience:

I had an experience after the hearing where the victim was there (and mother of the victim) and they were hugging and so forth. It seemed like the hearing played to the victim though. I wasn't sure how to deal with it. The Offender was paying attention to the victim and not to the board.

A female member of the board, in explaining her comment that "the board can be victimized by victim's voice of rage," explained that it is necessary that the victim be restricted in their "voice" at the hearing to certain criteria. She also believed that victims should be versed in advance about what they can say and what they will face in the hearing. In an explanation of her position, she said, "It was the discretion of board

members for how long victims can speak. There are advantages in that our board is creative but this can be unfair to offenders. We need more policy around victim issues.”

4. Higher rate of parole denial.

This category concerns the possibility that the introduction of the victim could mean longer sentences for offenders because it would increase the potential that parole would be denied if that were the wish of the victim.

[Victim information/participation] could quite possibly result in higher parole denial.

Unnecessary pressure to weigh victim information more heavily than other information.

Victim information is one factor to be considered in relation to all other factors. It is not intended to control the decision.

[Victim information/participation] can be overly influential in final decision to grant or deny release.

5. Impact of emotional victim information on board members.

This category of perceived danger resulting from victim participation centred on the uncertainty of how to deal with emotional displays from victims and the impact of such emotionality on board members and their decision-making functions.

It *could* influence certain people if they had strong emotional feelings about the case.

The Parole Board members must attempt to evaluate the information objectively.

From a management perspective there are two areas of concern, one is that the board is made up of individuals of varied backgrounds, and many feel rather ill prepared to deal with the potential emotional/tension issues, therefore additional training becomes a requirement.

Board members should not be overly influenced by emotional pleas only. Victim input is one piece of the puzzle.

There are always concerns that victim involvement may detract from both the intent of the hearing, that the emotional issues may disrupt the proceedings and that one or both of the parties might not present well in the presence of the other, or that restraint may be required.

6. *Interference with risk assessment process.*

The potential for victim involvement to interfere with the board's ability to engage in risk assessment procedures and processes was also noted directly or inferred.

Information from victims not particularly relevant to assessing parole readiness.

Victims needs usually cannot be met at this stage. Better met at front stage.

Victim participation is welcomed. However, it is important to note that the Courts initially heard all the same information, convicted the offender and sentenced the offender. But it is our responsibility to determine at what time release is appropriate and there are a great deal of factors that also must be considered.

The hearing process is a serious process and supports on both sides must stay within the boundaries.

Interview data with board members revealed an additional concern that victim presence could impact negatively on the ability of the board to conduct a thorough risk assessment. A female board member described her concerns in the following way:

Board members might not ask certain questions if victim is there. If victim there you might not go into details. This is a negative, especially if it is a sex offender. Dialogue limited between board and offender when victim is there. Presence of victim does not encourage more truth from the offender. The offender tightens up if victim there. You [the board members] then make assumptions about what is going on. You have to read body language of offender. Dialogue restriction between board and offender is a problem.

7. *Differential treatment of victims.*

Another potential drawback that emerged was the possibility that the victims might be treated differently depending on their status in the community. Almost 39% of surveyed board members agreed that cases involving high profile victims are "treated

differently” than cases where the victim is unknown or low profile (see Table 5).⁷² Unfortunately, no board members chose to elaborate on the nature of these differences. These differences might be consequential for the offender (higher rate of parole denial), victim (board more likely to vote with wishes of victim), or board members themselves (high profile victims mean more study time and preparation and have no significant impact on decision-making).

Table 5. Member Opinion on Differential Treatment of High Profile Victims

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Disagree	19	39.6	42.2	42.2
	Neither Agree or Disagree	9	18.8	20.0	62.2
	Agree	17	35.4	37.8	100.0
	Total	45	93.8	100.0	
Missing	System	3	6.3		
Total		48	100.0		

8. Practical concerns.

On a more practical level, issues were raised about accommodating and managing the presence of the victim in institutional settings and at the parole hearing itself.

Concern—safety issues—can be controlled through room set up.

The other issue is the problem of facilities and time, given that we have accommodated several relatives and observers in certain hearings, and that some facilities require physical modification, not to mention the security checks and planning in terms of accommodating the audience. Having victims and others in the room generally adds to the time a hearing takes.

⁷² Questionnaire question #22 worded as follows: “Cases involving high profile victims are treated differently than cases where the victim is unknown or low profile.”

Research Question 3:

Is victim information and involvement viewed as relevant and influential in the practices and decision-making exercises of parole board members?

Given the considerable degree of latitude for board members' subjective perceptions or attitudes to impact their decisions, it is important to investigate whether parole decision makers differ in their views on the specific weight and/or importance of victim information to their conditional release decision-making tasks. If, as expected, differences in how victim information is thought to be incorporated into the conditional release decision-making process are demonstrated, then it is important to attempt to explain these differences.

Influence of Victim Information

Overall, of those board members who responded (44 out of 48 board member respondents), almost 92% perceived victim information to have had some kind of impact on conditional release decision-making. When asked what influence, on average, victim information had on conditional release decision-making,⁷³ only one board member believed that victim information had no influence on conditional release decision-making (see Table 6).

⁷³ Questionnaire question #30 worded as follows: "On average, victim information (e.g. victim impact statements, victim presence at the hearing) has had the following impact on conditional release decision making."

Table 6. Member Opinion on Influence of Victim Information on Decision-making

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no influence	1	2.1	2.3	2.3
	some influence	13	27.1	29.5	31.8
	moderate influence	26	54.2	59.1	90.9
	substantial influence	4	8.3	9.1	100.0
	Total	44	91.7	100.0	
Missing	System	4	8.3		
Total		48	100.0		

Also underscoring the influence of victim information was the fact that almost 44% of board members (see Table 7) were able to recall a case they had voted on in which victim information had represented a particularly significant factor in their decision-making.⁷⁴ Furthermore, almost one third (33%) of board members opined that “some board members weight victim impact information too heavily in decision-making” (see Table 8).⁷⁵

Table 7. Member Recall of Specific Case Where Victim Information Represented Significant Factor

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	21	43.8	51.2	51.2
	no	20	41.7	48.8	100.0
	Total	41	85.4	100.0	
Missing	System	7	14.6		
Total		48	100.0		

⁷⁴ Questionnaire question #29 worded as follows: “Over your tenure as a parole board member, has there been a case you have voted on where victim information represented a particularly significant factor in your decision making?”

⁷⁵ Questionnaire question #20 worded as follows: “At times, I have found that some Board members weigh victim impact information too heavily in their decision making.”

Table 8. Member Opinion that Board Members Weigh Victim Information Too Heavily

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Disagree	14	29.2	29.2	29.2
	Neither Agree or Disagree	15	31.3	31.3	60.4
	Agree	19	39.6	39.6	100.0
	Total	48	100.0	100.0	

The potential for victim information to be influential in parole decision-making was also supported in the results of board members' ranking of decision-making factors. Specifically, board members were presented with a list of 18 possible factors that are often viewed as important issues and information related to conditional release decision-making. They were asked to estimate the average degree of importance each of the outlined factors held in their parole decision-making.⁷⁶ With respect to the perceived significance of victim information as a decision-making factor, 65.9% viewed victim information as *somewhat to very important*; 20.5%, *undecided*; and 13.6%, *somewhat unimportant* (see Table 9).

⁷⁶ Questionnaire question #5 worded as follows: "Listed below are possible factors which are often viewed as important in conditional release decision making. While each case before the parole board is unique, board members over time develop strategies for organizing and assessing complex information from diverse sources. One of these strategies is to develop patterns whereby certain kinds of information are routinely searched for when studying a case and weighed accordingly when making a conditional release decision. Please estimate the average degree of importance each of the following factors are to your decision making in a case of parole. They appear in no particular order."

Table 9. Member Rating of the Importance of Victim Information as a Decision-making Factor

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	14	29.2	31.8	31.8
	Somewhat Important	15	31.3	34.1	65.9
	Undecided	9	18.8	20.5	86.4
	Somewhat Unimportant	6	12.5	13.6	100.0
	Total	44	91.7	100.0	
Missing	System	4	8.3		
Total		48	100.0		

The finding that just over 31% of board members were ambivalent about the importance of victim information to their conditional release decision-making tasks was also supported in another area of the survey. Specifically, the first question asked in the board member questionnaire was as follows:

Suppose for the moment that instead of comprehensive reports and file information about an offender, it was necessary for your Parole Board to agree to receiving much shortened versions of existing reports/information. What instructions would you give your Chair concerning the kinds of information that must be included in this shortened report for your conditional release decision-making purposes?

Out of 44 board members who responded to this question, 13 (approximately 39%) listed “victim impact information” or “victim statements or submissions” as one of the kinds of information that must be included in this shortened report. Yet, the data revealed that out of the 18 decision-making factors, victim information was only ranked the 14th most important factor out of 18 possible factors listed for ranking by board member respondents (see Table 10).

Table 10. Ranked Significance of Decision-making Factors

Decision-making factors ^a	Response ^b
Prior criminal history	100.0%
Seriousness of current offence	97.7%
Protection of community	97.7%
Participation/progress in treatment programming	97.7%
Psychological information opinions/reports	90.9%
Comprehensiveness of community supervision plan	90.9%
Past behaviour on parole	90.9%
Support in community (family/work)	88.6%
Inmate presentation at hearing	86.4%
Institutional behaviour	81.8%
Recommendation of correctional (prison) staff	79.5%
Actuarial risk assessment scores	77.3%
Information from judge	70.5%
Victim information	65.9%
Inmate expression of remorse	61.4%
Length of sentence	54.5%
Age of offender	47.5%
Sex of offender	0.0%

^a In order of assessed importance; ^b *somewhat to very important.*

Influence of Victim Involvement at Parole Hearing

Among the means by which victim impact information might be more influential in conditional release decision-making is their physical presence at the parole hearing. Less than one third of board members (31.3%) revealed that there were occasions

during parole hearings that they had felt uncomfortable with the presence of the victim (see Table 11).⁷⁷

Table 11. Member's Degree of Comfort with Victim Presence at Parole Hearing

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Disagree	22	45.8	50.0	50.0
	Neither Agree or Disagree	4	8.3	9.1	59.1
	Agree	15	31.3	34.1	93.2
	Not Applicable	3	6.3	6.8	100.0
	Total	44	91.7	100.0	
Missing	System	4	8.3		
Total		48	100.0		

When asked in an open-ended question whether the presence of the victim at the parole hearing had impacted their decision-making, 31 of 48 board members provided a response. Data were also collected on this issue via interviews with board members. Generally speaking, the opinions of the board member survey sample was split (17 believing there had been an impact and 14 believing that there had been no impact). Interview data with board members, however, were more supportive of the view that the presence of the victim impacted in some way on the process and practice of decision-making.

For those board members who believed that the presence of the victim at the hearing did not impact decision-making (14 of 31), a number of explanations were put forward. Three of these members stated that they had not conducted a hearing with the victim present and, thus, were unable to evaluate the influence of victim presence. Two

⁷⁷ Questionnaire question #15 worded as follows: "There are occasions during parole hearings that I have felt uncomfortable with the presence of the victim".

other board members indicated that the victims who had attended their hearings were supportive of the offender and not opposing parole. The remaining board members either focused on the perceived need to weigh the views and interests of all parties fairly or the significance of other information.

Two offenders—equal crimes. Does it matter if victim is present? I don't think so. I, we (the board) look at institutional stuff and community assessment information and weigh this information more heavily.

For the surveyed and interviewed board members (21 members)⁷⁸ who reported that victim presence had impacted their decision-making, the reasons provided fell into five categories. These categories are presented below along with board member comments for illustrative purposes.

1. *Victim presence adds information for general decision-making consideration.*

Anytime the victim is present it impacts on decision-making. It gives one additional or different information to process. It puts a face to the information. It shows emotion that written correspondence cannot. If the question is "Does the presence of the victim modify or change a decision made from written information?" Rarely.

Yes, consider information in context of all other information.

2. *Victim presence assists in education of offender and victim.*

It does help to put a face on the information previously received. Emotions are expressed. It is also often the first time that our Parole Board guideline process is explained/introduced to the victim.

I would not say impacted but it is certainly a factor on my decision. However, it has proven to be good for both the victim and the offender to hear what each has to say.

⁷⁸ Representing 17 surveyed board members and 4 interviewed board members.

3. *Victim presence provides information about the offender.*

Only to the extent the offender is denying the crime and the victim is able to provide information that becomes useful in interviewing the offender.

More likely to deny release. Perhaps because more focus on “cross-examination” of offender than in cases where victim is not present.

Yes, a young woman was held against her will and beaten which resulted in bodily injury (As defined by our guideline manual) as reported in the pre-sentence investigation. At an open hearing where the victim appeared she explained in detail the 10-hour ordeal. She gave details which were verified by medical reports that were omitted by the official court documents. As a result, the Parole Board reversed its original decision of release and continued the inmate to the maximum expiration of sentence.

My experience has revealed that in a majority of cases the presence of the victim clearly impacts the board’s decision-making. This is particularly true when the victim is able to provide “new and substantial” information not previously known by the board. There have been several examples of this fact when the ____ board has conducted “full board open hearings” where a decision was made to release an offender but reverted after the victim and/or victims significant others have appeared to testify in person.

Yes, in all of them [all hearings]. The information forms part of the knowledge about the offender. Sometimes, a very negative response from the offender affects parole decision. Sometimes victims and offenders reconcile at the hearing. It is a dynamic process, the outcome of which cannot be predicted.

Yes, at times. One occasion victim was quite emotional—interesting to observe impact on offender.

4. *Victim presence interferes with risk assessment.*

Heightens emotionality of hearing—can make it uncomfortable to query sensitive subjects with offender or engage in confrontational line of questioning.

5. *Victim presence highlights need for particular parole conditions.*

Presence of victims has not impacted as far as changing the release outcome. However, it brings a clearer understanding of the devastation some victims feel many months (and years) after the offence has occurred. Knowing a victims lifestyle and living pattern sometimes helps in setting curfews or limiting areas for the parolee to go to avoid conflict.

