Mapping the Space for the Subjective Experiences of Victims in Criminal Justice Court Proceedings

by

Hannah McGechie, Honours Bachelor of Social Science, University of Ottawa, 2009

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in

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"Mapping the Space for the Subjective Experiences of Victims in Criminal Justice Court
Proceedings"

submitted by Hannah McGechie, Honours Bachelor of Science
in partial fulfillment of the requirements for
the degree of Master of Social Work

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Abstract

This research examines the subjective experiences of victims in Canadian criminal justice court proceedings. It investigates how victims are characterized in legal jurisprudence and criminal justice system theories, how they are allowed to be present in different court settings, whether they are allowed to be passive or active participants in the proceedings, and the therapeutic and anti-therapeutic impacts this participation has on them. Through secondary research and qualitative interviews with victims and key informants working within criminal justice court systems, the author compares the experiences of victims in three different court settings: a mainstream court, a “problem-solving/helping” court (Mental Health Court), and a court-based restorative justice program. This study found that victims’ experiences are generally anti-therapeutic as they have limited and very rigid opportunities to participate in court proceedings; the victims interviewed also reported that their basic needs for information about the criminal justice court system as well as social support were generally not met. The key informants reported that there are several structural barriers that prevent the meaningful participation of victims in court proceedings. This research project concludes with an outline of the implications of this study for individual social workers and social work agencies who deal with this population, as well as ideas for what a victim-friendly therapeutic court would look like.
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Chapter 1: Introduction

Introduction to the Topic

The criminal justice system - and criminal justice court proceedings in particular – is a site of contact for many parties. Their perspectives, interests and needs are often different and sometimes competing. The traditional triad of parties participating in these court proceedings includes the crown (lawyer representing the state and its laws), defense (lawyer representing the accused) and judge and jury of peers (individuals representing the concept of justice as well as the community the accused is part of who will decide whether the accused has broken the law and if so, the consequences that he or she must face) (Wemmers, 2009). However, a party that is very much affected by the events leading up to the court proceedings, as well as by the proceedings themselves, is not always included. Victims of crime do not have a recognized role in this triad and their presence is not required for proceedings to go forward. The methods of participation that are open to them are rigidly defined by the court; in Canada, when a matter goes to trial, victims are called as witnesses to help determine what truly happened, and they are entitled to submit Victim Impact Statements at the sentencing of the accused (Ontario Ministry of the Attorney General, 2007).

These limited options for participation and how they are treated within the criminal justice court system often leaves victims feeling that they have no voice, power or control in the wake of their victimization, particularly within criminal court proceedings (Herman, 2003). This thesis posits that this perceived lack of
voice, power and control within court proceedings has anti-therapeutic impacts on
victims of crime; furthermore, it posits that criminal court proceedings can – under
certain conditions- offer therapeutic outcomes for victims. This research was
designed to explore this discrepancy between the possibility for therapeutic impacts
and healing within court proceedings, and the experience of many victims of anti-
therapeutic impacts and disempowerment.

To do this exploration, this research investigates victims’ subjective
experiences presented in several different criminal justice court proceedings and
what impacts these experiences have had on them. For the purposes of this thesis,
subjective experiences include the victimization itself as well as its aftermath and
the experiences of court proceedings. These experiences range from individuals’
subjective accounts of their victimization to how they perceive their treatment by
and in the court.

Researcher Interest

I come from a background of direct practice and research within the Canadian
criminal justice court system where my main focus has been on criminalized
women. Like many authors studied and individuals interviewed for this research, I
came to see the Canadian justice system as broken. Although the vast majority of
women I work with have been victimized and experienced significant degrees of
trauma at least once during their lives, this fact frequently fades into the
background when their criminalization is discussed, and much of the literature has
noted the detrimental effect this disappearance has (Brewer-Smyth, 2004; DeHart,
2008; Goff, Rose, Rose & Purves, 2007; O'Keefe, 1998). This never sat well with my belief in the importance of therapeutic goals and outcomes in all situations, and the lack of acknowledgement of the impact of victimization and the general exclusion of victims from formal criminal court processes is proving increasingly frustrating.

My work with a court-based restorative justice program was the first personal experience that offered a positive suggestion that therapeutic processes and outcomes could exist within the court system and that there were spaces where victims’ experiences and needs were valued. Research into therapeutic jurisprudence was the second personal experience that offered some encouragement, particularly about the possibilities that this area of study and work held in terms of therapeutic goals being entrenched in the actual court process (and not an add-on, as is often the case with court-based restorative justice and diversion programs).

I chose to investigate victim participation and the spaces where their subjective experiences are present within court proceedings in this master’s thesis because it offers an opportunity to examine the court system from a therapeutic framework. It also offers the chance to investigate where victims fit into therapeutic jurisprudence as the body of literature around this framework says very little about them. Finally, this thesis research is also a way to test certain personal beliefs about the criminal justice court system: is it really broken when it comes to victims and therapeutic goals and outcome? Where do social workers fit into this? Where do I fit into this as a researcher, social worker and human being?
Research Questions

In this investigation of victims' participation in criminal court proceedings, the following three categories of research questions are the focus. Some of the questions fuelled the planning of this research and have been present since its beginning, while others emerged from the interview process.

1. What do spaces for victims within criminal justice court proceedings look like?
   a. In what ways are victims' accounts of their victimization allowed to be present in each court setting? At what point in the proceedings? What is the rationale behind each of these forms of inclusion?
   b. In what ways are victims' other experiences (such as their experiences with the criminal justice system) allowed to be present in each court setting?
   c. How are victims formally and informally treated in criminal justice court systems and programs? What impact does this have on them?
   d. Under what circumstances are victims allowed to be passive or active participants in criminal justice court systems and programs?

2. What are the therapeutic and anti-therapeutic impacts of participating or not participating?
   a. How do victims perceive the ways in which they are allowed to be present? What are their experiences?
b. What are the impacts of participating in court proceedings? What are the impacts of not being able to participate?

c. What do victims wish their experiences of participation to have been?

3. What role can social workers play in creating therapeutic spaces for victims within criminal justice court proceedings?

   a. What would need to happen in order to meet victims’ ideal experiences of participation?

   b. What roles do social workers play in supporting victims through criminal court proceedings?

   c. What do victims identify they need in terms of support during criminal court proceedings?

Research Definitions

There are several key concepts that are central to this research that should be defined from the start. However, one must be critical of these definitions, recognizing that how one defines and labels people and their experiences affects them and, in many cases, changes them and their experiences greatly.

- **Accused/convicted/offender/perpetrator/person in conflict with the law/participant**: the individual(s) who caused the harm. The term shifts throughout the court process depending on the legal status and court setting. For example, lawyers working in a mainstream trial court will use the term “accused” whereas in a “problem-solving/helping” court, they will use the
term “participant”. The label used will also shift with the personal and professional politics of the individual using the term; a social worker who works primarily with this population may use “person in conflict with the law” whereas a police officer is more likely to use “perpetrator”.

- **Diversion programs**: programs that provide an alternate process to straight involvement in the court system (Bakht, 2005). They range in structure and application, but often include an investigation into the context of the incident and attempts to “right the wrong” that has been done (Zehr, 2002). These attempts could include completing a set number of community service hours, paying for physical damages, taking part in therapeutic programming or counselling, and/or apologizing to the victim.

- **Participation**: victims' involvement in criminal court proceedings in any capacity, ranging from being present in the courtroom during the proceedings, to providing a witness statement or Victim Impact Statement, to actively participating in a restorative justice process.

- **Problem-solving/helping court**: courts whose aim is to be therapeutic and address the underlying problems of those before them; they include drug-treatment, mental health, youth, domestic violence and Aboriginal courts. Their origins are in principles of therapeutic jurisprudence (Bakht, 2005).

- **Restorative justice**: an approach to justice that moves away from traditional, retributive processes and instead asks, “Who has been hurt? What are their needs? Whose obligations are these?” (Zehr, 2002). The hurt of the
accused/convicted and the community where the events occurred are considered in addition to the hurt being experienced by the victim.

- **Therapeutic jurisprudence**: a framework of law (in this case, criminal law) and how it can be a therapeutic or an anti-therapeutic tool (Winick & Wexler, 2003).

- **Victim**: the individual who is designated as the “formal” victim in the court’s files and in police records. This is the person who was “principally” harmed by the incident. It should be noted that there are usually other “informal” victims who were harmed by the incident but who are not recognized by the criminal justice system as being affected. This includes the friends and families of “formal” victims as well as the larger physical, geographical and/or social communities where the incident occurred and which are affected by it.

**Research Process**

**Three** victims from three types of court proceedings were interviewed: one victim participated in a mainstream trial court (an adversarial court whose aim is to identify if law-breaking has occurred and if so, who is responsible and how they will be punished), one in Mental Health Court (a “problem-solving/helping” court whose aim is to embody the principles of therapeutic jurisprudence), and one in a court-based restorative justice program (a program whose aim is to identify who was harmed, how this harm can be healed and who has a responsibility in this healing).

**Five** key informants from each of these three types of court proceedings (lawyers
and restorative justice practitioners) were also interviewed to gain a better understanding of how these proceedings work, what role victims play in them and the jurisprudence/theory behind this participation (or lack thereof) and/or treatment.

