

## Victim Narratives and Therapeutic Justice

Heather B. F. Griffith

*Heather B. F. Griffith is a doctoral student in the University of Regina PhD in Education program and a recent graduate of the Master of Arts-Integrated Studies program at Athabasca University, specializing in victimology as an independent track of study. She continues to focus her doctoral research on the development of victimology pedagogy and academic learning opportunities. She currently lives in Regina, Saskatchewan.*

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### Abstract

Victim narratives and Victim Impact Statements are an opportunity for expression for victims of crime. However, victims often express dissatisfaction with the process of writing Victim Impact Statements and the subsequent ways in which those statements are used in criminal justice processes. This paper explores how the current practice fails to address problems associated with loss of voice as experienced by victims as primary stakeholders in the justice process. I conclude with a list of recommendations for victim writing in the context of therapeutic and restorative justice that are best implemented through victims' services and supports. These recommendations can be implemented without compromising the needs or processes of the justice system.

**Keywords:** victim narratives, victim impact statements, narrative expression, therapeutic justice, restorative justice

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This paper discusses some of the benefits and shortcomings of the Victim Impact Statement as an opportunity for expression for victims of crime. Current practices seldom create an opportunity for victims to tell their stories, in their own words, about the way a crime has impacted them. I explore how the current practice may fail to address problems associated with loss of voice for victims who have experienced feelings of loss of control. I provide a review of some of the ways in which trauma and crime can impact victims, exploring ways in which victim narratives can support individuals in the recovery process. I conclude with a discussion of possibilities for victim narratives and victim impact statements in the context of integration of therapeutic and restorative justice practices. The possibilities include traditional justice practices that may be best implemented through victims' services and supports, without compromising the needs or processes of the justice system. The Canadian Victims Bill of Rights ([openparliament.ca](http://openparliament.ca), 2015) identifies and formalizes a commitment to protecting victims' rights to information, the right to protection, the right to participation and the right to restitution. The Victim Impact Statement is currently a significant aspect of victim participation in justice processes. This paper queries possibilities for increasing victims' satisfaction with the process of preparing a statement.

### Historical Justification for Inclusion of Victim Impact Statements

In a comprehensive review of the function and purpose of Victim Impact Statements (VIS), Roberts and Erez (2004) take the position that the original intent of victim narratives was for the expressive and communicative value. This was subsequently replaced by an impact model which stressed that

the impact of a crime on the victim should be considered in the context of sentencing a convicted offender. They discuss how the impact model overlays with Roach's punitive model of victim participation (as cited in Roberts & Erez, 2004), where the communicative and expressive functions model interfaces with therapeutic and restorative justice principles. Roach (1999) argues that the punitive model of victim participation is adversarial, where the rights and needs of the victim are seemingly "pitted against" the rights of the accused (p. 29). According to Roberts and Erez (2004), the current impact-based court procedures seldom create an opportunity for victims to tell their stories in their own words.

Often, the Victim Impact Statement (VIS) is written in answer to carefully constructed questions that omit any references the Court finds inflammatory or inappropriate to sentencing decisions, effectively silencing the victim's own voice. Moreover, these predetermined questions can fail to support an individual's need for self-expression in ways that could promote recovery from the victimization or crime they have experienced (Roberts & Erez, 2004). This restriction on language and expression can be challenging and frustrating for victims. One survey of victims in the Province of Quebec determined that although most victims said they had prepared a VIS, the process did not satisfy their need for recognition and participation in the criminal justice process (Wemmers, 2008). In fact, some victims experience a form of secondary victimization and social injury when they feel their needs are not treated sensitively or that they are not receiving the support they require (Algonquin College, 2013). A more sensitive approach to how victims are supported as they write these important life experiences may help prevent this particular form of re-victimization based on the current system and practice.

## Empowering the Voices of Victims

In Canada, the values embedded in theories of therapeutic jurisprudence call for acknowledgment that legal procedures, rules, and actors involved, such as lawyers and judges, become social forces of law in action (Wexler, 2008). In Canadian jurisprudence, the concept of therapeutic justice is embraced as a 'problem-solving approach' that strongly emphasizes victim participation (Goldberg, 2011). According to Goldberg (2011), restorative justice "may reduce post traumatic stress among victims, and have a positive impact on the physical and psychological health of victims and offenders" (p. B18). Victim statements are considered an important part of that process. Future research based on the principles of therapeutic jurisprudence may help identify ways of reducing the anti-therapeutic effects of the traditional justice process, while enhancing those that are therapeutic without compromise to other values and processes of law (Wemmers, 2008).