In addition to the information gleaned from surveys, observing parole hearings provided some further insight into how the presence of the victim could impact on both the conduct and focus of the information discussed in the hearing. Specifically, in a parole hearing where the victim was present, the explanation provided to the offender at the beginning of the hearing about the hearing process and practice was different. Unlike hearings in which the victim was not present, the leading board member spent a considerable amount of time explaining that the board members were mandated to evaluate “risk to the community” and were required to “protect the community”. The same board members did not emphasize these explanations in other parole hearings on the same day when there were no victim observers. Other differences from the usual practices that were observable in hearings where the victim was present included the following:

1. An increased board emphasis on discussion of the current offence, details of how the crime occurred, and the seriousness of the impact on the victim(s).
2. The addition of specific questions designed to evaluate the offender’s understanding of victim issues such as the harm caused to the victim.⁷⁹

⁷⁹ For example, board members asked the following questions or made the following comments: “You were extremely lucky not to have killed her [the victim]”. “Part of the problem for victims is you get support for counselling – you are the offender and have this opportunity. For the victim it is difficult – she does not have counselling. You will have to live with this for the rest of your life. What else will you do besides counselling?”. “Discussion in psychological report is that you don’t connect feelings with behaviour, you don’t think through consequences of actions. Is this so?”. “How is the victim now?”. “Did you know victim?”. “Do you think you deserve release? Now, answer that question from a victim perspective,” and “Put yourself in the spot of the victim.”

Research Question 4:

How, in actual practice and in what ways, is victim information and involvement integrated into parole decision-making?

Given results that indicated some influence of victim information and involvement on parole decision-making, it was necessary to more fully explore how board members integrate victim information into their decision-making processes. Though parole board decision makers in this study were expressly required by legislation to “consider” the prescribed victim input, they generally have little guidance about what form such consideration should take.

Overall, wide disparity was evident in how specifically board members used victim information in their decision-making tasks. Five distinct purposes for victim information emerged from the comments provided by surveyed and interviewed board members.

1. Victim information considered and weighed along with other relevant factors

This use of victim information by board members was one in which victim information was not utilized in a distinct manner but considered and weighed along with other information viewed as relevant to decision-making tasks.

May provide additional information as to seriousness of offence. Not a determining factor in my decision-making regarding release.

More updated information is provided as to their physical and mental status. Victim’s support for the offender’s release.

Yes [victim information important], better awareness of total incident.

Yes [victim information important], important to review all file information.

Yes [victim information important], always consider all information with respect to case at hand.

This information becomes part of the overall decision process. Whether the same decision would be made if the information was absent is speculation.

On occasion, written statements have been more vindictive toward the offender. I always consider the information and then weigh it with all the other factors before making a decision.

Victim information must be considered and weighed along with other factors.

It is one of factors considered and weighed among many.

I use victim information in several ways. If the victim is present, I use their statements and any written documents they may have. I use the information from the Pre Sentence Investigation. I don't have any conferences with the victim before the hearing. I do meet and answer questions after the hearing with the victim.

If it is in the file, I review it.

The more information the better for decision-making. All factors to be weighed and considered.

2. Victim information used to assist in setting parole conditions.

This use of victim information attributed it a more distinct purpose in that it was viewed as relevant in assisting with the specific task of setting specific conditions of parole.

To set conditions, as an example if the victim relates the offender had an odour of an alcoholic beverage or offended under the influence. To establish no contact conditions and related restrictions.

Speaks to need for any conditions/restrictions on parole.

The fears and worries of the victim, particularly where the victim and offender are known to each other over a significant time period, have a strong influence on the decision. The past history of the offender, particularly where violence is prominent, is considered in relationship to the victim's statement.

Restricting access to victim. Allowing access to victim. Restricting access to a community.

Conditions on parole. Assess whether offender minimizing impact of offence.

Restricting access to victims that may live in a community, e.g., not to enter the community of... or, with victims that have no problems with contact. Recognizing there is no problem and refraining from placing unnecessary restrictions in parole certificate.

When mandating special parole conditions I consider the victims level of fear and whether or not the offender should be restricted in the areas that he/she can travel to or live near or the age of people he can be around.

Victim information has an impact on parole conditions, rather than on the grant of parole itself.

Yes [victim information important] in setting conditions of parole. I consider information in whatever decision made.

Imposition of conditions.

Victim information has an impact on parole conditions, rather than on the grant of parole itself.

Helps to keep what offender is capable of in perspective. However, don't really use information for actual decision—conditions maybe.

Don't utilize other than for conditions (e.g., no contact).

3. *Victim information re-directs or channels board member discretion to victim interests, particularly in cases characterized by significant victim harm.*

This use of victim information represented a unique and potentially influential information source. Victim information was viewed by some board members as a significant factor to be weighed in the parole decision itself, possibly working towards parole denial (or, in some cases, where victim supports release, a parole release).

It is vitally important to the release decision if the victim suffered permanent bodily injury, significant monetary loss and/or psychological trauma. Our agency sets aside one day per month to interview victims (telephonically/in person) by hearing officers. These interviews are based upon victim requests regardless of the severity of the crime.

I review the information and note anything that is extraordinary to what normally would be expected. A shooting victim would normally not want a

prisoner released. A victim who is not opposed is extraordinary. A victim who is permanently paralyzed as a result is extraordinary. This can assist in channelling my discretion as to when to release the offender.

Where the victim information indicated the victim was afraid, the conditions of parole were considered. If the victim was likely to be protected by an appropriate condition, parole would be granted. Where the conditions would not protect the victim, parole would be denied because of the parole criteria. If the victim information indicated the victim has no concerns, it was not a significant factor in the decision.

Maybe more inclination to deny parole if rationale to do so is evident.

The victim impact statement, particularly if it is recently written, has a powerful effect on decision-making, and is frequently the major influence on difficult decisions. This is most where there is violence involved in the offence.

This is a weekly occurrence (heavier weighting of victim information) especially in sex offences. The age and vulnerability of the victim and the trauma experienced can and often does, affect the amount of months required to be served.

This is a frequent occurrence (heavier weighting of victim information) in a certain type of offence. A good example would be the sex offender who preys upon young and vulnerable children or old and infirm citizens. There are a number of cases in these areas wherein the board will vote for upward departures to further punish the offender.

Judging seriousness of offence—can be of some consequence in weighing decision to release.

I view the victim information as very important and it affects the decision greatly. This is mostly provided by victim impact statements less so from police reports and the Community Assessment....

A complete review is given to all available victim information. We pay particular attention to victim information in cases where serious bodily and/or permanent bodily injury has been inflicted on the victims. We must be careful, however, not to allow this information to completely dictate what the release decision is to be.

[Victim information more influential in] cases of torture, murder and gang rapes.

[Victim information more influential in] cases involving very serious and life threatening behaviour. Also cases involving severe emotional trauma and gang/hate group activities.

There are so many things to consider when making a decision. Community safety is always the first. If the victim statement/presence raises issues that make us view the offender as a possible continued threat to the community then it would have substantial influence on my decision.

Feel pressure to review case more thoroughly. Pressure to not grant if victim [represents community interests] is fearful.

In my experience some (not all) colleagues weigh too heavily—public view considered of release rather than risk assessment.

Provides more updated information. This can also be positive in that we find that they have not suffered any long lasting negative effects or they feel that sufficient punishment time has been served.

It provides a perspective that is unique. It also speaks to the type of risks to the community.

Gives a partial community perspective. Shows impact of crime to assist in keeping perspective.

Puts seriousness of offence into perspective.

Some board members believe victim information—seem more likely to focus on negative or denial if victim views are extreme.

The potential for victim input to channel discretion both towards a parole denial and a parole release was evident in the author's observation of parole hearings. With respect to victim information operating as a factor towards parole release, for one panel of board members, it was evident in the deliberation stage that the statement of the victim, and, in particular, the board's assessment that the victim was not opposed to the release, was given significant weight. At the beginning of the deliberation process, the female board member stated, "The victims are in the reconciliation process and recognize the pressure by co-accused in this crime." Both members then focused on the progress the offender had made in prison to address her "risk factors" and their opinions that a "structured plan offered the best opportunity for rehabilitation" and "supervision". Parole was granted to the offender.

The use of victim information as a factor rationalizing a parole denial or more restrictive release than requested was also directly observed. Of the hearings observed, it was evident that victim information, when available to board members, influenced board practices both in terms of the hearing process (e.g., direction of questioning in the hearing) and as a decision-making factor that negatively influenced the outcome (parole being denied). Two of these cases, referred to as Hearing A and Hearing B are described in Appendix A.

4. Victim information incorporated into process of risk assessment.

The incorporation and application of victim information in risk assessment also proved to be a potentially influential variable in parole decision-making processes in that victim presence and information might influence the nature of hearing discussions and related considerations of offender risk management and recidivism risk issues.

Weigh the credibility of the victim. I attempt to empathize with the victim's experience, their fear, humiliation and terror. I attempt to discern their future risk from the offender. I weigh the offender statements about the offender vs. the victim's looking for the truth, for remorse, for empathy, from the offender.

It would be better to have the victim present then the victim could be questioned and also, their credibility assessed. The dynamics between offender and victim are also very important.

The victim statement has added an important dimension to the hearing and as stated previously triggers task specific questions to the applicant re: the harm done to the victim.

Assists in risk assessment process —does offender give an accurate accounting of his/her behaviour against the victim? Thus, can help in determining offender honesty/taking of responsibility for crimes in the past.

Assess pattern of offender behaviour.

I consider this information when questioning the offender re: taking responsibility for his behaviour and evaluate their degree of denial and/or minimization.

Consider information with respect to community risk, consideration information with respect to components of plan, designed to deal with contributing factors.

I give full consideration to all information. However, it depends on the crime. Is this once in a lifetime crime? Is there a long supporting history of repeating this pattern? Is this a revenge program? It is very important that the victim has their side of the crime heard.

One consideration among many factors which are necessary. Assists in questioning offender regarding impact of offence/victim empathy.

5. Victim information significance minimized or ignored as a consequential factor in parole decision-making.

This use of victim information saw board members either minimizing or dismissing the relevance of victim information to parole decision-making.

Important but not as significant as other factors (e.g., criminal history, institutional behaviour, programs taken and evidence of changed behaviour). Current victim information may be more persuasive.

NO [victim information not important], attempt to weigh views of all parties fairly.

The emotional or psychological impact on the victim is seldom relevant to the parole criteria. Economic impact on the victim may be relevant but parole cannot usually address such issues.

In addition to the emergence of the above five potential uses for victim information by board members, the data also explored the processes by which victim information was viewed as more salient to board members. Specifically, board members were asked to recall whether victim information had represented a significant factor in their decision-making and, if so, were requested to elaborate on what it was about a particular case or cases that made victim information more consequential to their decision-making. Twenty-one of 41 board members reported to recall such a case. Two

significant reasons emerged from board member comments as to what it was about the case that made victim information more consequential.

Victim information highlighted the severe brutality of the offence. Specifically, the fact that the victim had suffered serious physical and/or emotional damage or behaviour on the part of the offender was viewed as particularly heinous or sadistic.

Victim information spoke to current concerns of the victim. This included information that the offender was seeking release in the victim area, indication of clear, persistent and present danger to the victim, current fears of victim, and allegations from the victim of ongoing harassment.

A minority of board members recalled other reasons for why victim information had been consequential, including (a) the victim's participation in victim-offender reconciliation had represented a positively weighed factor in favour of the offender's release to the community and (b) victim information had been particularly informative about the offender's pattern of offending.

Research Question 5:

Is there a greater likelihood of parole denial because of victim participation in the conditional release process?

One of the key criticisms of victim participation in parole relates to the potential for victim information or presence to contribute to parole decision-making disparity and parole denial for offenders. Decision-making disparity would occur when similar cases are disposed of differently, depending upon the availability of the victim, the thoroughness of victim information, or the resiliency, vindictiveness, or other personality attributes of the victim. Furthermore, gains for victims might result in unfair consequences for offenders, such as longer sentences due to parole denials.

Victim Information as a Source of Disparity

With respect to whether victim input might contribute to disparity in conditional release decision-making, half of the board member sample had no opinion on the matter (see Table 12).⁸⁰ For those who had an opinion regarding the issue, some agreed that it would inject a source of disparity (14.6%).

Table 12. Member Opinion on Potential for Victim Input to Contribute to Disparity

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Disagree	17	35.4	35.4	35.4
	Neither Agree or Disagree	24	50.0	50.0	85.4
	Agree	7	14.6	14.6	100.0
	Total	48	100.0	100.0	

The relatively low reported potential for disparity is underscored by results that indicated that only 27.1% of board members disclosed that, at times, they were confused as to how victim information should be utilized in decision-making tasks (see Table 13).⁸¹

⁸⁰ Questionnaire question #25 worded as follows: "Victims' input will inject a source of inconsistency and disparity into conditional release decision making."

⁸¹ Questionnaire question #16 worded as follows: "At times, I feel confused as to how victim information should be utilized in decision making tasks."

Table 13. Member Confusion Level as to How Victim Information Should Be Utilized in Decision-making

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Disagree	30	62.5	68.2	68.2
	Neither Agree or Disagree	1	2.1	2.3	70.5
	Agree	13	27.1	29.5	100.0
	Total	44	91.7	100.0	
Missing	System	4	8.3		
Total		48	100.0		

With respect to the consequences of victim involvement on the parole decision, a majority of board members, 54.2%, expressed no opinion when asked if victims speaking at parole hearings would result in a higher rate of parole denial (see Table 14).⁸² However, of those who were willing to express an opinion, 29.2% agreed that this practice would result in a greater incidence of parole denial.