In comparing several types of court proceedings, the goal is to see whether victims' participation varies in different settings and, if so, what this variation looks like and what impact this has had on the victim. This comparison may offer ideas for alternatives and future direction for advocacy in victim participation and treatment in this area of the criminal justice system.

The objective of this research is to improve the understanding and provide significant information for analysis of how victims are allowed to participate and have their subjective experiences included in different ways and settings as well as whether this participation is always desirable and therapeutic. It also provides a better chance to understand how opportunities for participation and participation itself (or its absence) impacts victims and what needs this participation meets as well as creates.

This introductory chapter will outline the thesis' research questions, research definitions and the importance and relevance of this subject matter, particularly in relation to social work. The literature on victim participation and its history, various types of criminal court proceedings, therapeutic jurisprudence, diversion programs and restorative justice is reviewed in the second chapter and informs the theoretical framework of this thesis in the third chapter. The methodology employed by this research - including its potential limitations - is
outlined in the fourth chapter, and the findings and a discussion about them are then presented in the sixth and seventh chapters. The implications of this research for future academic work and social work practice are then discussed and the final chapter summarizes the main conclusions of this research.

Relevance and Importance of this Study

The goal of this research is to create a better understanding of the opportunities – or lack thereof – victims have to participate in criminal justice court proceedings and the impact this can have on them. It is further hoped that other important information can be gleaned from the data. In hearing the experiences of victims, social workers and other professionals working with victims can begin to form a clearer idea of where to start individual work as well as advocacy to address victim needs in general and within court settings in particular. By better understanding how criminal justice court proceedings are structured to treat and include/exclude victims, helping professionals can also begin to understand how to navigate this system, what barriers they and the people they are working with might possibly come up against, and how they might be mitigated.

The focus of this research compares different court proceedings and this provides the grounds for discussion about different approaches to victim participation that work well for certain types of cases and needs, and that are unsuitable for specific issues. The introduction of therapeutic jurisprudence will also be of particular interest to social workers since they can begin to see how
justice systems can be therapeutic or anti-therapeutic and determine what works best for them, their clients and their practice.

Finally, this research may provide social workers in practice and policy fields with direction for advocacy and change. Hearing about victims’ experiences of participation in criminal court proceedings, information about how the structure of this aspect of the criminal justice system responds to their needs and how it affects them is valuable for those seeking to create positive change and reform both in their own practices and more broadly within the criminal justice system. In particular, structural social workers will have more information to determine how a large, liberal Canadian institution – the criminal justice court system – is constructed, how it views individuals and their actions, the impact this has on those who come into contact with it, and alternatives that may improve the situations faced by victims. They can also take this opportunity to reflect on how the Canadian criminal justice court system is a reflection and function of our evolving western society, which strongly values individualism and capitalism, and resists challenges to this worldview. This analysis may help them create an understanding of how our current criminal justice court system came to be, who benefits from it and how, and who is harmed by it.
Chapter 2: Theoretical Framework

As this thesis was born out of an interest and belief in therapeutic jurisprudence, it is fitting that therapeutic jurisprudence be its theoretical framework underpinning. According to Wexler and Winick (1996, xvii), “therapeutic jurisprudence is the study of the role of the law as a therapeutic agent.” Therapeutic jurisprudence looks at how the law and the legal system can be therapeutic or anti-therapeutic for those who come into contact with it, and how legal actors (crown and defense lawyers, judges) and social workers (including but not limited to probation officers, parole officers, child protection workers and support workers for criminalized individuals) can facilitate these helping/harming processes.

As key authors in this field of study, Wexler and Winick explore what it means to be a “therapeutic agent” and argue that contact with the legal system is an opportunity for positive change; like when a individual may seek out a therapist when he or she is struggling with a problem, individuals come into contact with the legal system (usually not as willingly as with therapy) when something is wrong and a change is necessary. Like a therapist, the law can have an effect and create change in an individual’s life by its actions and consequences alone, but it can also serve to make the individual think about things differently, come to terms with something, realize what action is necessary, and work towards moving forward.

One of the main discussions within therapeutic jurisprudence is how the actors/practitioners within the legal system – lawyers, judges and social workers – can create therapeutic processes and outcomes. Therapeutic jurisprudence
theorists argue that the traditional role of the court (including its judges) as a neutral state arbitrator in cases of dispute resolution and violations of the law must change if the law and the legal system is to be a therapeutic agent. Van de Veen states:

The traditional adversarial justice system, on its own, cannot effectively deal with causes of recidivism. In certain complex issues coming before the courts, the adversarial system, on its own, does not address the underlying causes of the criminal conduct and can even make things worse for victims and the community at large. (Van de Veen, 2004, p. 93)

The role of judges must no longer be to pass judgment neutrally, but to recognize and acknowledge the root causes of problems and advocate for individual and/or systemic changes to try and reconcile what has happened. Both crown and defense lawyers must become more aware of the emotional and psychological impacts of contact with the law that are experienced by individuals, as well as how they can help negotiate these effects. Goldberg (2005, p. 3) explains that therapeutic jurisprudence does not require judges or lawyers to be therapists or counsellors, but for them to be aware that systemic social problems exist and consider that therapeutic outcomes can be maximized in these settings. She also recommends that interpersonal strategies be adopted in the majority of cases: in order for interactions to be meaningful, the judge must exercise empathy, respect, active listening, a positive focus, non-coercion, non-paternalism and clarity. Ongoing judicial supervision, a non-adversarial approach, constructive feedback and rewards for success are all listed as key factors in successful therapeutic interactions.
In this thesis, the approaches and actions of legal actors and social workers will be observed through this “therapeutic lens”. What are their goals when working with individuals, specifically victims, who come into contact with the legal system? Are they concerned about their therapeutic or anti-therapeutic impact on individuals? What is their impact? What measures are they taking to create meaningful, healing interactions? What measures are they taking to create therapeutic spaces within court proceedings?

Another central discussion within therapeutic jurisprudence is how traditionally adversarial and punitive courts can be transformed into therapeutic spaces. A distinction is often made between practising therapeutic jurisprudence at a systemic level (law reform) and within existing laws and systems. The two are not a pure dichotomy; instead, they are complementary forces that forge a connection between therapeutic jurisprudence theory and the daily realities of legal practitioners. Much change that has occurred in both law reform and the evolution of existing court structures is due to the courts’ frustration with the “revolving door” of people who are repeatedly in and out of court due to social issues such as poverty, addiction and mental illness. Goldberg (2005) tell us that judges in Canada are tired of seeing the same people in front of them with the same problems all the time, and feel frustrated that they seem to be offered little support. “The development of a problem-solving approach has permitted them to craft dispositions that reduce the likelihood of parties appearing in court in the future,” (Goldberg, 2005, p. 7) she writes. These problem-solving approaches include incorporating therapeutic goals into existing court structures (for example, sentencing an individual to probation
conditional upon working with a probation officer to find and seek appropriate drug treatment) as well as the creation of problem-solving courts which specialize in certain issues, including drug misuse and addiction, mental health, domestic violence, and the experiences of Aboriginal people and youth.

The path towards incorporating therapeutic processes and outcomes into courts is not necessarily a smooth, easy one. Brooks (2005) tells us that as therapeutic jurisprudence is about promoting therapeutic outcomes and thus not a single, normative framework, it is sometimes hard to fit into the current legal system. All of Wexler’s, Winick’s and Stolle’s scholarship on therapeutic jurisprudence emphasizes that therapeutic considerations should not take precedence over other considerations, such as individual autonomy, integrity of fact-finding, community and individual safety, efficiency, economy, due process, civil liberties and civil rights (Wexler & Winick, 1996; Winick & Wexler, 2003; Winick, Wexler & Stolle, 2000). Instead, a more holistic approach and requirement for solutions are advocated; therapeutic considerations are one of many factors that must be taken into account. They further emphasize the fact that therapeutic jurisprudence does not provide answers or a formula for resolving value conflicts; “instead, it sets the stage for their sharp articulation” (Wexler & Winick, 1996, p. 37), creating space for discussion, debate and holistic resolutions.

This thesis examines victims’ experiences in three different court spaces: a regular, mainstream criminal court; a Mental Health Court (a problem-solving court with therapeutic goals); and a court-based restorative justice program. Observations are made about how these spaces impact the therapeutic value of the
victims' experiences with court proceedings. How did the physical and ideological structures of the courts impact the victims? Were any features therapeutic or anti-therapeutic? What were the differences between the courts?

The third discussion within therapeutic jurisprudence – which has been touched upon above – is that this concept should not be viewed as a concrete framework but a lens through which to evaluate a large, complicated system for its therapeutic or anti-therapeutic value(s). It cannot be fully captured in the outline of a problem-solving court: focusing on root causes and treatment alone does not constitute a therapeutic experience of law. Instead, the principles and values of therapeutic jurisprudence form a lens through which everything must be seen and evaluated against, from a plan for a court to attitudes of the actors in the legal system. “[Therapeutic jurisprudence’s] overarching goal is to help people become increasingly self-sufficient by enhancing their own adaptive skills and abilities, while simultaneously decreasing existing environmental barriers,” Brooks (2005, p. 522) explains. As individuals’ existing skills and abilities, contexts and needs are all unique, therapeutic responses and work will look different in each case and thus a rigid framework is not a good working model. Therapeutic jurisprudence is not just a formal approach to justice, but a philosophy of life and work which must be engrained in the day-to-day practice and attitudes of actors in this area.