The Canadian Resource Centre for Victims of Crime (CRCVC, 2006) *Statement on the Impact of Victimization* agrees that victims need to be able to express their emotions and tell their stories. Victims often need to have their experiences validated and have their story heard by a non-judgmental listener. Even a group setting outside of a courtroom can provide a safe and supportive environment for victims to both tell their stories and to be heard (CRCVC, 2006). Victim narratives and the disclosure of a traumatic event can be therapeutic. Early research by Pennebaker (1997), referred to as the *Confession Studies*, evaluated data collected through the self-reporting of participants. The subjective findings of improved health and well-being were significant enough to warrant a collaborative effort between Pennebaker, Kiecolt-Glaser, and Glaser in 1988. Pennebaker et al. (1998) concluded that four consecutive sessions of 15-25 minutes of narrative writing about a difficult personal experience can accomplish powerful changes. Further, there is evidence that the benefits of narrative writing go beyond subjective experience to include quantifiable measures of physiological stress reduction. Pennebaker's model could therefore be implemented as an initial part

of the process of victims' services workers helping victims to prepare their narratives by first affording them the opportunity to express fully, in their own words, disclosure of the traumatic event. Prioritizing the victims' needs for expression, communication and disclosure can be accommodated without compromise to the final, officially submitted Victim Impact Statement.

## The Impact of Criminal Victimization

According to the General Survey of Statistics collected in 2009, close to 1.6 million Canadians aged 15 years and over reported having been the victim of sexual assault, a robbery, or physical assault in the preceding 12 months (Statistics Canada, 2010). Physical assault was the most common form of violence, followed by sexual assault and robbery. The Canadian Centre for Justice Statistics reports that among those Canadians who reported having been victims of a crime in the 12 months preceding the survey, 38% said they had been victimized more than once (Statistics Canada, 2010). Of those, half were victimized twice while the other half were victimized three or more times (Perreault, Sauv , & Burns, 2004). According to Fortier et al. (2009), re-victimization for victims of childhood sexual abuse, in particular, can exacerbate existing symptoms of trauma and strain adaptive coping mechanisms, often leading to avoidance as a coping mechanism. Significantly, this strain affects information processing and risk assessment in future scenarios when symptoms of Post-Traumatic Stress Disorder are present. Symptoms of strain adaptive coping mechanisms also include substance abuse and other high risk behaviours such as prostitution (Fortier et al., 2009). At the same time, many victims demonstrate resilience and are able to recover with an ability to move forward. Crime and victimization are social constructions of time and place, and criminalized events are not universally interpreted as such and can change according to societal responses. Hulsman (as cited in Algonquin, 2013) suggested that our *interpretation* of victimization is impacted by whether we consider the experiences problematic, and to what degree. Bard and Sangrey (1986) discuss the significance of how victimization is experienced:

...although the injury to the self intensifies as the crime becomes more serious, the degree of violation experienced by an individual victim finally depends on the meaning of the crime in that person's life. What seems a minor incident to one victim may be a personal catastrophe for another" (as cited in Markesteyn, 1992, p. 11)

Some victims will find it challenging to move forward and will be at risk for development of Post-Traumatic Stress Disorder and Acute Stress Disorder (Hill, 2009). One of the reasons that trauma and crime is so devastating is that it reveals our vulnerability, undermining our sense of control over our lives. Victims need to be heard if they are to experience restoration of power, which is necessary for psychological wholeness (Algonquin College, 2013).