Table 14. Member Opinion that Victims Speaking at Hearings Results in Higher Parole Denial

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Disagree	5	10.4	11.1	11.1
	Neither Agree or Disagree	26	54.2	57.8	68.9
	Agree	14	29.2	31.1	100.0
	Total	45	93.8	100.0	
Missing	System	3	6.3		
Total		48	100.0		

⁸² Questionnaire question #24 worded as follows: "Victims speaking at hearings or with board members prior to hearings likely results in a higher rate of parole denial".

Research Question 6:

What individual characteristics of board members, if any, have an influence on decision-making and opinions on victim issues?

Given results indicating that there were significant variations in how board members used victim information in their decision-making, combined with the possibility that there may be a greater likelihood of parole denial or disparity in decision-making because of victim participation in conditional release process, it was important to explore how much the individual parole board member actually contributes to or hinders the facilitation of victim participation in the conditional release decision-making process.

The potential impact of an individual board member was noted by one male board member respondent as follows:

Every board member has a different slant on justice, on culture, on life. I find it hard to deal with female victims. In my culture, First Nations, I am more holistic and sensitive to victim issues. Some board members are not sensitive.

Several demographic variables (e.g., gender and age) of the decision makers were examined to assess whether these variables correlated with how victim information and participation in parole was viewed and incorporated into their decision-making.

Board Member Gender

An important question is whether the board member's gender affects views on victim involvement in parole or use of victim information in decision-making. A significant impediment in most of the earlier research on women and men in traditional male occupations and decision-making positions was the lack of adequate controls. In

particular, few studies compared men and women in “matched” jobs or organizational positions (Bielby & Baron, 1986; Coverman, 1988; Hagan & Kay, 1995; McGuinness & Donahue, 1988; Resken & Phillips, 1988). This study on parole board decision makers provided an opportunity to compare women and men who were employed in the same male-typed job, receiving the same pay, performing a job entailing considerable work autonomy, and a holding a position involving considerable skills and prestige. These features were also viewed as critical in assessing the importance of individual as compared to structural or organizational explanations of behaviour, particularly gender-based behaviour.

Although it was not statistically significant ($p = .18$), female board members were less likely to agree with the statement “victim needs are better addressed at the front stage than at the conditional release stage” (25% female board members vs. 51.6% of male board members, See Table 15).

Table 15. Member Opinion on Timing of Victim Participation in Criminal Justice System by Gender*

			Gender		Total
			Male	Female	
Victim Needs Better Addressed at Front Stage	Disagree	Count	9	7	16
		% within Gender	29.0%	58.3%	37.2%
	Neither Agree or Disagree	Count	6	2	8
		% within Gender	19.4%	16.7%	18.6%
	Agree	Count	16	3	19
		% within Gender	51.6%	25.0%	44.2%
Total	Count	31	12	43	
	% within Gender	100.0%	100.0%	100.0%	

* exact $p = .18$.

Female board members were more supportive of the concept of victims speaking at hearings (see Table 16).⁸³ Only one female member was opposed to victims speaking at parole hearings, compared to the opposition of 11 male board members. Overall, a significant majority of female members (92.3%) were in favour of victims speaking at parole hearings, compared to just a slight majority of male board members (51.6%).⁸⁴

Table 16. Member Support for Victims Speaking at Hearings by Gender*

			Gender		Total
			Male	Female	
Support Victims Speaking at Hearings	Disagree	Count	11	1	12
		% within Gender	35.5%	7.7%	27.3%
	Neither Agree or Disagree	Count	4	0	4
		% within Gender	12.9%	.0%	9.1%
	Agree	Count	16	12	28
		% within Gender	51.6%	92.3%	63.6%
Total	Count	31	13	44	
	% within Gender	100.0%	100.0%	100.0%	

*exact p=.036.

In terms of the weighting of victim information in decision-making, female members were the least likely to feel that victim information was weighed too heavily in decision-making tasks (see Table 17). A strong majority of female members (61.5%) disagreed with the statement "board members weigh victim information too heavily in decision-making" in comparison to a minority of male members (15.1%).

⁸³ Questionnaire question #19 worded as follows: "I am in support of victims speaking at parole hearings."

⁸⁴ The SPSS Exact Test option was utilized for calculating significance levels of statistical procedures available through the cross-tabs procedure. Specifically, the Monte Carlo method was employed as the data set was small, the tables in some cases were sparse or unbalanced, and the data failed to meet the underlying assumptions necessary for reliable results using the standard asymptotic method.

Table 17. Member Opinion that Victim Information Weighed Too Heavily by Gender*

			Gender		Total
			Male	Female	
Weight Victim Information Too Heavily	Disagree	Count	5	8	13
		% within Gender	16.1%	61.5%	29.5%
	Neither Agree or Disagree	Count	12	2	14
		% within Gender	38.7%	15.4%	31.8%
	Agree	Count	14	3	17
		% within Gender	45.2%	23.1%	38.6%
Total	Count	31	13	44	
	% within Gender	100.0%	100.0%	100.0%	

*exact p=.023.

Female board members were more likely to rate the significance of victim information as a decision-making factor as *very to somewhat important* than were male board members (see Table 18). A full 100% of female board members who rated the significance of victim information rated it *important*. In contrast, 20% of male board members rated victim information as *unimportant*, and a further 23.3% reported being undecided about the significance of victim information.

Table 18. Member Rating of Victim Information Significance by Gender*

			Gender		Total
			Male	Female	
Significance of Victim Information	important	Count	17	12	29
		% within Gender	56.7%	100.0%	69.0%
	unimportant	Count	6	0	6
		% within Gender	20.0%	.0%	14.3%
	undecided	Count	7	0	7
		% within Gender	23.3%	.0%	16.7%
Total	Count	30	12	42	
	% within Gender	100.0%	100.0%	100.0%	

*exact p=.023.

As well, when asked to recall a case where victim information was a significant factor in their decision-making, more female board members (75% of women vs. 44.4% of men) reported recalling such a case (see Table 19).

Table 19. Member Recall of Victim Information as a Significant Case Factor by Gender*

			Gender		Total
			Male	Female	
Is there a case where victim information represented a significant factor in your decision making?	yes	Count	12	9	21
		% within Gender	44.4%	75.0%	53.8%
	no	Count	15	3	18
		% within Gender	55.6%	25.0%	46.2%
Total		Count	27	12	39
		% within Gender	100.0%	100.0%	100.0%

*exact p=.077.

An analysis of the ranking of 18 parole decision-making factors revealed that female board members ranked victim information as the 7th most important ranked factor, while male board members ranked it as 13th in importance (see Table 20).

Table 20. Significance of Victim Information Compared to Other Decision-making Factors

Factor	Ranked very Important		Factor
	Female	Male	
Protection of community	100.0%	90.0%	Protection of community
Seriousness of current offence	91.7%	80.0%	Progress in treatment
Prior criminal history	83.3%	70.0%	Seriousness of current offence
Support in community (family/work)	75.0%	63.3%	Comprehensiveness of community plan
Comprehensiveness of community plan	75.0%	63.3%	Prior criminal history
Past behaviour on parole	58.3%	56.7%	Support in community (family/work)
Victim information	50.0%	56.7%	Psychological information
Psychological information	50.0%	50.0%	Institutional behaviour
Progress in treatment	50.0%	50.0%	Inmate presentation at hearing
Actuarial risk assessment	33.3%	46.7%	Past behaviour on parole
Sex of offender	27.3%	33.3%	Inmate remorse
Sentencing judge information	25.9%	30.0%	Actuarial risk assessment
Institutional behaviour	25.0%	26.7%	Victim information
Inmate presentation at hearing	25.0%	23.3%	Sentencing judge information
Sentence length	23.3%	23.3%	Sentence length
Age of offender	20.0%	20.0%	Age of offender
Inmate remorse	16.7%	0.0%	Sex of offender
Correctional staff recommendation	16.7%	0.0%	Correctional staff recommendation

Female board members were also more likely to report feeling uncomfortable with the presence of the victim at parole hearings. Specifically, 41.6% of female

members felt uncomfortable as opposed to 26.7% of male board members (see Table 21).

Table 21. Member Discomfort with Victim Presence at Hearing by Gender*

			Gender		Total
			Male	Female	
Uncomfortable with Victim Presence	Disagree	Count	18	4	22
		% within Gender	60.0%	33.3%	52.4%
	Neither Agree or Disagree	Count	1	3	4
		% within Gender	3.3%	25.0%	9.5%
	Agree	Count	8	5	13
		% within Gender	26.7%	41.7%	31.0%
	Not Applicable	Count	3	0	3
		% within Gender	10.0%	.0%	7.1%
Total	Count	30	12	42	
	% within Gender	100.0%	100.0%	100.0%	

*exact $p=.065$.

The fact that more male board members (82.8%) perceived that they possessed adequate information and awareness about the effects of victimization than female members (75%) was significant. Whereas 25% of women indicated that they did not possess adequate information about victimization effects, no male members indicated the same (see Table 22).⁸⁵

⁸⁵ Questionnaire question #14 worded as follows: "I feel that I possess adequate information and awareness about the effects of victimization."

Table 22. Member Awareness of Effects of Victimization by Gender*

			Gender		Total
			Male	Female	
Awareness of Effects of Victimization	Disagree	Count	0	3	3
		% within Gender	.0%	25.0%	7.3%
	Neither Agree or Disagree	Count	5	0	5
		% within Gender	17.2%	.0%	12.2%
	Agree	Count	24	9	33
		% within Gender	82.8%	75.0%	80.5%
Total	Count	29	12	41	
	% within Gender	100.0%	100.0%	100.0%	

*exact p=.009.

In terms of the outcome of victims speaking at hearings or with board members prior to hearings (see Table 23), although not significant, female board members were more likely to believe this would result in a higher rate of parole denial (46.2% of female members vs. 21.4% of male members).⁸⁶

Table 23. Member Opinion on Victims Speaking at Hearings Results in Parole Denial by Gender*

			Gender		Total
			Male	Female	
Victims Speaking at Hearings Results in Parole Denial	Disagree	Count	2	2	4
		% within Gender	7.1%	15.4%	9.8%
	Neither Agree or Disagree	Count	20	5	25
		% within Gender	71.4%	38.5%	61.0%
	Agree	Count	6	6	12
		% within Gender	21.4%	46.2%	29.3%
Total	Count	28	13	41	
	% within Gender	100.0%	100.0%	100.0%	

*exact p=.132.

⁸⁶ Question #24 worded as follows: "victims speaking at hearings or with board members prior to hearings likely results in a higher rate of parole denial".

The overall results supported the hypothesis that there are gender differences with respect to several of the victim variables explored in this study. In particular, female board members were more supportive of victim inclusion in the conditional release process and were more likely to weigh victim information more heavily in their decision-making.

Board Member Age

Some important differences emerged in analyses of board member age and specific victim variables.⁸⁷ Although there were no significant differences, according to age differences, for victims speaking at parole hearings, those under 55 were more likely to believe in the significance of victim information as a decision-making factor than those over 55 (see Table 24).⁸⁸

Table 24. Member Rating of Significance of Victim Information by Age*

			age		Total
			under 55	over 55	
Decision Making Factors - Victim Information	Very Important	Count	10	4	14
		% within age	47.6%	21.1%	35.0%
	Somewhat Important	Count	10	4	14
		% within age	47.6%	21.1%	35.0%
	Undecided	Count	0	7	7
		% within age	.0%	36.8%	17.5%
	Somewhat Unimportant	Count	1	4	5
		% within age	4.8%	21.1%	12.5%
Total	Count	21	19	40	
	% within age	100.0%	100.0%	100.0%	

*exact p=.002.

⁸⁷ Board member age was recoded into two categories: under age 55 and over age 55.

⁸⁸ Questionnaire question #5. See footnote #83 for wording.

Similarly, board members under age 55 (83.3% under 55 vs. 31.6% over 55) were statistically more likely to report having experienced a case where victim information had represented a significant factor in their decision-making (see Table 25).⁸⁹

Table 25. Member Recall of Consequential Victim Information Case by Age*

			age		Total
			under 55	over 55	
Is there a case where victim information represented a significant factor in your decision making?	yes	Count	15	6	21
		% within age	83.3%	31.6%	56.8%
	no	Count	3	13	16
		% within age	16.7%	68.4%	43.2%
Total		Count	18	19	37
		% within age	100.0%	100.0%	100.0%

*exact p=.003.

In addition, board members over age 55 were statistically more likely to believe that victim needs were better addressed at the front stage of the criminal justice process than at the parole stage (65% of members over 55 vs. 30% of members under 55, see Table 26).

⁸⁹ Questionnaire question #29 worded as follows: "Over your tenure as a parole board member, has there been a case you have voted on where victim information represented a particularly significant factor in your decision making? If Yes, please elaborate on what it was about that particular case or cases that made victim information more consequential."

Table 26. Member Opinion on Timing of Victim Participation in CJS by Age*

			age		Total
			under 55	over 55	
Victim needs are better addressed at front end of criminal justice system than at conditional release stage	Disagree	Count	8	7	15
		% within age	40.0%	35.0%	37.5%
	Neither Agree or Disagree	Count	6	0	6
		% within age	30.0%	.0%	15.0%
	Agree	Count	6	13	19
		% within age	30.0%	65.0%	47.5%
Total	Count	20	20	40	
	% within age	100.0%	100.0%	100.0%	

*exact p=.013.

Political Orientation

Surveyed board members were asked to categorize their political orientation in one of the following categories: *conservative*, *somewhat conservative*, *moderate*, *somewhat liberal*, and *very liberal*. The majority of board members who answered the question described themselves as *moderate* (57.1%), followed by *somewhat to very liberal* (26.2%) and *somewhat to very conservative* (16.7%). No significant differences in self-disclosed political orientation emerged between genders.

It was hypothesized that conservative board members would be more welcoming of victim participation in parole and weigh victim information more heavily in their decision-making. The results were mixed, however. Some limited support was secured from the data in that conservative board members were statistically more likely to report that they had experienced a case where victim information had been a significant factor in their decision-making (see Table 27). The majority of liberally oriented board members were unable to recall a case where victim information had represented a significant factor in decision-making.