Madden and Wayne (2003) focus on the role of social workers within therapeutic jurisprudence and posit that social workers can use this lens to examine the law and ask how it can have therapeutic and anti-therapeutic consequences. The questions social workers are urged to ask include how the life circumstances
and environments of individuals are acknowledged (or ignored) by the legal system, whether the means justify the ends, how engaged the individual is in discussions about him or herself, and what the legal process is actually going to DO to the accused. These questions challenge the idea (that is commonly held within traditional legal systems) that there is a relationship between legal intervention and positive outcomes and that the law affects all individuals the same way. Within therapeutic jurisprudence, the role of social workers is to advocate for clients on an individual level as well as a systemic level, raising as much awareness about the individual and his or her lived experiences and personal circumstances as possible. After all, “the law’s functioning is only as good as the information it receives and relies on,” (Madden & Wayne, 2003, p. 246).

For their part, legal actors are asked not to shy away from emotion and the psychological roots of individuals’ resistance to dealing with what is happening to them. Winick, Wexler and Stolle (2000) recommend strategies for uncovering these roots that are frequently used by mental health professionals, and include gentle inquiry and systematic interventions. They note that lawyers often lack the professional training to deal with the potential fall-out from these techniques and encourage collaboration in the form of an interdisciplinary team to ensure that clients are positively affected by their engagement with the law.

The framework of therapeutic jurisprudence has evolved and expanded significantly since its inception two decades ago: problem-solving courts can be found across the country; there is an abundance of literature on the roles of specific legal actors in creating therapeutic processes; and therapeutic jurisprudence is
expanding to old and new branches of law, such as criminal law, civil law, family law, preventative law (which aims to minimize the possibility of litigation or other adversarial procedures) and collaborative law (a branch of family law used most frequently in separations and divorce which aims to have all the parties working together and getting what they all need out of the separation). The one area of the legal system that therapeutic jurisprudence is only beginning to address is the experiences of victims. Currently, most of the discussion about victims is within the context of domestic violence. This is very important and necessary work, but the experiences of victims of other crimes must also be considered and explored. This thesis is a step in that direction.

The lens just described is the one that will be used throughout this thesis to examine and evaluate the narratives of the victims and key informants who have been interviewed. It will also inform what the implications of this research project are as the findings will be evaluated for their therapeutic and anti-therapeutic value(s). This research is based on a case study, grounded theory methodological approach, and therefore follows Meyer's (2001) and Flyvbjerg's (2006) suggestion to embark on research with an idea of the theory underlying the subject area but remaining open to anything that may emerge from the participants themselves.

Proponents of grounded theory studies emphasize that specific theories about the area being studied will emerge from the data; themes will come out of narratives in interviews, and can in turn be used to build a theoretical framework to understand the phenomenon being studied (Creswell, 1998, p.46). In this research, the phenomena in question are victim participation in criminal court proceedings
and the spaces that exist for their subjective experiences. The narratives of the individuals interviewed are used to understand what their experiences of participation are like and what impact these experiences had on them; from this, a better understanding of the effects of this kind of participation will emerge. As this research is a case study of subjective experiences, the narratives of the victims interviewed will be privileged.

In addition to therapeutic jurisprudence, the theoretical frameworks of restorative justice, problem-solving courts and victimology have informed and guided this research. These theories and the realities experienced by the victims interviewed informed first the questions asked and then how the narrative was analyzed:

- How do victims feel about their participation? Do they feel they have been pushed to the side and are only included when they fit into the courts’ established models, or are they quite satisfied with their role in the court proceedings? Do they feel heard? How did the experience of participating (or not) impact upon them?

- What are victims’ impressions of mainstream courts? Do they feel that the process or outcome was therapeutic and/or anti-therapeutic?

- What are victims’ impressions of problem-solving courts rooted in therapeutic jurisprudence? Do they feel that the court proceedings were therapeutic, anti-therapeutic, or neither? Do they feel that this model of court proceedings was designed for them?
• What are victims’ impressions of restorative justice diversion programs? Do they feel included and that these processes increased their control over this particular situation? Do they feel more or less empowered at the end of the process?

In evaluating the therapeutic impact of participating in court proceedings, the therapeutic jurisprudence framework also raises the question whether victim participation was ever undesirable or had anti-therapeutic impacts in some contexts. For whom the experiences were therapeutic (the victims, the accused, both, neither) is also questioned.

As the goal of therapeutic jurisprudence is to be transformative, both in terms of how the justice system is formally and informally structured as well as with respect to the individuals in contact with the law, critical theory (Morrow & Brown, 1994) is also used to question the institution of the criminal justice court system. In particular, its impact on social life, individuals and oppressions is analyzed. The end goal of research using critical theory is “the desire to comprehend and, in some case, transform (through praxis) the underlying orders of social life – those social and system relations that constitute society” (Morrow & Brown, 1994, p. 211). This comprehension and perhaps transformation may be the result of in-depth discussions of assumptions and the structure of these social institutions (the criminal justice system), and their effect on those interacting with them.

A recurring theme in both the literature on victims in various court settings as well as case study methodology is that the individual’s voice and the validation of that individual’s story and impressions are key. These things are traditionally
excluded in court proceedings and when they are included, they are filtered through representatives and forms (in the case of voice) or subject to intense scrutiny (stories and impressions). Since this research examines specifically this exclusion and the subjective experiences of victims in these settings, feminist approaches to methodological theory are used. “In feminist research approaches, the goals are to establish collaborative and nonexploitative relationships, to place the researcher within the study so as to avoid objectification, and to conduct research that is transformative” (Creswell, 1998, p. 83). Research is meant to be done in a collaborative, participant-inclusive way that values and privileges the voices of participants in the narration of their own experiences. Researcher self-reflexivity is also promoted as a way for researchers to examine how their roles and positions impact their understandings of what they are hearing from participants.

Consequently, this researcher continually reflected on her role as a social worker and as someone who has worked in court settings for a significant amount of time and asking how her personal framework may impact what she heard. Specifically, this researcher questioned how her background in restorative justice may have affected her thoughts on victim participation.
Chapter 3: Literature Review

In order to begin to understand this area of study, we must first turn to the literature on different court proceedings and court-based programs to learn how they are structured in general and, in particular, how they are structured to incorporate victims’ participation and experiences. The first section of this literature review contains an overview of the roles victims play in mainstream criminal courts. Within this section, the history behind the structure of victims’ roles and how this structure is formalized in the *Criminal Code of Canada* is examined; studies about the mental health effects of participating (or not) in criminal court proceedings as a victim are also reviewed. It concludes by looking at the documented tension surrounding victim participation. The second section of this literature review examines the framework of therapeutic jurisprudence, how it plays out in problem-solving/helping courts, the history of these courts, and what spaces victims are allowed to occupy in these particular court settings. The third and final section of this literature review explores the principles of restorative justice, the history of restorative justice in the Canadian criminal justice system, what court-based restorative justice programs look like in practice, and what role victims play in them. Each section considers the strengths, realities and subsequent limitations of each court setting.
Mainstream Criminal Courts

Not surprisingly, there is little literature on victims in Canadian criminal justice court proceedings. Landau (2006) traces the history of the victim in the criminal justice system in her book *Challenging Notions*. She notes that while we largely see victims as emerging in the justice system and criminology in North America in the 1970s, their involvement goes much farther back. McShane and Williams (1992) tell us that in pre-law societies, “victims and their relatives controlled the extent of retribution and, consequently, the extent of their satisfaction with the punishment meted out to the offender” (p. 26). The Middle Ages saw the introduction of systems of law (in the name of the state – the King/Queen) in order to reduce blood feuds, and “public harm” came to be privileged above harm against individuals (Young, 2001). This was also the point at which the victim’s role was transformed into that of a witness to the state and not an active force within justice processes; civil courts were created to deal with “private harms” (Karmen, 2001). Young suggests that this shift was not only to reduce violent personal retribution, but to better enable the state to maintain social order and take control over conflict (Young, 2001, p. 6).

As Landau argues, “this secondary role of the victim has persisted, and, until recent times at least, could be described as a weak cog in the wheel of justice” (Landau, 2006, p. 8). Christie (1977) explains that in current court proceedings, parties are not particularly active but instead are represented by lawyers in the court. He is critical of this: “the one party that is represented by the state, namely the victim, is so thoroughly represented that she or he for the most of the proceedings is pushed completely out of the arena, reduced to the triggerer-off of
the whole thing,” (p. 6). Harm to individuals is replaced by “legal harm” and victims often end up playing a very technical role in court proceedings; authors frequently describe them as having their personal, emotional and innately human characteristics and dimensions erased in these processes (Christie, 1977; Landau, 2006). Victims are in these ways excluded from participating in traditional justice procedures except as witnesses and in the submission of Victim Impact Statements at sentencing and parole hearings (Wemmers, 2009). Christie (1977) describes victims as “sort of a double-loser; first, vis-à-vis the offender, but secondly and often in a more crippling manner by being denied rights to full participation in what might have been one of the more important ritual encounters in life,” (p. 6).