## Social Justice and the Voices of Victims

While the Canadian Charter of Rights and Freedoms contains 19 sections on the rights of criminals, in 2002 there were no provisions for the rights of victims. Consultations over 12 years between government and the public included "over 500 interveners, including victims of crime, victims' organizations, federal, provincial and territorial public servants and criminal justice professionals" (Government of Canada, 2015, par. 9). These consultations were instrumental in the formation of the Canadian Victims Bill of Rights (Government of Canada, 2015) that acknowledges victims' rights as the right to information, the right to protection, the right to participation and the right to restitution (Canadian Resource Centre for Victims of Crime, 2014, pp. 2-6). Although the recommendations for amendments are significant, there is little in the way of provision for how they will be enacted. The legal status of the victim in criminal proceedings is unchanged insofar as the

prosecution is still undertaken by the state in the name of Her Majesty the Queen. The victim is not a party to the proceedings and the prosecutor is an officer of the court and is not the victim's lawyer. The victim has no legal representation in criminal proceedings during the prosecution while the accused receives the benefit of the presumption of innocence and assurances of due process (Young, 2001).

Worldwide, the formation of Truth and Reconciliation Commissions signifies another trend in therapeutic and restorative justice. As governments have established Truth and Reconciliation Commissions globally, to attempt to address horrible wrongs such as genocide, apartheid, atrocities in war, and more, there is an interest in fostering reconciliation and hope for forgiveness. The foundation of this process is the creation of an opportunity for the stories of victims and offenders alike *to be told openly and heard with compassion*. Archbishop Desmond Tutu describes the African principle of *Ubuntu*, which broadly recognizes that the humanity of one is inextricably bound to the humanity of another (Tutu, 2000). Tutu himself describes his incredible difficulty in hearing tens of thousands of narratives from people expressing the horrors they had survived, as well as stories about those who had not survived. For eighteen months he listened to people who described suffering, torture, anguish and devastation under apartheid. Tutu's conclusion was that human beings can only move forward in the healing journey if they are willing to forgive those who have victimized them (Tutu, 2000). Similar opportunities seldom exist for individual victims within the Canadian justice system. There are provisions that allow victims of crime to prepare a narrative description of their experiences as Victim Impact Statements; however, many victims have expressed dissatisfaction with the restrictions placed on how their stories must be told, leaving them feeling a sense of 'loss of voice.'

While victims are usually advised that they are able to write a Victim Impact Statement, they often feel unheard in the justice process even when they do so. There is little sense of interaction between the victim and the larger justice system once the victim's story has been submitted, at times contributing to a deeper sense of invisibility. One exception in Canadian law, on paper at any rate, is the hearing process offered by the Ontario Criminal Injuries Compensation Board (Government of Ontario, 2013). Victims of crime – by a fairly broad definition – are entitled to request a hearing whereby they can present their story. This system of justice for victims does not depend on the criminal conviction of an offender or successful prosecution of a crime to proceed. However, in a scathing report called *Adding Insult to Injury: Investigation into the Treatment of Victims by the Criminal Injuries Compensation Board*, the Office of the Ombudsman of Ontario insists victims are still not being heard. In this report, Ombudsman André Marin describes an agonizing reality that often results in further damage to victims:

It takes, on average, three years for an application to be processed. Of those applications that are received– approximately 4,000 to 5,000 per year– the Criminal Injuries Compensation Board succeeds in adjudicating, on average, only 2,500 per year. The Attorney General has predicted that by October 2007, there will be 17,500 backlogged compensation claims worth \$109 million. ...The Board depends, shamefully, on attrition as well. Approximately half of those who attempt to file claims are so overwhelmed by the Board's complex documentation and process-based demands that they give up. ...These applicants are not helped when they founder, but left to fail. This report chronicles an embarrassing series of hurdles placed in the path of vulnerable victims of violent crime. (Ontario Ombudsman, 2007, p. 2)

Victims of crime are already marginalized by their lack of active participation and visibility in the

traditional justice system. Much work lies ahead if we intend to include their stories in a meaningful way as part of our social experience.