Table 27. Member Recall of Significant Victim Information Case by Political Orientation*

			Political Orientation			Total
			conservative	moderate	liberal	
Is there a case where victim information represented a significant factor in your decision making?	yes	Count	6	8	7	21
		% within Political Orientation	100.0%	72.7%	33.3%	55.3%
	no	Count	0	3	14	17
		% within Political Orientation	.0%	27.3%	66.7%	44.7%
Total	Count	6	11	21	38	
	% within Political Orientation	100.0%	100.0%	100.0%	100.0%	

*exact p=.003.

With respect to confidence levels around how victim information should be used, no conservative board members reported to be confused about how victim information should be utilized in decision-making, in comparison to 45.5% of those with a moderate orientation and 20.8% of those with a liberal orientation (see Table 28).⁹⁰

Table 28. Member Confusion as to Use of Victim Information by Political Orientation*

			Political Orientation			Total
			conservative	moderate	liberal	
Feel Confused as to Use of Victim Information	Disagree	Count	6	5	19	30
		% within Political Orientation	100.0%	45.5%	79.2%	73.2%
	Neither Agree or Disagree	Count	0	1	0	1
		% within Political Orientation	.0%	9.1%	.0%	2.4%
	Agree	Count	0	5	5	10
		% within Political Orientation	.0%	45.5%	20.8%	24.4%
Total	Count	6	11	24	41	
	% within Political Orientation	100.0%	100.0%	100.0%	100.0%	

*exact p=.08.

⁹⁰ Questionnaire question #16 worded as follows: "At times, I feel confused as to how victim information should be utilized in decision making tasks."

Contrary to the hypothesis that conservatively oriented board members would be more accepting of victim participation, it was the conservative members who were statistically the most against the idea of victims "speaking at hearings". Specifically, 71.4% of conservatively oriented board members disagreed with the proposition of victims speaking at hearings, compared to only 25% of liberally oriented board members (see Table 29).⁹¹

Table 29. Member Support for Victims Speaking at Hearings by Political Orientation*

			Political Orientation			Total
			conservative	moderate	liberal	
Support Victims Speaking at Hearings	Disagree	Count	5	1	6	12
		% within Political Orientation	71.4%	9.1%	25.0%	28.6%
	Neither Agree or Disagree	Count	0	2	2	4
		% within Political Orientation	.0%	18.2%	8.3%	9.5%
	Agree	Count	2	8	16	26
		% within Political Orientation	28.6%	72.7%	66.7%	61.9%
Total		Count	7	11	24	42
		% within Political Orientation	100.0%	100.0%	100.0%	100.0%

*exact p=.052.

Despite their general opposition to victim participation, the conservative board members emerged as statistically the least likely to report feeling uncomfortable with the presence of the victim at the parole hearing (see Table 30).⁹²

⁹¹ Questionnaire question #19 worded as follows: "I am in support of victims speaking at parole hearings".

⁹² Questionnaire question #15 worded as follows: "There are occasions during parole hearings that I have felt uncomfortable with the presence of the victim".

Table 30. Member Level of Comfort with Victim Presence at Hearings by Political Orientation*

			Political Orientation			Total
			conservative	moderate	liberal	
Uncomfortable with Victim Presence	Disagree	Count	5	2	15	22
		% within Political Orientation	83.3%	18.2%	62.5%	53.7%
	Neither Agree or Disagree	Count	0	2	2	4
		% within Political Orientation	.0%	18.2%	8.3%	9.8%
Agree	Count	1	4	7	12	
	% within Political Orientation	16.7%	36.4%	29.2%	29.3%	
Not Applicable	Count	0	3	0	3	
	% within Political Orientation	.0%	27.3%	.0%	7.3%	
Total		Count	6	11	24	41
		% within Political Orientation	100.0%	100.0%	100.0%	100.0%

*exact p=.021.

Personal Philosophies and Opinions

Board members themselves appeared to recognize the significance of their own ideologies as a decision-making factor as just over 73% of board members agreed that their personal philosophies and opinions about the causes of crime represented a moderate to very strong influence on their decision-making (see Table 31).

Table 31. Member Opinion on Influence of Personal Crime Causation Philosophies on Decision-making

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Strong Influence	6	12.5	13.0	13.0
	Strong Influence	20	41.7	43.5	56.5
	Moderate Influence	9	18.8	19.6	76.1
	Minor Influence	8	16.7	17.4	93.5
	No Influence	3	6.3	6.5	100.0
	Total	46	95.8	100.0	
Missing	System	2	4.2		
	Total	48	100.0		

Female board members were much more likely to acknowledge the impact of their own biases, with 41.7% of female members describing it as a very strong influence, compared to 3.2% of male board members (see Table 32).⁹³

⁹³ Questionnaire question #6 worded as follows: "Reflecting on your experience as a parole board decision maker, what influence on average, do the following factors have on your decision making in conditional release cases. My personal philosophies/opinions about the causes of crime one of the factors listed."

Table 32. Member Opinion on Influence of Personal Crime Causation Philosophies by Gender*

			Gender		Total
			Male	Female	
Decision Making Factors - My Personal Philosophies/Opinions About Causes of Crime	Very Strong Influence	Count	1	5	6
		% within Gender	3.2%	41.7%	14.0%
	Strong Influence	Count	15	2	17
		% within Gender	48.4%	16.7%	39.5%
	Moderate Influence	Count	6	3	9
		% within Gender	19.4%	25.0%	20.9%
	Minor Influence	Count	7	1	8
		% within Gender	22.6%	8.3%	18.6%
	No Influence	Count	2	1	3
		% within Gender	6.5%	8.3%	7.0%
Total	Count	31	12	43	
	% within Gender	100.0%	100.0%	100.0%	

* exact p=.011.

Board members who described themselves as moderate and liberal were statistically more likely to report a stronger influence of their own philosophies on their decision-making (see Table 33).

Table 33. Member Opinion on Influence of Personal Crime Causation Philosophies by Political Orientation*

		Political Orientation			Total	
		conservative	moderate	liberal		
Decision Making Factors - My Personal Philosophies/Opinions About Causes of Crime	Very Strong Influence	Count	0	3	3	6
		% within Political Orientation	.0%	27.3%	12.5%	14.3%
	Strong Influence	Count	0	3	13	16
		% within Political Orientation	.0%	27.3%	54.2%	38.1%
	Moderate Influence	Count	2	1	6	9
		% within Political Orientation	28.6%	9.1%	25.0%	21.4%
	Minor Influence	Count	4	3	1	8
		% within Political Orientation	57.1%	27.3%	4.2%	19.0%
	No Influence	Count	1	1	1	3
		% within Political Orientation	14.3%	9.1%	4.2%	7.1%
Total	Count	7	11	24	42	
	% within Political Orientation	100.0%	100.0%	100.0%	100.0%	

*exact $p=.021$.

Length of Tenure

With respect to victim information and length of board tenure, various hypotheses were plausible. New board members might give more weight to victim information due to an over-identification with the victim and the shock of the impact some offences can have on their victims. It was also plausible, however, that new board members might give less attention to victim information and more weight to the needs of the offender and his or her reintegration potential. On the other hand, victim information might be viewed as a more consequential decision-making factor to members who have served on the board for a long time and may have had unfortunate experiences with parole

decisions that resulted in negative consequences for society (e.g., re-offence by a parolee they released). Accordingly, concerns for their own and the parole board's reputation, as well as public safety, might mean that as length of tenure increases, board members might pay more attention to victim information. With respect to length of tenure on the parole board, no significant statistical differences emerged between genders. The majority of members had served 3 years or less on the parole board (see Table 34).

Table 34. Member Gender and Length of Tenure

			Gender		Total
			Male	Female	
Length of Tenure as Parole Board Member	under 1 year	Count	6	2	8
		% within Gender	19.4%	18.2%	19.0%
	1 to 3 years	Count	18	5	23
		% within Gender	58.1%	45.5%	54.8%
	4 to 7 years	Count	7	2	9
		% within Gender	22.6%	18.2%	21.4%
	over 7 years	Count	0	2	2
		% within Gender	.0%	18.2%	4.8%
Total		Count	31	11	42
		% within Gender	100.0%	100.0%	100.0%

Among the most important findings related to length of board tenure was the fact that victim information became more important as a decision-making factor as the length of tenure on the parole board increased (see Table 35). Specifically, 50% of board members with less than 1 year of tenure ranked victim information *very to somewhat important*, in comparison to 63.6% with 1 to 3 years, 88.9% with 4 to 7 years, and 100% with over 7 years. As well, the board members with the least tenure on the board were those who were either the most undecided or unconvinced about the significance of

victim information to their decision-making tasks. Specifically, 50% of board members with under 1 year's experience were undecided, in comparison to only 9.1% and 11.1% of members with 1 to 3 and 4 to 7 years of experience, respectively. As well, the only board member group that rated victim information *somewhat unimportant* were those members with 1 to 3 years of tenure, with 27.3% rating it *somewhat unimportant*.

Table 35. Member Rating of Significance of Victim Information by Tenure*

			Length of Tenure as Parole Board Member				Total
			under 1 year	1 to 3 years	4 to 7 years	over 7 years	
Decision Making Factors - Victim Information	Very Important	Count	1	11	1	1	14
		% within Length of Tenure as Parole Board Member	12.5%	50.0%	11.1%	50.0%	34.1%
	Somewhat Important	Count	3	3	7	1	14
		% within Length of Tenure as Parole Board Member	37.5%	13.6%	77.8%	50.0%	34.1%
	Undecided	Count	4	2	1	0	7
		% within Length of Tenure as Parole Board Member	50.0%	9.1%	11.1%	.0%	17.1%
	Somewhat Unimportant	Count	0	6	0	0	6
		% within Length of Tenure as Parole Board Member	.0%	27.3%	.0%	.0%	14.6%
Total		Count	8	22	9	2	41
		% within Length of Tenure as Parole Board Member	100.0%	100.0%	100%	100%	100%

*exact $p=.003$.

The newest board members (on the board less than 1 year) expressed the greatest ambivalence about the significance of victim information to decision and were the most undecided about the significance of victim information to their decision-making tasks. Specifically, 50% of these board members were undecided, in comparison to only 9.1% and 11.1% of members with 1 to 7 years of experience, respectively. Furthermore, as noted in Table 36 below, 75% of novice board members agreed that victim's needs were better addressed at the front stage of the justice system than at the parole stage.

Table 36. Member Opinion Regarding Timing of Victim Participation by Tenure*

			Length of Tenure as Parole Board Member				Total
			under 1 year	1 to 3 years	4 to 7 years	over 7 years	
Victim needs are better addressed at front end of criminal justice system than at conditional release stage	Disagree	Count % within Length of Tenure as Parole Board Member	2 25.0%	8 36.4%	4 44.4%	1 50.0%	15 36.6%
	Neither Agree or Disagree	Count % within Length of Tenure as Parole Board Member	0 .0%	2 9.1%	4 44.4%	1 50.0%	7 17.1%
	Agree	Count % within Length of Tenure as Parole Board Member	6 75.0%	12 54.5%	1 11.1%	0 .0%	19 46.3%
Total	Count % within Length of Tenure as Parole Board Member	8 100%	22 100%	9 100%	2 100%	41 100%	

*exact $p=.043$.

It was board members who had from 1 to 3 years of experience on the board who emerged as the most divided in their opinions about support for victims speaking at parole hearings (see Table 37). Specifically, 47.8% of these board members reported to disagree with the prospect of victims speaking at hearings. This was in comparison to 0% of board members with under 1 year or over 7 years of experience and 11.1% of members with 4 to 7 years of experience.

Table 37. Member Support for Victims Speaking at Parole Hearings by Tenure*

			Length of Tenure as Parole Board Member				Total
			under 1 year	1 to 3 years	4 to 7 years	over 7 years	
Support Victims Speaking at Hearings	Disagree	Count % within Length of Tenure as Parole Board Member	0 .0%	11 47.8%	1 11.1%	0 .0%	12 28.6%
	Neither Agree or Disagree	Count % within Length of Tenure as Parole Board Member	0 .0%	3 13.0%	1 11.1%	0 .0%	4 9.5%
	Agree	Count % within Length of Tenure as Parole Board Member	8 100.0%	9 39.1%	7 77.8%	2 100.0%	26 61.9%
Total		Count % within Length of Tenure as Parole Board Member	8 100.0%	23 100.0%	9 100.0%	2 100.0%	42 100.0%

*exact $p=.031$.

Research Question 7:

Are there contextual or environmental factors that influence decision-making and the significance assigned to victim information in decision-making?

To explore the potential impact of contextual, situational, and environmental influences on decision-making, board members were surveyed about what influence, on average, the following factors had on their decision-making in conditional release cases:

1. Presence of observers at hearing.
2. Number of cases in a hearing day.
3. Reference groups: Make-up of voting board (e.g., who you are working with).
4. Reference groups: Correctional service directives.
5. Reference groups: Parole board chair directives.
6. Reference groups: Public opinion.
7. Reference groups: Media attention surrounding the case.

In addition to the survey data, observations of parole hearings and interview data also provided information about the significance of the above and other contextual and environmental constraints on their decision-making and are included in the analysis where appropriate.

Observers at Parole Hearing

Survey results revealed that 15% of board members ranked the presence of observers at hearings as having a *moderate to strong influence* on their decision-

making. A further 48% described observers as a *minor influence*. Only 33.3% indicated that it had no impact at all on the decision-making process (see Table 38).

Table 38. Member Rating of Influence of Observers on Decision-making

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strong Influence	1	2.1	2.2	2.2
	Moderate Influence	6	12.5	13.0	15.2
	Minor Influence	23	47.9	50.0	65.2
	No Influence	16	33.3	34.8	100.0
	Total	46	95.8	100.0	
Missing	System	2	4.2		
Total		48	100.0		

The only individual level board member variable that impacted the perceived influence of observers was that of political orientation. Specifically, board members with a conservative orientation were statistically the most likely to state that observers had no influence on their decision-making (see Table 39).