This trend of victims as “secondary” players in criminal court proceedings is not unique to Canada or North America; Baumgartner (2008) tells us that even within the International Criminal Court, victims play a marginal role. The statute which defines their participation leaves much up to the discretion of the judge, but states – in vague terms - that they should be allowed to participate in matters that affect them. Some scholars and practitioners are concerned about this, as “It has often been argued that such participation impedes the equilibrium between prosecution and defense, and that it interferes with the suspected or accused person’s right to a fair and expeditious trial” (Baumgartner, 2008, p. 432). Fridman (2009) notes that while some see the inclusion of victim participation in the International Criminal Court as a positive move away from a retributive system towards a healing one, others worry about what will happen if the rights of the victim conflict with those of the accused, and what the impacts of the victim having a
dual role (victim and witness) will be. Erez and Laster (1999) as well as Wemmers (2005) reveal that many countries have been slow to allow victim participation and are concerned about the implications of victim impact statements.

Currently in Canada, only those who meet the criteria set out by the *Criminal Code of Canada* qualify as "official" victims in court proceedings. The criteria are as follows:

Section 722.1: Definition of "victim"
(4) For the purposes of this section and section 722.2, "victim", in relation to an offence,
(a) means a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence; and
(b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement... includes the spouse or common-law partner or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependant of that person.

Victim impact statements originated in the United States and came to Canada in 1988 with amendments to the *Criminal Code of Canada* in regards to victims; up until this point, the word "victim" was not included in the *Code* (Wemmers, 2005). The impetus behind introducing victim impact statements in Canada was to improve the quality of sentencing:

"Victim impact statements consist of a written statement by the victim regarding the impact the crime had on him or her. It is an objective description of the medical, financial and emotional injuries caused by the offender. Often it is a standardized form that the victim fills in. This form is then added to the Prosecutor's file and is given to the judge after the determination of guilt at the sentencing hearing... Canada [allows] victims to read their statements aloud in court." (Wemmers, 2005, p. 122)
In these statements, victims are not allowed to give their views on sentencing or what they want to happen to the person who harmed them; they can only discuss the impact of the crime that is currently being tried.

Several scholars have questioned the efficacy of victim impact statements in achieving what they set out to do (improve the quality of sentencing). Erez and Laster (1999) cite studies that have found that victim impact statements have little influence on criminal proceedings and court outcomes and Wemmers (2005) reports that there has been resistance in many countries to introducing victim impact statements in court proceedings. The lack of impact of these statements could mean that courts were already considering victim impact in sentencing, but studies actually suggest that:

Practitioners perceive the [victim impact statements] as something that has been imposed on them and that obtaining or ensuring the quality of [victim impact statements] is someone else’s job. Moreover, however, they simply dismiss the value of the [Victim Impact Statement] because of its alleged poor quality, subjectivity, or superfluousness. (Erez & Laster, 1999, p. 545)

This suggests a denial of the victimization, the victim identity and the responsibility of the courts to include victims. This dismissal of victim impact statements also demonstrates the belief that victims’ subjective experiences are not a valuable addition to the court process and are not worth addressing. It could also be argued that this dismissal demonstrates a continued resistance to changing the traditional role of criminal courts from protectors of the law to a therapeutic agent.

Despite this lack of access to participation, victims’ rights have emerged as an interest of many organizations, mainly feminist and civil rights groups. They call for
attention and respect to be paid to victims and for their increased inclusion in
criminal justice processes (Landau, 2006, p.26). They often call for victims’ rights to
be valued over the rights of the accused, but not always. Another challenge they
raise is how victims are perceived (good vs. bad victims are created around certain
types of crime, principally sexual assault) and who is categorized as a victim: many
examples exist of the victimization and trauma experienced by criminalized
individuals being ignored (Landau, 2006).

Changes to the *Criminal Code of Canada* in 1988 resulted from this advocacy
and as noted above, it is now the right of all identified victims in court to submit a
Victim Impact Statement at sentencing after the accused is found guilty. The duty of
the court is to ensure that the victim is advised of this right. The guidelines of
Victim Impact Statements are laid out in two sections of the *Criminal Code of
Canada*:

675.2
*Victim impact statement*
(14) A victim of the offence may prepare and file with the court or
Review Board a written statement describing the harm done to, or
loss suffered by, the victim arising from the commission of the
offence.

*Copy of statement*
(15) The court or Review Board shall ensure that a copy of any
statement filed in accordance with subsection (14) is provided to
the accused or counsel for the accused, and the prosecutor, as soon
as practicable after a verdict of not criminally responsible on
account of mental disorder is rendered in respect of the offence.

*Presentation of victim statement*
(15.1) The court or Review Board shall, at the request of a victim,
permit the victim to read a statement prepared and filed in
accordance with subsection (14), or to present the statement in any
other manner that the court or Review Board considers
appropriate, unless the court or Review Board is of the opinion that
the reading or presentation of the statement would interfere with
the proper administration of justice.

Inquiry by court or Review Board

(15.2) The court or Review Board shall, as soon as practicable after
a verdict of not criminally responsible on account of mental
disorder is rendered in respect of an offence and before making a
disposition under section 672.45 or 672.47, inquire of the
prosecutor or a victim of the offence, or any person representing a
victim of the offence, whether the victim has been advised of the
opportunity to prepare a statement referred to in subsection (14).

Adjournment

(15.3) On application of the prosecutor or a victim or of its own
motion, the court or Review Board may adjourn the hearing held
under section 672.45 or 672.47 to permit the victim to prepare a
statement referred to in subsection (14) if the court or Review
Board is satisfied that the adjournment would not interfere with
the proper administration of justice.

722. (1) For the purpose of determining the sentence to be imposed
on an offender or whether the offender should be discharged
pursuant to section 730 in respect of any offence, the court shall
consider any statement that may have been prepared in accordance
with subsection (2) of a victim of the offence describing the harm
done to, or loss suffered by, the victim arising from the commission
of the offence.

Procedure for victim impact statement

(2) A statement referred to in subsection (1) must be
(a) prepared in writing in the form and in accordance with the
procedures established by a program designated for that purpose
by the lieutenant governor in council of the province in which the
court is exercising its jurisdiction; and
(b) filed with the court.

Presentation of statement

(2.1) The court shall, on the request of a victim, permit the victim to
read a statement prepared and filed in accordance with subsection
(2), or to present the statement in any other manner that the court
considers appropriate.

Evidence concerning victim admissible

(3) Whether or not a statement has been prepared and filed in
accordance with subsection (2), the court may consider any other
evidence concerning any victim of the offence for the purpose of
determining the sentence to be imposed on the offender or whether
the offender should be discharged under section 730.
Much of the literature on the impact of victim participation in mainstream trial
courts centers on the effects felt by prosecutors, judges and accused individuals.
Within this literature, the focus is on what factors are most effective at convincing
these actors of the validity of the victim’s story and suffering (Propen & Schuster,
2010a, p. 26). Judges and prosecutors are often uncomfortable with displays of
emotion, especially when this emotion is anger (Erez, 1990; Propen & Schuster,
2010a; Propen & Schuster, 2010b). When victim participation is discussed, it is
usually in the context of discussions about victim advocates and support workers:
“advocates often provide models and heuristics to help victims conform to the
norms of the court but still create a detailed picture of how their lives have been
affected by the crime,” (Propen & Schuster, 2010a, p. 28). The picture that emerges
is that courts are accepting of victim participation, but only when it is on the court’s
terms and fits into the model it has established (individuals speaking through
someone else who is a “professional” and having “appropriate” emotions).

Herman (2003) discusses the mental health implications of victims who
become involved in legal processes. She notes that while there may be potential
benefits (such as payment for damages or a perception of justice being done) to
legal intervention in a situation where someone has been harmed, the adversarial
structure of traditional court proceedings can expose victims to serious risks.
“Victims who file civil or criminal complaints are subject to the rules and procedures
of a complex legal system, where their mental health and safety may be of marginal
concern, and where the potential for retraumatization may be high,” (Herman, 2003,
Facing this prospect, many victims end up conflicted about whether to call for legal intervention and, if court proceedings are going ahead, whether to volunteer to participate in them. Those who are required to participate often feel that their control and power over their victimization and everything that has happened to them decrease further as they do not set the terms of participation. Herman describes other barriers to participation: “many crime victims also face linguistic, cultural and social obstacles to participation in the justice system... deaf victims cannot communicate effectively... if the services of skilled interpreters are lacking... refugees from countries where police corruption or despotism are the norm may be terrified of any encounter with state authorities...” (p. 160). Herman cites studies which looked at areas where victims' rights were more strongly enforced and more support (from a support worker to a translator) was given versus areas where the opposite was true; these studies found that the former group was far more likely to feel satisfied with judicial outcomes, participate more in court proceedings, and experience lower rates of mental health issues as a result of legal intervention (see, for example, Kilpatrick, Beatty & Howley, 1998).