## Challenges and Problems

Despite the empirical evidence that supports the claim that a therapeutic approach to writing is beneficial for victims, there is a lingering opposition by some theorists to the development of practical and pedagogical applications. One concern stems from problems with the lack of preparedness on the part of victims' service workers and others to deal with the crisis that can arise when narrative inquiry opens the flood gates to deeper, unresolved and disturbing emotions. The potential for emotional crisis is of particular concern, and perhaps more likely, where there is a history of previous victimizations such as childhood sexual abuse (Fortier et al., 2009). It is important that training in life-writing is made available for facilitators of victim narratives (Hunt, 1998). Training should include a familiarity with narrative writing processes and should sensitize the facilitator to the potential for problems when disturbing emotions and thoughts surface for victims. There should be adequate access to resource information for referrals to mental health professionals if required by victims, especially to professionals familiar with narrative psychotherapeutic technique (Bracher, 1999). Bracher (1999) insists that regardless of whether writing is academic, psychoanalytic, or as an exploration of social problems toward change, conflicts of a pedagogical, personal or social nature can be explored and resolved in a positive way through narrative writing. There is a potential for problems to arise if the facilitator, potentially a victims' services worker, is insensitive to a power dynamic that could push an individual to enter into disturbing thoughts and feelings at a pace that is not self-determined. Bracher (1999) counters these concerns by insisting that when the pace is self-determined, psychoanalytic writing is likely to be a fail-safe process.

There are instances where writing can be problematic and, according to Pennebaker (1990), there are times when there is a "downside of writing." For instance, when the process is little more than an indulgence in anger and the writing is only an opportunity to vent, writers may find themselves feeling more angry and frustrated if their writing is not accompanied by a process of reflection and resolution. Similarly, writing that is focused on someone other than *self* can exacerbate feelings of distress and fail to bring about resolution of troublesome feelings (p. 204). Where victims are expressing harmful experiences, it is important to be aware of how healing and recovery can be impacted by this type of writing. The reflective process can be equally emotional and intellectual. Pennebaker (1990) cautions that writing focusing on intellectual insights into *self* and the behaviour of others is unlikely to have the desired result (pp. 202-203). It is the reflective process that allows one to write with feeling and to explore emotions which is likely to provide therapeutic benefit. Both Pennebaker (1990) and Anderson (2006) discuss potential problems with narcissistic writing and self-absorption. Deep personal reflection can be uniquely beneficial in the interest of personal growth and development, but it takes place in relative isolation from others. Pennebaker (1990) points out that reflective writing does not provide opportunities for meaningful and reciprocal interactions with others (p. 204). In fact, writing of this kind can provide a type of insulation that actually prevents growth if the writer does not take the actions necessary in order to have a meaningful life. Making changes can be difficult and the therapeutic narrative process is necessarily one that facilitates positive strategies for taking action.

## Conclusion

Support for victims who choose to participate in the justice process by preparing a Victim Impact Statement could implement processes that include the opportunity for victims to write and to

express themselves freely and in their own words. An integration of practices consistent with principles of therapeutic jurisprudence that best serve the needs of victims can be implemented without compromise to the processes and protections inherent in the criminal justice system. This would assure the maximum therapeutic benefits associated with narrative expression and also provide some assurances that the pace of disclosure will be self-determined by the victim. Prioritization of the victim's need for expression, communication, and disclosure can be accommodated without compromise to the official Victim Impact Statement, eventually submitted for inclusion in the sentencing decisions after an accused person is convicted. Pennebaker's (1997) model for narrative writing could be implemented as part of a process where victims' services workers assist victims in the preparation of their narratives, by first affording them the opportunity to disclose, in their own words, the traumatic event. Many serious offenses will be prosecuted only in traditional justice settings and the Victim Impact Statement will continue to be a primary way for victims to participate in the process. Having had the opportunity to first disclose their own feelings and experiences outside of those strict rules will help ensure optimal benefit for the victim.

Training of responders and victims' services workers, who would normally be involved in supporting victims through preparation of the Victim Impact Statement, can provide an opportunity for development of a familiarity with narrative writing processes. This is an opportunity to sensitize the facilitator to the potential for problems when disturbing emotions and difficult thoughts surface for victims. There should be adequate access to resource information for referral to mental health professionals, especially counselors who are familiar with narrative psychotherapeutic technique, if they are available and are required by victims. Victim narrative expression may be a critical element to recovery and resiliency for victims of trauma and crime and should be supported by best practices, with victim needs at the forefront of any process. Future research would help identify the ways in which victim narratives written for expressive value increase victim satisfaction in justice processes and facilitate recovery.

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