Table 39. Member Rating of Influence of Observers by Political Orientation*

			Political Orientation			Total
			conservative	moderate	liberal	
Decision Making Factors - Presence of Observers at Hearing	Moderate Influence	Count	1	4	1	6
		% within Political Orientation	14.3%	36.4%	4.2%	14.3%
	Minor Influence	Count	0	6	14	20
		% within Political Orientation	.0%	54.5%	58.3%	47.6%
	No Influence	Count	6	1	9	16
		% within Political Orientation	85.7%	9.1%	37.5%	38.1%
Total		Count	7	11	24	42
		% within Political Orientation	100.0%	100.0%	100.0%	100.0%

*exact $p=.001$.

Although board members in this study were not asked to elaborate on the nature of the influence that observers had on their decision-making, the author's observation of parole hearings provided some insights. Specifically, in hearings where observers were present (e.g., victims, media), board members gave a great deal more attention to exploring the intricacies of the crime and made a special effort to emphasize the fact that public protection represented the paramount principle of release decision-making. Without victim and observer presence, the board members focused primarily on matters related to the offender, particularly focusing on reintegration and the benefits from programming.

Number of Cases in a Hearing Day

Close to a majority of board members (47.9%) rated the number of cases in a hearing day as having a *strong to moderate influence* in decision-making. A further 24.4% described it as a *minor influence*, and the remaining 24.4% indicated *no influence* (See Table 40).

Table 40. Member Rating of Influence of Number of Cases on Decision-making

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strong Influence	7	14.6	15.6	15.6
	Moderate Influence	16	33.3	35.6	51.1
	Minor Influence	11	22.9	24.4	75.6
	No Influence	11	22.9	24.4	100.0
	Total	45	93.8	100.0	
Missing	System	3	6.3		
Total		48	100.0		

With respect to the individual-level variables, no statistically significant differences emerged. There was a tendency for those board members with moderate or liberal orientations were more likely attribute the number of cases in a hearing day as having a moderate to strong influence on decision-making (see Table 41).

Table 41. Member Rating of Influence of Number of Cases by Political Orientation*

			Political Orientation			Total
			conservative	moderate	liberal	
Decision Making Factors - Number of Cases in a Hearing Day	Strong Influence	Count	0	4	0	4
		% within Political Orientation	.0%	36.4%	.0%	9.5%
	Moderate Influence	Count	2	2	12	16
		% within Political Orientation	28.6%	18.2%	50.0%	38.1%
	Minor Influence	Count	3	3	5	11
		% within Political Orientation	42.9%	27.3%	20.8%	26.2%
	No Influence	Count	2	2	7	11
		% within Political Orientation	28.6%	18.2%	29.2%	26.2%
Total		Count	7	11	24	42
		% within Political Orientation	100.0%	100.0%	100.0%	100.0%

*exact $p=.019$.

In the survey component of the research, board members were not asked to elaborate on the nature of the influence and the specific outcomes of case numbers on their decision-making processes. The observational phase of the research, however, revealed one important contextual effect that could potentially affect board member use of victim information. This effect involved the manner in which information was organized and presented to parole decision makers—in particular, the manner by which victim information was made available to them. The location of “victim information” in the file or “study package” of board members was prominent. For this board, victim impact information represented the first document in the board members’ study package. Given the prominent location of victim information, it is reasonable to suggest that this

information might be more salient to board members and more likely to be incorporated into the factors that are consequential in the decision-making process.

Reference Groups

Board members were surveyed about the perceived significance of reference groups to their decision-making. Specifically, they were asked to reflect on their experience as a parole board decision maker and rate the degree of influence the following factors had on their decision-making:

1. Make-up of voting board (e.g., who you are working with).
2. Correctional service directives.
3. Parole board chair directives.
4. Public opinion.

1. Make-up of voting board.

This study of parole board decision makers confirmed the potential influence of the composition of the voting board as a reference group contextual factor. A solid majority of board members, 60.5%, ranked the make-up of the voting board as a *moderate to very strong influence* on their decision-making (see Table 42). Only 12.5% suggested that it had no influence on their decision-making. Interview data with board members also revealed the significance of the composition of the board, as illustrated in the following comment from a female board member:

The mix of the board is very important to hearing and decision-making. The mix on the board should not be random. It must be more carefully prepared—especially when victims are present. Diversity should be complementary. In our board, members are chosen by who they get on the phone.

Table 42. Member Rating of Influence of Board Composition on Decision-making

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Strong Influence	1	2.1	2.2	2.2
	Strong Influence	2	4.2	4.3	6.5
	Moderate Influence	26	54.2	56.5	63.0
	Minor Influence	11	22.9	23.9	87.0
	No Influence	6	12.5	13.0	100.0
	Total	46	95.8	100.0	
Missing	System	2	4.2		
	Total	48	100.0		

No statistically significant differences were found between any of the individual-level variables and board member responses about the perceived influence of the make-up of voting board as a decision-making factor.

2. Parole board chair directives.

Overall, half of board members (50.1%) ranked directives from the chair of the parole board as a *moderate* to *very strong* influence on decision-making (see Table 43). A further 22.9% ranked such directives as a *minor influence*, and 22.9%, as *no influence*. No significant differences emerged between the individual-level variables of board members and the reported influence of chair directives.

Table 43. Member Rating of Influence of Parole Board Chair Directives on Decision-making

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Strong Influence	1	2.1	2.2	2.2
	Strong Influence	9	18.8	19.6	21.7
	Moderate Influence	14	29.2	30.4	52.2
	Minor Influence	11	22.9	23.9	76.1
	No Influence	11	22.9	23.9	100.0
	Total	46	95.8	100.0	
Missing	System	2	4.2		
Total		48	100.0		

The data received from parole board chairs (4 in total) revealed dramatic differences in support for victim participation in the parole process, provision of training opportunities for board members, and the level of direction from the chair about how victim information should be utilized by individual board members. Whereas the chair of one of the parole boards believed training on victim issues was not necessary because board members came to the board with such expertise, the other parole board chairs made varying efforts to facilitate training opportunities on victim issues. One parole board chair spoke of how board members with special qualities and skills were sought in order to ensure respect for victim involvement in the parole process. This particular chair was strongly supportive, if not bordering on being an advocate for victim rights. The “success stories” of victim involvement in the parole process, which were shared with the researcher, revealed extra-ordinary involvement of the board in facilitating victim involvement and “healing” in the conditional release process. These success stories are duplicated below for illustration purposes:

Story 1

I was assigned a case to vote on which had many angry letters from victims. The offender had killed an individual in a drunken state on a reserve. The offender had gone through a circle sentencing process. Victims had a lot of support during the sentencing process and felt included. Yet, when circle was over, the support stopped. Their anger grew and victims did not deal with their issues. They did not know about eligibility for parole.

Victim letters stated that if he (the offender) was released by the board he would be killed by one of the victims. I went up to the reserve and arranged a circle with the victims. I had no approval by anyone—I just went up and did it.

I brought along a native board member to advise me on native culture. The circle lasted for hours. Victims worked through various levels in the circle. In the beginning, they were angry and could only voice how they were going to kill him if he was released from jail. As the feather went around the room, the victims began to realize that they had not dealt with their issues. They began to realize that the cycle of violence would continue if one of them (or a member of the community) were to follow through with killing the offender. I as a board member remained silent through the process. I let the victims do the talking and I listened. Because of this process, there actually wasn't a parole hearing. The offender was released at the 2/3 mark (statutory release date). While it is not a success story in terms of involving victims at the hearing, it was a success as the offender was not killed. The offender is now doing well. The victims received some needed healing through the process.

Story 2

A young woman receiving a ____ sentence for _____ in which one person lost their life and two other victims received life long injuries. The victims were angry that the offender was eligible for parole and many angry letters were written to the board. Angry letters contained tons of allegations about insensitivity of judges, lawyers and the parole board. It was clear that they had a lot of questions about the system. They felt they had no voice. I took it upon myself to meet with the victims—not to discuss specifics of the case (that would be inappropriate as chair) but to meet with them and explain the process.

I met with the group of victims and explained the aspects of the system that they had questions around. I explained that the purpose of parole was to ensure that there were no more victims in the future—through slow reintegration with programs, etc....When I arranged this meeting, I had myself, and two representatives from the victim-offender reconciliation program. These representatives had heard earlier from the offender and knew that the offender was wanting to have contact to deliver a letter of apology to the victims. These representatives were able to do some counseling with the victims.

I also met with the offender at the institution. I explained to her what would happen in the hearing [victims would be present at the parole hearing] and prepared her for the fact that the victims would be there.

The hearing took place. The victims were in attendance. It was a powerful hearing. The offender was able to express apologies. When the victims left, one of them commented: “now I can get on with my life.” It clearly had a significant impact both for the offender and the victim. Some healing took place.

Story 3

I knew of a case of an offender who had committed over 100 car thefts. He had a real attitude this individual, yet had some salvageable qualities. One of my best friends had her car stolen. I was pretty sure that it was this individual.

What I did was call the police and ask them to get together some victims of property offences—car thefts to see if they were willing to come to a parole hearing. I had 12 people (victims of car theft) come to the hearing for this individual.

I think that this was the first time he was able to put a face to these people. He was truly moved by the experience—by the impact of crimes like his.

I met with the offender beforehand and asked him if he was interested in having these victims attend. Of course, he said “I don't care”. He really didn't think about the victims before his hearing or didn't care to hear their stories.

I have kept track of this individual. He finished his parole successfully. As far as I know he is staying out of trouble. This was a real success story.

3. Correctional service directives.

In contrast to the finding that a majority of board members saw the parole board chair as representing a moderate to strong influence on decision-making, fewer board members, 35.4%, ranked the influence of correctional service directives (CSC) as *moderate to strong influence* (see Table 44). The majority of board members, 63%, rated CCS directives as a *minor influence* (29.2%) or *no influence* (31.3%).

Table 44. Member Rating of Influence of CSC on Decision-making

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strong Influence	6	12.5	13.0	13.0
	Moderate Influence	11	22.9	23.9	37.0
	Minor Influence	14	29.2	30.4	67.4
	No Influence	15	31.3	32.6	100.0
	Total	46	95.8	100.0	
Missing	System	2	4.2		
Total		48	100.0		

With respect to the individual board member variables, a statistically significant result that emerged was that female board members were the least likely to describe CSC directives as having an influence on their decision-making. In fact, a majority of female members, 58.3%, indicated that such directives had no influence to their decision-making (see Table 45).

Table 45. Member Rating of Influence of CSC by Gender*

			Gender		Total
			Male	Female	
Decision Making Factors - Correctional Service Directives	Strong Influence	Count	3	3	6
		% within Gender	9.7%	25.0%	14.0%
	Moderate Influence	Count	10	1	11
		% within Gender	32.3%	8.3%	25.6%
	Minor Influence	Count	13	1	14
		% within Gender	41.9%	8.3%	32.6%
	No Influence	Count	5	7	12
		% within Gender	16.1%	58.3%	27.9%
Total		Count	31	12	43
		% within Gender	100.0%	100.0%	100.0%

*exact p=.007.

Conservative board members were statistically the most likely to rate correctional directives as a *strong influence*, while those board members with a liberal orientation were the least impacted (see Table 46).

Table 46. Member Rating of Influence of CSC by Political Orientation*

			Political Orientation			Total
			conservative	moderate	liberal	
Decision Making Factors - Correctional Service Directives	Strong Influence	Count	4	0	2	6
		% within Political Orientation	57.1%	.0%	8.3%	14.3%
	Moderate Influence	Count	0	5	6	11
		% within Political Orientation	.0%	45.5%	25.0%	26.2%
	Minor Influence	Count	3	2	9	14
		% within Political Orientation	42.9%	18.2%	37.5%	33.3%
	No Influence	Count	0	4	7	11
		% within Political Orientation	.0%	36.4%	29.2%	26.2%
Total		Count	7	11	24	42
		% within Political Orientation	100.0%	100.0%	100.0%	100.0%

*exact p=.006.

4. Influence of reference group: Parole supervisor.

The potential influence of another reference group, the parole supervisor, was observed in the participant-observation phase of the research. The practice of the observed parole board involved the parole supervisor routinely sitting in with board members prior to the formal hearing with the offender, during the "pre-deliberation" phase of the hearing. It was during this pre-deliberation phase that the parole supervisor routinely shared important victim information with the board immediately prior to the

interview with the offender. In two cases, this parole supervisor brought to the board members' attention "serious" victim issues (e.g., victim's intense fear of the offender being released, allegations of ongoing abuse that had not previously been reported in file information).

One of these parole cases involved an offender serving a sentence for assault of his spouse. The board members (again, 1 male and 1 female) were in the process of preparing for the case, when they were interrupted by a parole supervisor from the institution. The supervisor advised the board that there were new victim concerns in the case they were about to see. Specifically, the supervisor explained that one victim was so concerned, she did not even want the parole board to see her letter for fear the information might somehow be linked to the offender during the hearing—"she is so terrified she does not want parole applicant hearing any of her information." The board members then proceeded to review the letter from the victim, along with other relevant information to the case. Given the concerns of the victim, the board members chose to keep the victim information confidential and only shared the "gist" or summary of the concerns, phrased to the offender as "confidential information is on file and letters expressing concern about release."

5. Public opinion.

With respect to the perceived impact of public opinion on decision-making, 37.4% of board members rated this external factor as a *moderate to strong influence*; 52.1%, a *minor influence*, and 4.2%, *no influence* (see Table 47).

Table 47. Member Rating of Public Opinion Influence on Decision-making

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strong Influence	4	8.3	8.9	8.9
	Moderate Influence	14	29.2	31.1	40.0
	Minor Influence	25	52.1	55.6	95.6
	No Influence	2	4.2	4.4	100.0
	Total	45	93.8	100.0	
Missing	System	3	6.3		
Total		48	100.0		

Contrary to expectations, board members who rated public opinion as having a moderate to strong influence on their decision-making did not statistically emerge as possessing more favourable views about victim participation in parole.