Konradi and Burger (2000) have done extensive research on participation of rape victims in criminal justice court proceedings and the mental health impacts upon them, and many of their findings are applicable to victim participation in general. When they examined motivation to participate in court proceedings, they found that 52% wanted to influence the sentence (to “even the score”, have the person who harmed them get counselling, and protect others), a third wanted their subjective experiences on record and not just a filtered version, 44% participated in
an effort to deal with the psychological impact of the victimization (to reduce their own fear, to resolve their own feelings of guilt or to see if responsibility for the harm was being taken), and 24% participated in an effort to deal with the emotional aspects of their victimization that were not specific to the accused (to resolve self-doubt, to purge strong emotions, and to attain closure). Many simply wanted to attend court proceedings “to witness, and possibly ensure through their presence, the criminal justice process move through its final state” (Konradi & Burger, 2000, p. 367). Twenty percent of the victims interviewed chose not to participate at all and once the sentence and its length was set, other victims chose to stop participating as they didn’t see their continued involvement as worth the emotional ordeal if they were not going to effect change. Herman’s work (2003) on how court proceedings can hinder healing is echoed in Konradi and Burger’s study, and the need to consider the therapeutic and anti-therapeutic impacts of court proceedings have on victims emerges:

“Some [victims] heal very slowly; participating in legal events that constitute the prosecution phase aggravates the trauma of the [victimization] for them without offering any mitigating emotional satisfaction. Therefore, in spite of their desires for substantive or procedural justice, they view extended involvement in the criminal justice process as an obstacle to their emotional recovery.” (Herman, 2003, p. 378)

This finding emphasizes the need many authors argue for court proceedings that consider their therapeutic or anti-therapeutic impact on victims.

The shift in the late 1980s to include victims more in criminal justice court proceedings was met with pushback from some members of the legal community,
both in Canada and around the world. Erez and Laster (1999) write that the concerns with increased victim participation grew out of fear that the shift was a reflection of repressive ideological underpinnings (the return, perhaps, of the “eye for an eye” mentality towards justice); they also cite concerns about logistical problems produced by introducing a component into the legal system. Above all else, the dedication to doing and being seen to do justice was of paramount concern: “all legal professionals share a higher loyalty to the elusive and fluid concept of justice and, increasingly, to the smooth operation or efficiency of the criminal justice system” (Erez and Laster, 1999, p. 547). All of these concerns continue to exist in tension with victims’ rights advocates and those who argue that you can have a strong, transparent justice system that also includes victims, and this tension plays out in courtrooms, academic settings and the creation and funding of social programs.

**Problem-Solving/Helping Courts**

The term “therapeutic jurisprudence” first appeared in a 1987 paper delivered to the National Institute of Mental Health by David Wexler and Bruce Winick. With a focus on crimes related to the mental health problems of the accused, they described how legal actors (lawyers and judges) as well as laws and legal proceedings can create therapeutic or anti-therapeutic outcomes for those involved in the legal system as accused individuals, victims and even those witnessing legal processes. Based on this view, Wexler and Winick called for a new perspective from which to study the law and jurisprudence and have produced much literature on
this perspective. In 1991, they published *Essays in Therapeutic Jurisprudence*; followed by *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* in 1996; *Practicing Therapeutic Jurisprudence: Law as a Helping Process* in 2000 (with Dennis Stolle); *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts* in 2003; and *Rehabilitating Lawyers: Principles of Therapeutic Jurisprudence for Criminal Law Practice* in 2008. By the mid-1990s, over 70 scholars from the fields of law, criminology, psychology, psychiatry and social work were adding to this body of literature (Wexler and Winick, 1996). This number has grown exponentially since then, with the creation of the International Network on Therapeutic Jurisprudence and classes on the subject being taught in law schools across North America.

While therapeutic jurisprudence was formally introduced in the late 1980s, James points out that it has been around in some shape or form since the early 20th Century in the form of psychiatric teams in courts (James, 2006, p. 531). Beginning in 1914, teams of psychiatrists, nurses and social workers were assigned cases where the accused was suspected of having psychiatric issues; they examined each case, consulted with the individual’s family and friends, and created access to relevant community resources. While these teams seem very progressive for their time, they largely ignored the links between lived experiences of poverty and trauma, the development of mental illness, and criminal behaviour. Their purpose was not necessarily treatment, but to better advise the court about how to assess and sentence the individual from a scientific point of view; the “problem of criminality” was seen in these cases as a flaw with genetic make-up and brain
chemistry, not a reaction to social conditions (James, 2006, p. 531). Today's therapeutic jurisprudence is far more interdisciplinary and frequently acknowledges the interconnectivity between lived experiences and neurological development and functioning (Van de Veen, 2004, p. 107).

The pillar of therapeutic jurisprudence is in its name: this approach to law posits that the experiences of going through the legal system should be therapeutic and inspire positive change. As with therapy, individuals are involved in the court system because something in their lives is not going well – whether it be commission of harmful actions or victimization – and change is necessary if they are to recover. Some literature on therapeutic jurisprudence examines how legal procedures themselves can be structured in a therapeutic way (as is the case with preventative and collaborative law) (Wexler, Winick & Stolle, 2000, p. 67). Other sources study the actions and attitudes of legal actors, and how they create and maintain relationships with those they work with; the focus here is recognizing how the law can affect individuals on a psychological level and how these effects can be negotiated. Acknowledgement of the root causes of problems and the subsequent advocacy for treatment and social change are also integral to therapeutic jurisprudence (Wexler & Winick, 2003, p. 102). Madden and Wayne (2003, p. 339) discuss the links between therapeutic jurisprudence and law and outline the ways in which social workers can achieve better outcomes for their clients. As mediators, educators, advocates, researchers and policy makers, social workers are encouraged to ask how an individual's life experiences are acknowledged (or not) by the law, whether the means of legal proceedings justify their ends, how engaged the
individual is with the legal proceedings involving him or her, and what the legal
practice in question is actually going to do to the individual.

Around the same time that Wexler and Winick formally introduced the
concept of therapeutic jurisprudence, North American judges who were becoming
frustrated with losing the “war on drugs” and the resulting mass incarceration
began to advocate for courts that focused on drug treatment. Drug Treatment Courts
as well as Mental Health Courts, Domestic Violence Courts and Youth Courts came
into being from this push, and continue to exist as problem-solving courts today.
Problem-solving courts are those which attempt to address a specific problem
stream that is connected to the occurrence of crime and victimization (such as
mental health issues) and “find new solutions to difficult socio-legal problems”
(Bakht, 2005, p. 12). They are rooted in therapeutic jurisprudence principles but
should not be conflated and confused as the same thing (Wexler & Winick, 2003).
These courts are still located in a traditionally adversarial legal system and a social
context of the deinstitutionalization movement of mental health as well as the
criminalization of poverty (Hereema, 2005); they are working within all these limits,
which sometimes means they are prohibited from sticking to therapeutic principles
and values to the letter.

In a typical problem-solving court, the process begins with an assessment to
determine the individual’s level of accountability for her/his actions given the issue
she/he is facing, whether it be drug addiction, mental illness, or something else. The
admission phase of this process examines whether the individual is a good match
for diversion into one of these courts. The program phase is the treatment phase of
the issue (such as addictions counselling or mental health programming) and, finally, the disposition phase examines whether the individual is able to comply with her/his treatment program or not, and what should be done from that point on. These courts have been found to be highly successful in creating positive change and in reducing the rate of recidivism for those who take part in them. These last words are critical: "those who take part in them" are often not the most "serious" cases as these cases are either deemed ineligible for diversion or are unsuccessful in taking part in treatment or programs because of the severe nature of their problems (Evans, 2001; Hereema, 2005; La Prairie, Gliksman, Erickson, Wall & Newton-Taylor, 2002). These authors also cite the need for more rigorous, empirical evaluation of these courts. As for victims, they are remarkably absent from the therapeutic jurisprudence literature; this seems to indicate the need for more investigation.

When victims are included in therapeutic jurisprudence literature and practice, it is generally as victims of domestic violence; indeed, domestic violence courts are an established type of problem-solving court. Cattaneo and Goodman (2010) tell us that:

Therapeutic jurisprudence... posits that the court system has far-reaching impact on those who become involved with it, whether he or she is a victim, offender or witnesses – one that goes far beyond traditional notions of deterrence and behaviour change. Given that assumption, it advocates for laws and policies that maximize the therapeutic potential of the system and minimize the negative. The term therapeutic is purposefully broad, suggesting the consideration of any way the system might affect psychological well-being. (p. 482)
The existing literature on victimization and victimology focuses on the outcome of criminal court proceedings, assuming that victim satisfaction and the therapeutic impact can be found in sentencing and the decision of the court. While this is a potential site for therapeutic impact, therapeutic jurisprudence literature on court processes in general suggests that one must also examine the process of court proceedings to determine their impact. The literature around victims of domestic violence within problem-solving courts calls for empowering experiences to be created throughout the court process in the form of victims’ inclusion and their ability to express experiences and wishes (Cattaneo & Goodman, 2010). Indeed, Herman (as cited in Cattaneo & Goodman, 2010) argues:

> No intervention that takes power away from the survivor can possibly foster her recovery, no matter how much it appears to be in her immediate best interest... a supportive response from other people may mitigate the impact of the event, while a hostile or negative response may compound the damage. (p. 484)

Studies have found that when victims felt empowered during the court proceeding by being allowed to share their subjective experiences, there was a greater improvement in their rates of depression and their quality of life, and that they were far more likely to seek help in the future than those who felt that the court proceedings were a place where they had no power (Cattaneo & Goodman, 2010). Given these findings about victim participation in domestic violence courts, it stands to reason that victims in other court settings that are similarly supportive and empowering would experience similar positive effects. Currently, however, no
other problem-solving court gives the same amount of attention to the therapeutic impact it has on victims.