Gender was a statistically significant factor in the ratings of the influence of public opinion. Specifically, 63.7% of women rated public opinion as a *moderate to strong influence* on their decision-making, in comparison to 29% of the men (see Table 48).

Table 48. Member Rating of Public Opinion Influence by Gender

			Gender		Total
			Male	Female	
Decision Making Factors - Public Opinion	Strong Influence	Count	0	2	2
		% within Gender	.0%	18.2%	4.8%
	Moderate Influence	Count	9	5	14
		% within Gender	29.0%	45.5%	33.3%
	Minor Influence	Count	20	4	24
		% within Gender	64.5%	36.4%	57.1%
	No Influence	Count	2	0	2
		% within Gender	6.5%	.0%	4.8%
Total		Count	31	11	42
		% within Gender	100.0%	100.0%	100.0%

*exact p=.041.

6. Media influence.

Attention from the media was rated as a less influential factor than public opinion, with only 22.9% of board members rating it as *moderate influence*; 60.4%, *minor influence*; and 12.5%, *no influence* (see Table 49).

Table 49. Member Rating of Influence of Media Attention

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Moderate Influence	11	22.9	23.9	23.9
	Minor Influence	29	60.4	63.0	87.0
	No Influence	6	12.5	13.0	100.0
	Total	46	95.8	100.0	
Missing	System	2	4.2		
Total		48	100.0		

The comments from interviewed board members provided some insight into the means by which the media influenced the decision-making process. This included perceived pressure to deny release, the potential for media presence to add additional stress, and the perception that additional time was required to file and case preparation.

The comments from board members are outlined below for illustrative purposes:

There is more pressure on us (board members) because of victim and media attention—pressure not to release. You have to be strong in your decision-making in these cases. (female board member)

It is always difficult when you know the T.V. is outside.
(male board member)

You should be given notice when you have a high profile case—more study. The only individual board member variable to emerge as statistically significant was gender.

Female members rated media attention on the case as a more influential factor to decision-making than male members, with 50% of female members giving media

attention a “moderate influence” rating, compared to 9.7% of male members; exact $p = .013$ (See Table 50).

Table 50. Member Rating of Influence of Media Attention by Gender*

			Gender		Total
			Male	Female	
Decision Making Factors - Media Attention Surrounding Case	Moderate Influence	Count	3	6	9
		% within Gender	9.7%	50.0%	20.9%
	Minor Influence	Count	23	5	28
		% within Gender	74.2%	41.7%	65.1%
	No Influence	Count	5	1	6
		% within Gender	16.1%	8.3%	14.0%
Total	Count	31	12	43	
	% within Gender	100.0%	100.0%	100.0%	

* exact $p = .013$

Overall, results revealed the significance of reference groups in the following order: (a) make-up of voting board (who board members work with), (b) parole board chair directives, (c) correctional service directives, (d) public opinion, and (e) media attention surrounding the case.

Chapter 8: Discussion and Policy Implications

The parole boards that participated in this study required that victim information be given “consideration” as a criterion in conditional release decision-making. In practice, however, this does not necessarily mean that victim interests and information will be considered, weighted appropriately, and ultimately integrated into parole decision-making. Overall, this study found that victim participatory rights in a parole context are not fully understood or welcomed by some board members. Further, significant disparity was evident in how victim information was used by individual board members and the extent to which it was incorporated into parole practices and outcomes. This section will examine and attempt to explain this disparity and will conclude with suggestions for improving the probability of a fair and consistent application of victim rights in parole.

Victim Participation in Parole: Level of Understanding and Acceptance

Notwithstanding legislation and board policy which directs that consideration be given to victim interests in board practices and decision-making, individual board member responses to general questions about victim participation in parole and their actual-decision-making experiences and practices revealed a level of disparity and

negative viewpoints which could reasonably be seen to impair the fair and consistent application of victim participation rights in the parole arena.

Board member responses to questions of a general nature surrounding victim participation revealed that some board members still question the appropriateness of victim involvement in parole and see the potential for negative consequences due to their participation in conditional release. Many board members are unclear as to what can be achieved for the victim at the parole stage. The data revealed that 46% of the parole board decision makers (22 of the 47 surveyed) believed that victim needs were better addressed at the front end of the criminal justice system than at the conditional release stage. Furthermore, despite all participating parole boards in this study permitting victim attendance and oral presentations at hearings, a majority of board members (64.6%, 31 of 48) disagreed with the practice. Finally, when asked whether they believed there were any dangers or drawbacks associated with victim participation in parole, 82% (41 of 50) of surveyed and interviewed board members voiced concerns.

Among the drawbacks outlined by board members was evidence of stereotypical notions of various victim characteristics and victim motivations with respect to their interests in parole participatory rights (e.g., all victims desire vengeance, all victims are against the idea of parole, all victims exaggerate the harm caused). The existence of such victim stereotypes is of concern in that it can impede the fair and objective application of victim participatory rights within the parole arena.

With respect to actual board member decision-making practices, differing views were evident regarding the importance of victim information as a variable to be considered and weighed in the parole decision. When asked to rate the degree of importance they assigned to various decision-making factors, victim information was

rated as a “somewhat to very important” decision-making factor by 65.9% of board members, while 20.5% were undecided about its significance, and 13.6% rated victim information as somewhat unimportant. In a related question, when asked about the kinds of information which must be included in a shortened report to streamline what is often volumes of relevant file information about a prospective parolee, only 39% of board members listed “victim impact information, statements or submissions” as one of the kinds of information that must be included in this shortened report. Furthermore, out of 18 decision-making factors, victim information was ranked 14th in significance and just slightly more important than the “inmate’s expression of remorse”. Of higher perceived decision-making importance than victim information included the inmate’s presentation at the parole hearing, their support in the community (family/work), and institutional behaviour.

The variability seen in the perceived significance of victim information is not a particularly surprising result given the discretion afforded board members. Of concern, however, are results which reveal the existence of board members within a sample of victim rights oriented parole boards who are either uncertain or dismissive of the value of victim input to their decision-making tasks.

Victim Information: Its Influence as a Decision-making Factor

While individual board members held different views as to the appropriate weight to be assigned to the victim variable, the majority of board members reported that victim information was an influential variable. With respect to the circumstances under which

victim information exerted influence and the actual ways in which parole board decision makers used victim information when making conditional release decisions, there was less consensus evident.

When asked what influence, on average, victim information had on conditional release decision-making, only one board member in the sample surveyed stated that it had no influence. The majority of board members (62.5% or 30 of 44) indicated that, on average, victim information had a moderate to substantial influence. Also underscoring the influence of victim information was the fact that almost 44% of board members (21 of 48) were able to recall a case they had voted on which victim information had represented a particularly significant factor in their decision-making.

The influence of victim information on the parole decision itself is less clear. Thirty-one percent of board members (14 of 45) agreed that victims speaking at hearings or with board members prior to hearings likely results in a higher rate of parole denial. Only 11.1% of board members were prepared to disagree with this statement, while a majority of board members (57.8%, 26 of 45) declined to offer a definitive opinion in that they choose the "neither agree or disagree" option.

Among those board members who saw victim information and/or participation as an important consideration in their own decision-making, variation was seen in relation to how members actually used and incorporated victim variables into decision-making practices and outcomes. Emerging from the open-ended responses to various questions regarding their specific use of victim information in decision-making tasks were three distinctive ways in which victim variables were influential and/or integrated into board member decision-making tasks:

1. a discretion channelling tool,

2. a parole condition assessment tool, and
3. a risk assessment tool.

Discretion Channelling Tool

The presence of serious and/or current victim information encourages some board members to give such information a heightened level of consideration and in some cases, its existence can re-direct or channel board member discretion towards victim interests. In this way, victim information can exert a significant influence on the parole decision itself. Serious victim impact information included evidence that the victim suffered severe long lasting emotional or physical trauma or particularly brutal or sadistic behaviour inflicted on the victim. Current victim information, included recent information of ongoing harassment of victim by offender, reasonable and current fear of offender's release, and evidence of ongoing victim suffering. In the words of one board member:

There are so many things to consider when making a decision. Community safety is always the first. If the victim statement/presence raises issue that make us view the offender as a possible continued threat to the community then it would have substantial influence on my decision.

However, current information that indicates the victim has not suffered any long lasting negative effects, victim feels that sufficient punishment time has been served, or there has been positive efforts towards victim-offender reconciliation can work towards a parole grant.

Parole Condition Assessment Tool

In this instance, victim information is viewed as a consequential factor, not in relation to the decision to grant or deny parole, but in terms of assisting with the assessment of and imposition of parole conditions. These conditions might include imposing a condition to have no contact with the victim(s), restricting the location

whether the offender can reside, requiring that the offender report all associations and relationships, and requiring that the offender participate in treatment oriented programming. This perspective is reflected in the commentary of one board member: "Victim information has an impact on parole conditions, rather than on the grant of parole itself".

Risk Assessment Tool

Victim information is incorporated with the purpose of assisting board members in their assessments of the risk an offender might present both to the victim(s) and to the community at large. The victim's provision of new and significant information about the offender in relation to any number of areas (e.g. psycho-social history, familial background, employment history, response to prior treatment interventions and/or community supervision) can be seen as relevant to the board's risk assessment duties. However, information which speaks to the etiology, nature, duration and frequency of criminal or anti-social behaviours committed against a victim(s), may prove to be of high relevance to risk assessment exercises particularly if such behaviours were unknown and not previously recorded in other documentation available for board member review. Victims can share details regarding criminal behaviours which had not been reported and victims can provide information which is perceived as relevant by board members in assessing the seriousness and dynamics of an offending pattern.⁹⁴ The victim might also provide the board with new information about the offender that assists in identifying criminogenic factors or a behaviours that may not have been previously known or may

⁹⁴ This information might include evidence of longstanding abuse, abuse of multiple partners, sadistic or brutal elements of an offending pattern, stalking behaviours, violation of no-contact orders, and related information.

not have been addressed through treatment programming or other means. Finally, the presence of victim information can also encourage board members to ask specific victim related questions of the offender that are relevant to the risk assessment process.⁹⁵

In addition to the use of victim information in risk assessment exercises, victims attending at parole hearings also afford board members an opportunity to test and assess the existence of any problematic issues which might still exist between offender and victim. For example, the offender's responses may indicate a continuing anger towards the victim, elements of a controlling personality or a lack of empathy. However, the presence of the victim at the parole hearing could feasibly impact negatively on the risk assessment process particularly if victim presence provokes the development of an emotionally charged environment. For the offender, victim presence may cause the offender to experience any number of emotions which may impair the ability of the offender to reflect on and competently answer board questions. For the board members, victim presence may discourage certain questions being asked out of a perceived need to protect the victim from further victimization or embarrassment if certain subject areas are canvassed.

Overall, however, the use of victim information as a risk assessment tool has the potential to impact on the decision to grant or deny conditional release and in this way, represents a particularly influential role in the conditional release decision-making process.

The various uses of victim information underscore the potential for decision-making disparity in that similar cases may be disposed of differently, depending on the

⁹⁵ For example, questions related to a previous pattern of behaviour, specific elements in crimes, extent of awareness of impact of crime on the victim, degree of empathy and remorse, acceptance of responsibility, future intentions towards the victim.

individual orientations of board members, the availability of the victim to attend a parole hearing, and the kind of victim information available. Further, the potential for higher rates of parole denials are evident given the usage of victim information as a discretion channelling mechanism and in the risk assessment process.

Victim Variables: Accounting for the Disparity in Board Member Use

There are various explanations for why board members were found to differ in regards to their actual utilization and incorporation of victim related variables in their decision-making tasks. Study data suggest that these explanations include a lack of clarity about the appropriate role for victims in parole, the existence of implementation problems, the characteristics of the individual decision maker and the influence of specific contextual and environmental factors.

First, it was evident that board members hold diverse opinions about the role victims should play in parole board proceedings. When asked to reflect on the role victims should play in parole decision-making, board member responses were clearly demonstrative of the differing views that exist. Seven roles for victims were outlined with these roles ranging from what represented essentially no role or a minimal one in parole, varying roles related to that of information provider (relating to offence impact, appropriate parole conditions, risk assessment information), to an influential role which involved the victim directing the outcome of the parole decision. Clearly, the personal orientation and viewpoint of the individual decision maker regarding the role for victims

has an impact on the extent to which victim information is influential in actual decision-making tasks.

Second, implementation problems related to victim issues were also reported by board members in terms of a lack of training opportunities for board members and the availability of victim information. Almost 30% of board members (13 of 44) reported feeling confused at times about how to use victim information in their conditional release decision-making tasks. As noted by one board member: "Victim issues should be considered. Difficult to explain how or what victim information should be weighed." As well, victim information was not available for board member consideration in many cases. For victim information to be considered at parole hearings, it must first be made available to reviewing authorities. Survey results revealed that victim information is either not available or, if available, is not provided for board members review in all cases. Specifically, only 27.3% of the board members advised that victim information was available to them in 81 to 100% of cases. The majority of board members indicated that victim information was available to them in less than 60% of cases. The unavailability of victim information further contributes to the potential for a lack of clarity and confusion around how victim information should be used given its relative rarity compared to other types of information which are consistently available for review (e.g. criminal history, treatment program reports, institutional behaviour).

Third, the level of support for victim involvement in parole and the extent and methods by which they incorporate victim information into parole decision-making appears to be somewhat dependant on individual board member differences. As has been demonstrated in a number of studies on parole board decision-making (see Chapter 5), certain individual board member characteristics were found to influence the

level of board member acceptance of victim participation in parole and the perceived significance of victim information in decision-making. Specifically, younger board members, those members who have served on the parole board for longer periods of time, and most significantly, female board members, were the individual characteristics of decision makers which emerged as "victim rights friendly" characteristics. Board members with these characteristics possessed views more favourable towards victim participation in parole and were more inclined to consider and weigh victim information more heavily than board members with other characteristics. Gender, however, emerged as the most significant individual board member characteristic which influenced the level of support for victim participation in parole was supported and the perceived significance of victim information in decision-making.