**Restorative Justice Programs**

In introducing us to restorative justice and the origins of the movement, O’Brien and Bazemore (2006, p. 279) write “somewhat unexpectedly in the typically ‘closed system’ context of criminal justice organizations, restorative justice advocates have identified new customers of criminal justice services – victim, offender and community – and invited them to participate actively, as stakeholders in the justice process.” The concept of restorative justice comes from North American Aboriginal communities and it is still used in the Gladue and Tsuu Tina Courts (located in Toronto and a reserve outside Calgary, respectively) as well as other Aboriginal justice initiatives and programs (Bakht, 2005, p. 27).

Those who are practising restorative justice consider crime and court proceedings very differently from those working in the mainstream. Instead of asking “who broke the law and how should he or she be punished?”, they ask “what happened? Who was harmed? How can this be put right?” They include all parties affected by the incident in the process of answering these questions and try to draw something positive and transformative from the justice process. Two criminologists, Zehr and Mika (1998), interviewed individuals working in the field of restorative justice about how they understood and defined the concept; the definition that came from these interviews was that “restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve
collectively how to deal with the aftermath of the offence and its implications for the future” (p. 54).

Zehr and Mika (1998) identified three main tenets of restorative justice. The first is “crime is fundamentally a violation of people and interpersonal relationships” (1998, p. 51). This means that while the primary victims are those whom the court recognizes as most directly harmed by the incident, so too are those around them, including family, friends, the community and even the accused. The goal of restorative justice in relation to this tenet is to examine the harm done, especially interpersonal, and to investigate how to repair the damage. Their second tenet is that the “violations [caused by crime] create obligations and liabilities” (p. 51); those accused of crimes are encouraged to try and understand the nature of the harm they have done and to take responsibility for healing the wound. Victims are encouraged to contribute to the definition of these obligations, liabilities and the justice process in general with the expectation that this participation will create feelings of empowerment. The community also has a responsibility to support both the victim and the accused in its efforts to repair harm, as well as to acknowledge social conditions which may have played a role in the harm occurring. Their third tenet is that restorative justice “seeks to heal and put right the wrongs” (p. 52); these processes are about healing, not punishment or retribution. “Putting right the wrongs” can mean anything from providing involved parties with information, trying to understand their experiences, validating their feelings, creating safe, supportive spaces, paying for medical bills and physical damages, apologizing, or seeking opportunities to change. Zehr and Mika state that “the needs of victims for
information, validation, vindication, restitution, testimony, safety and support are the starting points of justice” (p. 52) in explaining how wrongs can be put right. They continue by arguing that it is necessary for the healing process to include an exchange of information and to address the needs and competencies of the person who caused the harm. Additionally, they state that justice belongs to the community, and that “justice is mindful of its outcomes, intended and unintended, or its responses to crime and victimization” (p. 52).

Sullivan, Tifft and Sullivan (1999) question what we seek to restore when the community and relationships that were harmed were not that great to begin with. “It is puzzling to see... how many proponents of restorative justice can limit their focus to only the correctional aspects of restorative justice and refuse to take into account the ‘transformative’, economic, and structural dimensions of justice, that is, the social structural conditions that constrain the lives of us all and affect the extent to which any of us can live restorative lives,” (p. 8). They go on to note that if restorative justice practices fail to examine preexisting social structures and oppressive forces in the communities and lives involved, they themselves will fail. When restorative justice practices are located within the traditionally adversarial context of the criminal justice system, which is considered by many to be a site of intersection of many forms of oppressive, one must question how these practices can challenge harmful social conditions and forces. It could be argued that many court-based restorative justice programs are not adopted into the criminal justice system but adapted to fit into this system’s structure and that this adaption
decreases opportunities for healing, restoration and transformation that restorative justice practices seek to create.

It could also be argued that court diversion programs are a type of adaption of restorative justice. These diversion programs emanated from the restorative justice movement and are a way for accused individuals to be diverted from a mainstream trial court to programs that try to address the root causes of the criminal acts. Participation is voluntary and if the individual does not wish to participate or fails to comply with the program’s conditions, he or she will be referred back before a mainstream trial court (Winick & Wexler, 2003). That said, for an individual to be eligible for a diversion program, he or she must take responsibility for what happened, and address the root causes of something the individual says never happened would be a fruitless exercise. If the individual does take responsibility and chooses to stay in the program, he or she is called on to make gestures to right the wrong that has occurred. These gestures could include writing a letter of apology, paying for damages, participating in community service opportunities, or enrolling in a treatment program (Winick & Wexler, 2003). Many diversion programs have been criticized as positioning themselves within the restorative justice movement as many do not actively involve the victim or community in their processes (Sullivan, Tifft and Sullivan, 1999).

The criticism of restorative justice approaches discussed by Sullivan, Tifft and Sullivan above also holds true for court diversion programs: most approach what happened on an individual level and fail to recognize preexisting social structures and forces which are oppressive and contributed to the incident happening. In this
way, it is quite possible that the actual roots of the harmful incident – poverty, racism, sexism and trauma, to name a few – are not part of the understanding of what happened and subsequently not part of the resolution. It could be argued that this does an injustice to both the accused and the victim(s), as all the factors contributing to the harm are not being addressed, future deterrence of harm is perhaps compromised, and an individual is asked to take responsibility not only for his/her actions but an entire societal problem.
Chapter 4: Methodology

This research project employs a case study methodology. Creswell (1998) explains that "a case study is an exploration of a ‘bounded system’ or a case (or multiple cases) over time through detailed, in-depth data collection involving multiple sources of information rich in context" (p. 61). Meyer (2001) adds that there are virtually no specific design requirements in the case study approach to research, which is the source of many of its strengths and weaknesses; researchers have the flexibility to tailor the research design and data collection methods to meet their needs and the nature of the research subject, but this flexibility has led to many poor case studies, thus leaving some hesitant about its validity. Questions have also been raised about the generalizability, objectivity and appropriate use of case study research. The rationale behind the choice of a case study approach used in this thesis, the methodological structure of this research, and the concerns about case study methodology will be discussed in this section. The Ethics Proposal for this project can be found in Appendix A.

Why a Case Study Approach?

Case studies are an attractive research method for the examination of a phenomenon in depth and in context. According to Gummesson (1988), "the detailed observations entailed in the case study method enable us to study many different aspects, examine them in relation to each other, view the process within its total environment and also use the researchers’ capacity for ‘vertehen’
Advocates of case study methodology are adamant that the context in which a research subject is located cannot be excluded and posit that by paying such close attention to details of a story, case studies can do the context justice. At the core of this method is the belief in the research subject as being able to tell his or her story and to have it represented as accurately as possible in the research. Establishing a relationship of trust between the subject and the researcher is thus integral to the method (Meyer, 2001, p. 334). As the subject of this thesis is centered on the inclusion of subjective experiences, this particular element of case study methodology is appealing. The details that can be gleaned from case studies are very good at answering “how” and “why” questions (Creswell, 1998; Flyvbjerg, 2006; Meyer, 2001), and this is useful in this research project in trying to understand how victims participate in criminal court proceedings, what spaces they are allowed for their subjective experiences, how they are impacted by this participation/space or lack thereof, why this is, and why their participation is structured in the ways it is.

Methodological Design

i. Sampling and Selection of Key Informants

Meyer (2001, p. 340) criticizes many published case studies for not including discussion about how research decisions are made and suggests areas for such discussion. The first such point at which decisions must be made is in sampling and the selection of cases; researchers employing case study methods must ask
themselves how many cases they want included and why, how they are going to choose cases, the sampling timeframe and the sampling sites.

In this research, five key informants were interviewed to gain a more informed understanding of how and why different court proceedings are structured as they are. One key informant was a crown attorney who works within the mainstream court system; another was a crown attorney who works within Ottawa's Mental Health Court (the problem-solving court that was chosen as the focus of this research); two were restorative justice practitioners in a court-based restorative justice program; and one was a defense attorney whose practice aims to be therapeutic. Prior to conducting these interviews, the researcher investigated each of these court proceedings via secondary research data and thus approached each interview with a firm grasp of how the proceedings work both locally and nationally. The goal of these particular interviews was to understand in greater depth how various types of courts allow victims to participate and why; while some of these court proceedings are standard across the board (mainstream trial courts), others allow for internal diversity (various restorative justice diversion programs may look very different, for example).

To recruit key informants from a mainstream trial court and a problem-solving court, the researcher approached the Crown’s Office at the Ottawa Provincial Courthouse and Land Registry Offices in January of 2011; the crown counsels working here are assigned to specific courts and have academic and professional expertise on how these courts work and why. The interview requests were initially rejected on the grounds that all interviews with crowns must be approved by their
guiding body, the Ontario Ministry of the Attorney General, and that this approval was rarely granted. The researcher approached the Ontario Ministry of the Attorney General for permission to interview these two crowns and after many conversations, was granted approval in late February of 2011. The Mental Health Court crown was the first of the problem-solving court crowns to respond positively to the interview request, and the mainstream court crown who was interviewed was also the first from this court setting to respond positively to the interview request. Initial interviews to discuss what the research project was about and what the interviews would entail occurred over the phone and e-mail, and then information-gathering interviews were booked for March, 2011.

To recruit a key informant from the court-based restorative justice program, an interview request was sent directly to its office and its director and a caseworker requested a meeting to learn more about the research and what the interviews would entail. After this meeting, both the director and the caseworker expressed interest in being interviewed and the researcher decided to interview them both separately at the beginning of February, 2011.

In January of 2011, after learning that one of the only criminal defense firms practising therapeutic jurisprudence in Canada was located in Ottawa, the researcher approached them for an interview. The planned goal of this interview was to get an understanding of what therapeutic jurisprudence looks like from the perspective of a legal firm, whether victims were incorporated into this practice and, if so, what this incorporation consisted of. A defense attorney with the firm
responded positively to the interview request and the interview was conducted in February, 2011.

Due to time constraints, each key informant was only interviewed once but all were given the opportunity to follow-up with the researcher if she/he had additional thoughts or questions. They were also all asked to choose interview locations where they felt safest and most comfortable (their offices, Carleton University, a coffeeshop, etc.). All chose to be interviewed in their offices.

\[ \text{ii. Sampling and Selection of Victims} \]

\underline{Three} victims, one from each type of court proceeding, were also interviewed. The inclusion criteria for victim participants was guided both by the goals of the research project as well as Carleton University's Ethics Review Board. As the research examines subjective victim experiences in various court settings, the researcher was concerned about the already limited generalizability of the data gleaned from the research and made efforts to enhance this generalizability. Because one of the court settings that is the focus of this research (the court-based restorative justice program) does not take domestic violence cases, the researcher decided to exclude victims of domestic violence from this study. Much literature and work around victim participation in court proceedings is focused on victims of domestic violence and consequently there is an opportunity to examine the victims of other offences.

The two other inclusion criteria for victim participants were that they must be over the age of 18 at the time of the interview (and thus of age of majority in
Ontario and able to consent freely to the interview) and the court process they were involved in as a victim had to have concluded at least three years prior to the interview. This latter criteria came out of the understanding that participating in court processes as a victim is often an incredibly hard experience, and victims may be somewhat emotionally raw for some time after. The researcher wanted to ensure that the interviews were not happening at a time that was already very difficult for the participants, and thus the three year gap between the proceedings and the interview became part of the inclusion criteria. The researcher was also concerned that talking about court participation (an experience that is a very emotionally hard time for many individuals) could bring up some negative feelings and so arranged for each victim to be able to bypass the waiting list to see a counsellor at Family Services à la Famille Ottawa if they wanted support after the interview.

In January, 2011, recruitment materials (an email and a poster) were sent to organizations who work with victims, including the court-based restorative justice program, the Victim/Witness Assistance Program, the Canadian Resource Centre for Victims of Crime, Ottawa Victim Services, the Ottawa Police Service, the Federal Ombudsman for Victims of Crime, the Department of Justice's National Office for Victims, the Ontario Victim Services Secretariat, the Ottawa Rape Crisis Centre and the Sexual Assault Support Centre of Ottawa. Due to concerns about confidentiality, the researcher asked these services to distribute these materials as well as researcher contact information to colleagues and victims they have worked with. Some services responded positively to the researcher, saying they had distributed
the material widely, and other services responded that they were not able to
distribute materials for a variety of reasons (including not having the authority to
distribute materials as well as concerns about confidentiality). Several services did
not respond at all and it is unknown whether they distributed materials or not.

While much interested was expressed, the first round of participant
recruitment only produced one participant who met the inclusion criteria.
Consequently, the researcher sent out a second round of recruitment calls in mid-
February, 2011. Agencies that had initially been contacted were contacted again,
while new agencies were added: Ottawa-based counselling and advocacy agencies,
including all the community health centres, Family Services à la Famille Ottawa,
Jewish Family Services, the Ottawa Coalition to End Violence Against Women and
the Elizabeth Fry Society of Ottawa. The recruitment poster was also sent to the
researcher’s contacts in various networks, both personal and professional. This
recruitment campaign produced a second participant who met the inclusion criteria.
In May, 2011, a third victim participant who met the inclusion criteria came to the
researcher via word of mouth.

As indicated above, the researcher was approached by a number of victims
who did not ultimately meet the inclusion criteria. One reported to be the victim of
a sexual assault whose matter did not make it to court; another was the victim of
domestic violence; and a third had lost a loved one to murder. Their situations and
narratives brought up many interesting ideas for the further research efforts, such
as the impact of trying to participate in a court process as a victim but being unable
to do so when the matter is dismissed as well as ideas about what “makes” a victim a
victim. However, these ideas are beyond the scope of this thesis and may form the subjects of future study.

The researcher met with each individual victim twice, the first time to explain the research in full and the second time to explore their experiences of participating in a criminal court proceeding. The timeframe of their stories that the researcher focused on was the duration of their participation in the court proceedings and the aftermath but, as anticipated, they also talked about their victimization and what preceded the court proceedings. All three participants were asked to choose an interview location that was comfortable and safe for them: one chose to be interviewed via Skype and two chose to be interviewed in coffee shops.

iii. Data Collection

The second area of research that Meyer (2001, p. 341) suggests examining is the decision-making process centered around data collection. In case studies, a combination of data collection methods – such as reviewing archives, interviews, questionnaires and observation – is typical. The employment of these methods is affected by time, financial resources and access (Flyvbjerg, 2006, p. 236; Meyer, 2001, p. 341). In this research project, while some time was spent monitoring court proceedings, interviews were the primary method employed. As the individuals being interviewed had been through the court proceedings at least three years prior to the interview, it was impossible to directly observe the court proceedings in which they were involved. The researcher also decided not to track down the court records of their cases as this research was centered on the victims’ subjective
experiences. Moreover, it was felt that the victims’ own narratives should be privileged and that accessing court records would risk discrediting them or being seen to discredit them. As previously noted, court proceedings in general were investigated prior to interviews and this provided a strong backdrop to the narratives.

Meyer (2001, p. 341) suggests recording interviews to preserve interviewees’ thoughts and answers, and the researcher asked all participants for permission to do so. All but one participant gave this permission; during the one interview that was not recorded, the researcher took precise notes and repeated phrases and quotes back to ensure they were heard and understood accurately.

iv. Data Analysis

The third and final area that Meyer (2001, p. 342) recommends a discussion of the decision-making process is the analysis of the data. With interviews, she recommends transcribing interviews and then reviewing them for key themes. Creswell (1998, p. 206) notes that analysis can be holistic (looking at the whole case) or embedded (looking at specific aspects of the case). Flyvbjerg (2006, p. 237) seems to recommend a holistic approach to analysis. Because of the richness, depth and context of case study narratives, keeping them “open” and looking at all parts better enables us to see the full story, its diversity, complexity and conflict. The researcher decided to follow this recommendation and also incorporate elements of grounded theory into the data analysis. Creswell (1998) explains that the purpose of a grounded theory study is “to generate or discover a theory” (p. 56). The same
methods that are used in case study approaches (interviews, observations) are used here to study how people act and react to a phenomenon or phenomena; in this case, the phenomena are the presence of subjective experiences and participation in criminal justice court proceedings. Themes emerge from the narratives in the interviews and observations, and the researcher's theory about interactions with the phenomenon is grounded in these narratives and themes.

As grounded theory focuses so strongly on the themes emerging from the narratives, the ways in which data analysis and the narrative report are written must be paid great attention. Strauss and Corbin (1990, p. 56) explain that data analysis starts with "open coding" where the researcher develops categories of information based on what she/he sees in the narratives; she/he then explores how these categories are interconnected, builds a story about these connections, and concludes with a set of theoretical propositions about the phenomenon in the narrative report. The researcher followed this process by scrutinizing the transcripts and noting key words to do with the phenomena of subjective experience (key words: subjective experience, experience, subjective, impact, voice, story, opinion, perspective, feelings, needs and wants) and participation (key words: court, court proceedings, trial, require participation, participation, ask for participation, volunteer to participate, witness, victim impact statement and victim input) as the first-level coding. For the second-level coding, these key words were clustered together (within the phenomenon of participation, for example, the researcher found that key words formed a cluster group around participation
One of the main concerns about case study research is that it is often not generalizable (Flyvbjerg, 2006, p. 224). This calls its validity into question, and some have suggested that too much room is left for researcher subjectivity (Flyvbjerg, 2006, p. 224). Flyvbjerg responds to these concerns by discussing the idea of experts: most of us have general knowledge about many things, but experts in specific areas of study, work and social phenomena are rare. To ignore these experts would be to miss out on the deep understanding they have to share; Flyvbjerg compares this to collecting only formally generalizable knowledge. “That knowledge cannot be formally generalized does not mean that it cannot enter into the collective process of knowledge accumulation in a given field or in a society. A purely descriptive, phenomenological case study has often helped cut a path toward scientific innovation,” (Flyvbjerg, 2006, p. 227). He also found that researchers who conduct intensive case study research found their preconceived views, assumptions, concepts, hypotheses and understandings were challenged and as a result, they learned what new directions to explore. Meyer (2001) responds to the concern of researcher subjectivity by recommending that researchers be aware of their biases from the start, explore their presuppositions, and make an effort not only to put them aside over the course of the research but also to check in on them frequently to see where they are and if they are having an impact. “Furthermore, rival conclusions should be considered,” she concludes (p. 344).