With respect to victim participation, female board members emerged as statistically more likely to be accepting of victims speaking at hearings. Specifically, a significant majority of female members, 92.3%, were in favour of victims speaking at parole hearings, compared to just a slight majority of male board members (51.5%), a statistically significant difference (exact $p=.036$). As well, although not reaching statistical significance, female members of the board were less likely to agree with the statement "victim needs are better addressed at the front stage of the justice system than at the conditional release stage" (25% of female board members vs. 51.6% of male board members).

As to views on the significance of victim information in decision-making, female members were more convinced of the relevance of victim information and more likely to rate victim information as an important factor than male members. A statistically significant number of female board members disagreed that "board members weighed

victim information too heavily in decision making” (61.5% female vs. 16.1% male board members—statistically significant at exact $p=.023$). Furthermore, when asked to rate the importance of victim information as a decision-making factor, female board members were more likely to rate it as a “very to somewhat important factor” than male board members (statistically significant at exact $p=.023$). While falling short of statistical significance, more female board members (75% of women vs. 44.4% of men) reported recalling a case where victim information was a significant factor in their decision-making (exact $p=.077$). An analysis of 18 possible decision-making factors revealed that female board members placed victim information as the 7th most important ranked factor, with male board members ranking it as only 13th in importance.

Overall, real and important differences were observed in how male and female board members view victim participation in parole and use victim information in their decision-making tasks. The finding that female board members are more sensitive to victim information lends support to research which has found that women and men differ in their administration of justice (see Chapter 5 for a review). As the specific reasons for the observed differences between male and female board members are beyond the scope of this study, further empirical study of the existence of and reasons for differences in decision-making processes between male and females parole board members is necessary.

Finally, the study findings support the general social psychological observation that human behaviour is influenced by situational factors in the immediate decision-making environment (Mischel 1968). Among the various situational and contextual factors explored, board panel composition was the highest rated factor in terms of its influence on decision-making and given the importance of board member gender,

represents the characteristic most likely to impact on victim variables. Specifically, 63% of board members rated the make-up of the board as a moderate to very strong influence on their decision-making. Thus, the coincidence of like-minded parole board members (e.g. those who are more inclined to accept victim participation) or a panel with a majority of female board members would increase the probability that victim information would be weighted more heavily.

The environmental factors of public opinion and media attention were generally rated by board members as less significant influences on parole decision-making, but differences were found in the degree of influence by gender. Female board members emerged as statistically the most likely to rate public opinion and media attention as factors of influence on their decision-making. Specifically, 63.7% of women rated public opinion as a moderate to strong influence on their decision-making, in comparison to 29% of the men ($p < .041$). Further, female members rated media attention on the case as a more influential factor to decision-making than male members, with 50% of female members rating media attention a "moderate influence" rating, compared to just 9.7% of male members; exact $p = .013$. The enhanced focus on accountability on the part of female board members lends support to the research of Steffensmeier and Hebert (1999) who found that female judges were more affected by recidivism risk and more likely to take notice of constituents' criticisms about the impact of offender recidivism on the court's standing in the community. The pressure caused by token status may be an explanatory factor given the fact that only 29.5% of the board members in this study were women.

Policy Implications

An important finding in this study was the use of victim information as either a tool to channel discretion towards victim interests or as a tool in risk assessment exercises. In both cases, these uses of victim information increase the probability that an offender will be denied parole, particularly if victim interests are negative in nature. Given the finding that victim information can play an influential role in the parole decision, concerns arise around the lack of standardized procedures to verify the information provided to the board by victims and the lack of guidelines for the content of victim information. Given these issues, a case is made for the development of information verification guidelines, improved board member training on victim issues, as well as an exploration of the idea of parole within a restorative justice framework.

The Need for Victim Information Guidelines

It is important to underscore the fact that many parole boards have no established procedures in place to verify that the information provided in victim impact statements or to the board in letters or other submissions is accurate. It is entirely possible that victim impact information could contain erroneous, false, and inflammatory information. Victim impact statements, however, form part of the permanent record of the inmate file and cannot be removed under most circumstances. Canadian parole boards do not have jurisdiction under subsection 24(2) to exclude information or evidence that is provided to it (Mooring v. Canada (NPB), (1996) 1 S.C.R. 75. The following passage by

Mr. Justice Sopinka in *Mooring v. Canada*,⁹⁶ summarizes the board's role and the mandate to include, not exclude, evidence:

The Parole Board does not hear and assess evidence, but instead acts on information. The Parole Board acts in an inquisitorial capacity without contending parties—the state's interests are not represented by counsel, and the parolee is not faced with a formal "case to meet". From a practical perspective, neither the board itself nor the proceedings in which it engages have been designed to engage in the balancing of factors that s. 24(2) demands.

In the risk assessment function of the board, the factors which predominate are those which concern the protection of society. The protection of the accused to ensure a fair trial and maintain the repute of the administration of justice which weighs so heavily in the application of s. 24(2) is overborne by the overriding societal interest. In assessing the risk to society, the emphasis is one ensuring that all reliable information is considered provided it has not been obtained improperly.

Like the basic structure and function of the Parole Board, the language of the board's enabling statute makes it clear that the board lacks the ability or jurisdiction to exclude relevant evidence. The language of the Corrections and Conditional Release Act confers on the board a broad inclusionary mandate. Not only is it bound to apply the traditional rules of evidence, but it is required to take into account "all available information that is relevant to a case". No mention is made of any power to apply exclusionary rules of evidence. Indeed, such a provision would conflict with its duty to consider "all available information that is relevant." (pp. 92-93)

Court decisions related to the parole board have also noted that if the board uses information in its decision-making, it must fulfil its duty to act fairly by verifying the reliability and persuasive value of that information. This, however, does not mean conducting an inquiry to verify information that the board receives. As noted by the Court (*Mooring v. Canada*, 1996):

⁹⁶ Mr. Mooring claimed his constitutional rights were violated as his former wife had provided victim impact information to the Board. He alleged that the board and the correctional service of Canada had failed to investigate the truthfulness of the information contained in the two letters, which he believed the Board had used to his detriment (in revoking his parole, denying a subsequent parole and imposing special conditions upon his legislated release).

Given its needs, resources and expertise, the board must be given some latitude, obviously within some legal parameters, as to the appropriate methods for guaranteeing the reliability of information that is supplied to it. It may be appropriate to do so by an investigation or by merely inquiring further. But confronting the person primarily affected with the allegations made in his regard, and enabling him to comment on them and rebut them, is also a significant method of verification which is generally done unless there is some security problem. Furthermore, in terms of fairness, the confrontation ensures compliance with those principles, and, in terms of the release objective, is a way of gauging the inmate's reaction and his sincerity in the face of the allegations. (p. 18)

The board's ability to verify victim information is complicated, however, by the need to protect confidentiality in cases where safety of the victim is an issue. One of the concerns expressed by victims of crime is whether the input they provide to parole boards will be kept confidential. Some crime victims fear that the offender will retaliate if the source of the information is not kept confidential. In the United States, the majority of paroling authorities consider victim input to be confidential. By contrast, the majority of Canadian parole boards require that all information used by board members to make decisions, including victim information, be shared with offenders. One notable exception is the found in the policy of the B.C. Parole Board which permits submissions from victims to remain confidential if the victim expresses written concern about further victimization and harm and marks their submission as confidential. Given confidentiality provisions in many parole boards, verification of victim information is impaired if not impossible as confronting the offender with the information would break set confidentiality rules and potentially jeopardize the safety of the victim. Further, even in a confrontation with the offender, most board members are likely to regard an offender's denial of the facts presented by the victim with some degree of scepticism.

Given the constraints on verifying victim input, it is evident that increasing victim participation in the parole process also increases the risk of false information being introduced into the parole decision-making process. Inaccurate information, whether it comes from victims or other sources, makes risk assessment and quality decision-making unattainable goals. This is problematic insofar as it interferes with the ability of the board to achieve their primary purpose; the protection of society. Clearly, given these possibilities, greater attention must be paid by parole boards as to what policies and/or procedures could reasonably be implemented to ensure the reliability and veracity of victim information.

In addition to the need to incorporate verification procedures for victim information, a related issue concerns the nature of the content permitted within victim statements to paroling authorities. Perhaps the most realistic way of limiting the potential arbitrariness produced by victim information is to limit their scope. Guidelines for victim statements have previously been advanced as necessary, particularly given the potential for victim information in the parole phase to replicate that which was shared at the sentencing hearing (Roberts, 2001). While many parole boards have developed general policy guidelines around the kind of information victims should provide to the board, in most instances there is minimal vetting of victim information due to the potential for such exclusionary policies to attract negative attention from the public at large. Further, board members' typically possess the discretionary authority to consider the victim information, even if it deviates from board policy. An example of this was found in the author's observation of hearings of one parole board which had implemented a restrictive policy regarding the content of victim information for board member review. Despite the existence of a policy guiding content of victim information, the victim information

considered by board members, as well as the victim presentation at the hearing, deviated significantly from stated board policy. Given this potential for policy directives to be ignored by board members, a practice observed in others studies of decision-making within the correctional arena (Carroll and Mondrick, 1978; Kastenmeier and Eglit, 1975; Smara-Grewal, Pfeifer, and Ogloff, 2000), the provision of training by board members might assist in the facilitating a fair and consistent application of victim variables in parole decision-making.

The Case for Board Member Training

The lack of training of board members might partially explain the observed variation in opinion regarding the role for victims in parole and the differential weighting and utilization of victim information by individual board members. This study found that less than half of the board members agreed that they had received training that would assist them in understanding how to consider and integrate victim interests into their conditional release decision-making tasks.

The differential case factor weightings across decision makers is particularly problematic given the implications for disparate decision-making. Practically, a first step to address this issue might be to alert board members to the reality of variability in factors relied upon in decision-making and, in particular, the existence of differing views on the importance and use of victim information in board decision tasks. As well, training should focus on the value of objective evaluation of rendered decisions and the benefits of maintaining a degree of consistency in their decision-making. Further, the introduction of more specified guidelines around how victim information is to be

incorporated into decision-making may be necessary to ensure fairness and consistency in both the implementation and application of victim participatory rights.

The benefits of training aside, a longer term resolution to the problems evident with victim participation in parole may require an in-depth analysis of how victim interests could more comfortably fit within the fundamental principles and purposes of parole.



Parole Within a Restorative Justice Context

Given the potential for victim participation to conflict with what have historically been the most significant purposes of parole, namely rehabilitation and reintegration, a fundamental review of parole purpose may be necessary to minimize the potential for conflict between victim participatory rights and the achievement of parole goals. Such a review might include an analysis of the pros and cons of situating parole within a restorative justice philosophy.

Is parole a restorative process? Although parole is not usually considered in traditional descriptions of restorative justice, there is a strong case to be made for its inclusion. Parole has many of the necessary characteristics in that it engages the victim, the community, and the offender. It provides an opportunity for gradual reintegration and support for a crime-free lifestyle, setting the stage for offenders to demonstrate accountability for their offence, to address the harm they have caused, and to re-build relationships with the victim and the larger community. Parole within a restorative context would provide greater opportunities for the victim and the larger community to

become involved in the decision processes of the parole board and subsequent reintegration efforts. The non-adversarial model of the majority of board hearings seems well suited for a restorative justice approach to parole decision-making in which the offender, the victim and the community interact to address harm, healing, and explore options for rebuilding of positive relationships.

Even though there is seemingly a close fit between some of the characteristics of restorative justice and the principles and purposes of parole, there are some challenges for parole boards in considering a restorative justice approach. Many of the offenders with whom the parole board must deal are incarcerated for violent crimes, and this in and of itself creates barriers for the victim and the community to participate in the process of restoration. In addition, the parole board's role and its positioning in the criminal justice system influence the board's ability to implement restorative processes. The parole board is very much at the "back-end" of the system and is episodic in nature given its focus on parole decisions. Unless restorative approaches permeate the front-end of the system, and the work of correctional and other agencies charged with case preparation and supervision, it will be difficult for parole boards to implement a restorative justice approach in an effective manner. While individual parole boards can work toward ensuring that the principles and philosophy of restorative justice characterize their work, full implementation of restorative approaches will require close partnerships with correctional and other agencies with which the parole board works alongside. Notwithstanding these barriers, paroling authorities can begin to bring a restorative approach to parole through revision of their decision-making processes and policies.

Developing decision processes and policies that are more inclusive for victims for crime would be a practical first step towards implementing a restorative approach to parole. In practical terms, this could require that the board add another component to the risk assessment policy. This could be a dimension that would require the offender to have done his utmost to make reparations for their crimes. Thus, the parole board could rationally deny an offender a conditional release if, in the opinion of the reviewing panel, the offender had failed to make an adequate effort to restore the harm done to the victim. It is not uncommon for the parole board members to review cases where the offenders have outstanding restitution orders or community service orders. The board could require or actively encourage offenders to respect these undertakings before being favourably considered for release to the community.

In addition, parole boards could seek information from victims that is directly relevant to the risk assessment process. As noted earlier, many parole boards have attempted to restrict the voice of the victim through policies that provide guidelines to victims as to what information the board would like to receive from them. Usually this information is restricted to their views on the harm they have suffered, both past and present. The extent to which harm caused to the victim and ongoing suffering weighed in risk assessments, however, is variable as this study demonstrated. A more restorative approach would seek information that is of enhanced relevance to risk assessment processes from victims. This might include information on a specific pattern of criminal behaviour, relevant details of the crime, social and life history information, and so on. Permitting victims to submit information that does not speak to the parole criteria is akin to providing no voice at all to victims.



Restorative justice in a parole context would give victims the opportunity to express their feelings about the offence and harm done to them and to fully contribute their views about what is required to put things right. The offender would be held responsible for the harm caused and their parole application evaluated as to their restorative efforts, among other factors. Given the negative views held by the public about parole and the move to abolition of parole in many jurisdictions, a shift to viewing parole as a restorative process might be necessary for the very survival of the institution of parole.

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Appendix A: Hearing Specific Examples of Victim Issues in Parole Decision Making

Hearing “A”

Hearing A represented a case in which the offender had been convicted of a sexual assault and assault causing bodily harm against an intimate partner and physical assault on a young children. One male and one female board member constituted the panel for this case. There existed written victim information for the Board’s perusal in this case, of which, only a gist or summary was shared with the offender. The information from the victim contained new information, namely allegations of significant ongoing domestic violence and harassment of the victim, and ongoing fear of the victim that the offender would be released.

It was the male board member who emerged as the board member more pre-occupied with the victim information in this case. In the pre-deliberation stage, the male board member opened discussions about the case with a focus on the victim:

The victim wants to be kept advised of this guy—substantial victim information on file—he was stalking her (male board member).

The male board member also expressed his dissatisfaction prior to the hearing with the inmate’s sentence: “I am very surprised at the short sentence. I am not in favour of short sentences for major offences”.

The Board members devoted a considerable degree of time in the hearing to exploring issues of relevance to the impact of the offending on the victim and the potential for further harm to the victim with questions asked such as:

1. Why did you commit the current offences?
2. Why did you choose her {the victim}?

3. Was relationship abusive for the full ___ years?
4. What was the nature of the break of undertaking? Did it relate to victim?
5. You told us you engaged in a violent sexual assault on your wife?
6. What did you do to your spouse?
7. When did you separate?
8. What do you feel about what happened?

The potential emotional impact of the victim information and focus on victim related concerns and information is demonstrated by the spontaneous comment of the male board member when the hearing was adjourned for deliberation:

My anger took over once I found out she {the victim} was beaten every day.

It is important to note that this victim information (beating of the spouse on a regular basis) was information provided by the victim and not shared with the offender. The verbal comments from both the male and female board member focused primary on issues related to the victim information and clearly illustrate the weight given to victim information in their ultimate decision to deny parole. The female board member noted at the outset of the deliberation process:

At beginning {of hearing}, he was denying. Then he came out and came clean about offending every day.

The male board member observed that the incidents of violence were “all historical, no recent examples of violence” and spoke about his concerns around the treatment program the offender hoped to attend in the community on parole. The male board member then turned abruptly to victim issues:

It is amazing what she has been put through.....We have unfortunately, the victim's family, they are concerned. His family blames the victim for offences still. I am not comfortable with granting parole.

The female board member also focused her attention to victim issues:

What can we do, he has lots of plans but nothing is confirmed—he can come back {apply for parole} when plans are confirmed. From intuition, I don't see him harassing her in the community. Obviously, he admitted remorse {at hearing}.

Overall, in voting to deny parole, the Board members advised that concerns around his history of violence, lack of programming, unconfirmed release plans and victim concerns were the persuasive factors in the case.

Hearing B

The last hearing of the day, referred to as hearing B, also represented a case with significant victim interests. This case involved an offender serving a sentence for assault of his spouse. The Board members, again one male and one female member, were in the process of preparing for the case when they were interrupted by a parole supervisor from the institution. The supervisor advised the Board that there were new victim concerns in the case they were about to see. Specifically, the parole supervisor explained that one victim was so concerned she did not even want the parole board to see her letter out of fear that the information might somehow be linked to the offender during the hearing—“she is so terrified she does not want parole applicant hearing any of her information”. The Board members then proceeded to review the letter from the victim, along with other relevant information to the case. Given the concerns of the victim, the Board members chose to keep the victim information confidential, and only shared a “gist” or summary of the concerns, phrased to the offender as “confidential information is on file and letters expressing concern about release”.

In hearing B, both parole Board members observed that they had seen this offender several months ago and voted to deny parole. The male board member, in particular, recalled the response of the offender to victim concerns which had been evident in this file: "he said things at his last hearing that she {one of the victims} had accused people before and they make money at it". The female board member also verbalized that " I still haven't changed my position on release—last time we were negative about release". Psychological information, which emphasized high risk factors, violence and risk to re-offend was high, was also underscored by both board members.

It was clear from the pre-deliberations that the previous parole denial and the victim information which was available for their perusal had impacted negatively on the male board member.

In hearing B, board members also focused a considerable amount of time on questioning the offender on victim related concerns:

1. How do you feel towards ex-spouse?
2. How long have you been with your current girlfriend?
3. Do you know where ex-spouse is?
4. Do you feel you have her (ex-spouse) out of your system?
5. How did things come together that you did what you did?
6. Why would your ex-spouse make-up allegations (e.g., threatening her life, prior violence)?

While the offender was now being supported for a day parole, the board members were only prepared to grant a restricted day parole release specifically for purposes of attending treatment programming. In their deliberations, it was evident that victim interests had been a persuasive factor in the decision. The female board member

explained that she was only prepared to grant a restricted treatment oriented parole and emphasized that he was to attend immediately from one program to the next (thus, limiting any unstructured time in the community and opportunities for victim contact). A no contact with the victim condition was also imposed.

Appendix B: Simon Fraser University Research Ethics Forms

SIMON FRASER UNIVERSITY INFORMED CONSENT BY SUBJECTS TO PARTICIPATE IN A RESEARCH PROJECT

The University and those conducting this research project subscribe to the ethical conduct of research and to the protection at all times of the interests, comfort, and safety of subjects. This form and the information it contains are given to you for your own protection and full understanding of the procedures. Your signature on this form will signify that you have received a document which describes the procedures, possible risks, and benefits of this research project, that you have received an adequate opportunity to consider the information in the document, and that you voluntarily agree to participate in the project.

Any information that is obtained during this study will be kept confidential to the full extent permitted by law. Knowledge of your identity is not required. You will not be required to write your name or any other identifying information on the research materials. Materials will be held in a secure location and will be destroyed after the completion of the study. However, it is possible that, as a result of legal action, the researcher may be required to divulge information obtained in the course of this research to a court or other legal body.

Having been asked by Kim Polowek of the School of Criminology of Simon Fraser University to participate in a research project experiment, I understand the procedures to be used in this project. Specifically, the procedures to be used involve research subjects completing a questionnaire or an interview. I am aware that the benefits of the project include a greater understanding of parole board decision making. There is no risk of physical or psychological stress from my participation. I understand that I may withdraw my participation in this project at any time.

I also understand that I may register any complaint I might have about the research project with either the principal researcher, Kim Polowek or with Dr. Rob Gordon, Director, of the School of Criminology of Simon Fraser University (Tel.: 604-291-3213).

I may obtain copies of the results of this study, upon its completion, by contacting: Kim Polowek at Simon Fraser University (604-291-3213).

I have been informed that the research material will be held confidential by the principal investigator.

I understand that Chair of the Board, _____, has granted permission for Board members to participate in this study. Board member participation, however, is completely voluntary.

I agree to participate in this research study by completing a questionnaire during the time period (March to May, 2000).

Name (please print legibly): _____

Address: _____

Signature: _____

Date: _____

Witness: _____

ONCE SIGNED, PLEASE RETURN TO (Parole Board office) FOR RETURN BACK TO RESEARCHER or FAX SEPARATELY TO RESEARCHER AT 604-461-4441

**SIMON FRASER UNIVERSITY
UNIVERSITY RESEARCH ETHICS REVIEW COMMITTEE**

Completion of this form is **OPTIONAL**, and is not a requirement of participation in the research project. However, if you have served as a subject in a project and would care to comment on the procedures involved, you may complete the following form and send it to the Chair, University Research Ethics Review Committee. All information received will be treated in a strictly confidential manner.

Name of Principal Investigator: _____

Title of Research Project: _____

Dept./School/Faculty: _____

Did you sign an Informed Consent form before participating in the project? _____

Were there significant deviations (changes) from the originally stated procedures? _____

I wish to comment on the involvement in the above project which took place:

(Date) (Place) (Time)

Comments: _____

Completion of this section is optional:

Your name: _____

Address: _____

Telephone: (work) _____ (home) _____

This form should be sent to the Chair, University Research Ethics Review Committee, c/o the Office of Vice-President, Research, Simon Fraser University, Burnaby, BC, V5A 1S6.

Appendix C: Parole Board Decision-Making Survey for Board Members

PAROLE BOARD DECISION-MAKING SURVEY

FOR BOARD MEMBERS

Please return completed survey to:

Kim Polowek
Faculty, Criminology and Criminal Justice
University College of the Fraser Valley
Abbotsford Campus
33844 King Road
Abbotsford, B.C. Canada
V2S 7M9

Telephone: 604-853-7441 (local 4330)—University
604-461-4441 (home number and fax)

Dear Parole Board Members:

I am a student in the School of Criminology, Simon Fraser University, who is in the process of completing doctorate studies. For the dissertation component of my Ph.D., I am focusing on issues relating to Parole Board decision making and conditional release, as well as victim participation in the conditional release phase of the justice system. This research interest has developed from my past life in provincial corrections as a probation officer and through my current teaching position at the *University College of the Fraser Valley*. I am also a part-time member of a Parole Board in Canada.

Please feel free to contact me directly if you have any questions about this research or the attached questionnaire (Kim Polowek at 604-461-4441(home), 604-853-7441 (local 4330—University), or by email:kimpolowek@aol.com)

Your participation in this survey is completely voluntary. I hope that you take this opportunity to express your opinions as your responses may play an important role in helping with the future planning of training programs for Board members across North America. A personal and very sincere thank-you is extended for taking valuable time out of your busy day to complete this survey.

CONFIDENTIALITY AND ANONYMITY

The identity of specific Parole Boards and individual board member respondents will not under any circumstances be known nor will the completed survey be available to anyone other than the researcher. A number of steps have been taken to ensure that the anonymity of you and your Parole Board is protected:

- ONLY the researcher will see your completed questionnaire.
- Surveys will be shredded upon data entry. All data entry will take place at the *University College of the Fraser Valley*—no one other than the researcher will have access at any time.
- The final survey results will be presented in an aggregated (grouped) format without any reference to the responses from specific Boards or individual Board members. Raw data will not be displayed—only aggregated distributions. There are numerous Parole Boards participating in the research across North America.
- Your name (or any other identification numbers) does not appear on the questionnaire.
- Only a very limited number of demographic characteristics are contained in the questionnaire.

After survey completion, please return to the researcher at the University College of the Fraser Valley.

Your opinions really do count, and I am counting on you to share them. Again, complete confidentiality is guaranteed. Thank you for your participation.

Sincerely,

Kim Polowek
Criminology Research Centre, SFU

5. Listed below are possible factors which are often viewed as important in conditional release decision making. While each case before the parole board is unique, board members over time often develop strategies for organizing and assessing complex information from diverse sources. One of these strategies is to develop patterns whereby certain kinds of information are routinely searched for when studying a case and weighed accordingly when making a conditional release decision.

Please estimate the average degree of importance each of the following factors are to your decision making in a case of parole. They appear below in no particular order. Please rank each factor listed below with reference to the following scale:

- 1=very important
- 2=somewhat important
- 3=undecided
- 4=somewhat unimportant
- 5=not at all important

- Actuarial risk assessment/recidivism scores _____
- Prior criminal history _____
- Inmate presentation at the hearing _____
- Victim information (victim impact reports/victim info. on file) _____
- Institutional behaviour _____
- Family/relationship/employment support in the community _____
- Participation in and progress in treatment/rehabilitative programs _____
- Recommendation of Correctional (prison) staff _____
- Seriousness of current offence _____
- Psychological information/opinions/reports _____
- Information from sentencing Judge _____
- Protection of the community _____
- Comprehensiveness of community supervision plan _____
- Past behaviour on parole _____
- Inmate expression of remorse _____
- Length of sentence imposed by the Judge _____
- Age of offender _____
- Sex of offender _____
- Other _____(please identify) _____
- Other _____(please identify) _____
- Other _____(please identify) _____

6. Reflecting on your experience as a parole board decision maker, what influence on average, do the following factors have on your decision making in conditional release cases. (Please Circle)

	Very Strong Influence	Strong Influence	Moderate Influence	Minor Influence	No Influence
a) Make-up of voting board (e.g., who you are working with)	1	2	3	4	5
b) Media attention surrounding the case (e.g., the parole decision will receive media attention)	1	2	3	4	5
c) Public opinion	1	2	3	4	5
d) Correctional Service Directives	1	2	3	4	5
e) Presence of Observers at hearing	1	2	3	4	5
f) Number of cases in a hearing day	1	2	3	4	5
g) Directives from Chair of the Parole Board	1	2	3	4	5
h) My personal philosophies/opinions about the causes of crime	1	2	3	4	5

7. Is there anything you can suggest that might contribute to Parole Board members making improved quality decisions?

13. Since becoming a member of the Parole Board, I have received training which assists me in using information provided by and about victims in my decision making.

(Please circle response)

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
1	2	3	4	5

14. I feel that I possess adequate information and awareness about the effects of victimization.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
1	2	3	4	5

15. There are occasions during parole hearings that I have felt uncomfortable with the presence of the victim.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
1	2	3	4	5

16. At times, I feel confused as to how victim information should be utilized in decision making tasks.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
1	2	3	4	5

17. Based on my experience as a board member, I have found that offenders postpone/waive their hearing because of the presence of the victim.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
1	2	3	4	5

18. The presence of a victim at the hearing has a negative impact on the offender.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
1	2	3	4	5

19. I am in support of victims speaking at parole hearings.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
1	2	3	4	5

20. At times, I have found that some Board members weight victim impact information too heavily in their decision making.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
1	2	3	4	5

21. Victim needs are better addressed at the front end of the criminal justice system (e.g police and sentencing) than at the conditional release stage.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
1	2	3	4	5

22. Cases involving high profile victims are treated differently than cases where the victim is unknown or low profile.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
1	2	3	4	5

23. Overall, I am satisfied with the availability of victim information for the conditional release cases I review.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
1	2	3	4	5

24. Victims speaking at hearings or with board members prior to hearings likely results in a higher rate of parole denial.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
1	2	3	4	5

25. Victims' input will inject a source of inconsistency and disparity into conditional release decision making.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree
1	2	3	4	5