jurisprudence, victim experiences of participating, etc.); the themes of the data developed from these clusters. Please see Appendix B for an example of coding.
Another criticism of case studies is that they do not tend to be grounded in a specific theory and that the theory component often comes in later, as a product of the analysis as opposed to an innate part of its beginning (Creswell, 1998; Meyer, 2001; Flyvberg, 2006; Langrish, 1993). Meyer clarifies that "the case study is open to the use of theory or conceptual categories that guide the research and analysis of data. In contrast, grounded theory or ethnography presupposes that theoretical perspectives are grounded in and emerge from firsthand data," (p. 331). The concern is that by not starting with a theory, a lot of time will be spent on description and not a lot on drawing out meaning. Meyer and Flyvberg both further argue that it is beneficial for case study researchers to have established an understanding of general theories, models and concepts around the research area, but not to "be their slave" (Meyer, 2001, p. 331). “Narrative inquiries do not – indeed, cannot – start from explicit theoretical assumptions. Instead, they begin with an interest in a particular phenomenon that is best understood narratively. Narrative inquires then develop descriptions and interpretations of the phenomenon from the perspective of participants, researchers, and others,” (Flyvbjerg, 2006, p. 240). Seen in this way, the interviewees are the “experts” in their own lives and experiences, and they are not asked or forced into a pre-established model. They are at the core of theory creation and testing, but they and their experiences are not something to be tested.
Potential Limitations

Although a case study approach is suitable for this research, it does create some limitations. A small sample size was chosen in order to gain a depth and richness of understanding. Given more time and resources, the researcher would have preferred to explore many more narratives in this same depth, but this is not realistic for this project. What this research sacrifices is formal generalizability: it cannot speak about the experiences of victims in general. Because of the small sample size, it is also limited in its ability to explore the impact of various social structures and forces such as race, gender and class in the experiences of participation in court proceedings. This research project is largely guided by the "victim" identity of the participants.

Another limitation has already been touched on: because only those whose experience of participating in court proceedings was three years prior were interviewed, the researcher was not be able to observe their court participation. It is also likely that their thoughts and emotions about their participatory experiences have changed and perhaps mellowed over time; it would be interesting to look at this longitudinally, but this is impossible given the timeframe of this research. It should also be noted that this change or mellowing may be a good thing: it may represent the lasting impacts of participation and not the immediate reactions to it.
Victim Participation Jurisprudence

In mainstream courts, victims were found to be able to participate in several different ways and at different points of the court proceedings. If the accused pled guilty, the victim could submit a Victim Impact Statement at sentencing. If the accused did not plead guilty and the matter went to trial, the victim could also submit a Victim Impact Statement at sentencing if the accused was found guilty. Indeed, the crown key informants said that asking if the victim wanted to submit a Victim Impact Statement was their only responsibility as officers of the court to victims:

The court’s responsibility [towards victims] is to see if the victim wants to file a victim impact statement. We need to find out what those efforts were and find out if they’re reasonable. If they weren’t reasonable, we adjourn proceedings until the victim is properly engaged. (Key Informant – Mental Health Court Crown)

In the case of a trial, the victim was also subpoenaed to come to court and act as a witness; in this case, their participation was not voluntary. In some cases (usually where the victimization had been violent, such as an assault), the crown also asked for “victim input” when considering conditions of release but not with findings of guilt/innocence or sentencing:

[Victim input] could be considered by the crown if the accused’s lawyer or the accused himself or herself tried to vary... let’s say they were in custody and having a bail hearing or they had had a bail hearing and been released on bail, and were then coming to the crown to ask the crown to consent that they be released from jail, or ask the crown to consent to their bail restrictions be lessened somewhat, we
would um, look at the victim’s views. And if the victim’s saying “I’m terrified, he’s breached court orders before, he’s been calling me from the jail...” all those things... that would very much impact things. Before we would agree to any change regarding custodial status pending trial, we would look at the victim input. (Key Informant – Mainstream Crown)

Among the lawyer key informants (both crown and defense), there was concern about victim participation in sentencing. The specific concern identified by the crown key informant working in a mainstream court centered on adhering to principles of sentencing set out in the *Criminal Code of Canada*:

We don’t allow victims to opine on what sentence an offender should receive because that is and will remain ultimately at the discretion of the trial judge... I think that the judge has to be dispassionate as much as possible and I don’t think we can expect a victim of any crime to be dispassionate to any degree, let alone to the degree that would be required to balance all of the competing factors... while it might be helpful for the victim to state what he or she thinks needs to happen, anything beyond what they need to happen for their own assistance and safety is really not helpful for what has to happen to the accused because our principles of sentencing... it’s focused on denunciation of the offence, both general deterrence and specific deterrence of this offender. (Key Informant – Mainstream Court)

The defense lawyer key informant was apprehensive about the “injection” of the victim into established process that did not have a formal role for them:

I’m not a big fan of the role of victims in the court process and I’ll tell you why exactly. It basically changes the dynamic of um, the adversary process. The crown represents the state. The act of the violence, or the robbery, or the sexual assault or whatever is against a particular individual and this is true. But the interests – the interests behind the case - are the interests of the state. And the crime has been committed against the state. The rules that have been enacted have been broken and someone has to be prosecuted and someone has the right to defend themselves, and it is not about separate, individual parties duking it out to see what happened. The injection of the victim into
The two key informants who were part of the court-based restorative justice program were critical of how victims are generally treated within mainstream courts and how some victims are unable to seek help from court-based victims' programs because of their “type” of victimization. As stated by one of these informants:

Victims are not treated or... engaged in a way that is very meaningful to them, from my perspective. If they are engaged in the traditional system, they are engaged at the entry points. So if a charge is laid, they are contacted by the police and they fill out a statement. But past that, they aren’t often contacted or followed-up with until a trial date is set. And in that case, they’re only involved if the accused is pleading not-guilty and there is going to be a trial. Victims are left out of the system for that entire process and that’s a lot of victims who are left unserved. There are programs like [the Victim/Witness Assistance Program] who engage victims and support them... it’s a wonderful program but unfortunately they are limited to certain cases.... of domestic violence, child abuse, things like that. So they are limited to what cases they take and that leads all of your victims of assault, break-and-enter, robbery, mischief, fraud, you name it, a ton of victims are left unserved. (Key Informant – Court-Based Restorative Justice Practitioner 1)

All the key informants said that victims connected to Mental Health Court were not treated much differently than victims who went through mainstream courts as victim participation in both spaces is governed by the same guidelines set out in the Criminal Code of Canada. In Mental Health Court, the accused is taking responsibility for the crime and thus essentially pleading guilty; he or she will not go to trial and subsequently, the victim will not be called as a witness. The extent of victim participation is through Victim Impact Statements and victim input.
The Mental Health Court Crown noted that the one difference that might be experienced by victims in this problem-solving court is the amount of information they receive:

The only one difference might be the information side of things with respect to um, providing some... general information as we don’t want to breach anyone’s confidence. But some general information about what motivated the behaviour that they became victim of and the fact that there’s treatment being provided. So we may provide a little more information there than in other cases... (Key Informant – MHC Crown)

In the court-based restorative justice program, victims are asked to participate in the process and their participation is completely voluntary; they can withdraw and end the process at any point. The key informants from this program noted that one of the main differences between their process and a court process is that victim participation determines whether the case progresses or not:

The victim’s involvement is pivotal, not just... we wouldn’t proceed without them. Whereas in the [mainstream] court system, whether the victim is there or not, the process will proceed. (Key Informant - Court-Based Restorative Justice Practitioner 2)

They also explained that victim participation looks very different within their program and has very different goals than within a mainstream court proceeding:

[Restorative justice is about] treating an act as more than just a violation of the state, more than a crime... it’s a violation of the relationship, right, and that relationship can be anything from two strangers on the street, to people who live in the same neighbourhood, to a brother and sister. I keep going back to healing, but that is our ultimate goal... wherever they come from and wherever they’re going, we’re trying to facilitate a healing process. It’s about information sharing, it’s about providing as much information as possible to people on both sides so they can make realizations and come to understandings that they wouldn’t else-wise. Um, it’s about um, truth-telling. It’s about getting to the bottom of what happened without excuses and differences getting in the way. It’s about the core of the
whys and the hows. I think for victim participation, as much as it’s about victim participation, it’s about offender participation as well. It’s bringing two people together in whatever way that they want where there’s a debt to be paid. It’s not mediation and we’re very clear about that. Mediation happens when people are coming together as equals and as much as we’re trying to be balanced here, we do have people that... there’s the hurt and someone whose done the hurting. It values treating people like people rather than just players in a system. (Key Informant – Court-Based Restorative Justice Practitioner 1)

**Reasons Victims Participated**

When the victim from the mainstream court called the police to report her victimization and identify who had harmed her, she viewed this act as volunteering to participate in the court proceedings. She had been watching the news and heard that the man who harmed her had harmed others, and reported feeling a sense of responsibility to report her victimization:

> I knew I was coming to the end of my experiences on the street and I knew other women were going to have that happen to them if I didn’t do this. And there were several more assaults... several more victims. (Victim – Mainstream Court)

Once the matter of the man who had harmed her was brought to trial, she was subpoenaed as a witness and participated in the court process by testifying against him. When he was found guilty, she was told she could submit a Victim Impact Statement and chose to do so.

In contrast, the victim whose matter went through Mental Health Court was not asked to participate in the court proceedings in any way but attended the hearing anyway. “I wanted to be there, [in court], to make sure everything was taken
care of properly. I wanted to act as a witness, in a sense," he said of his “unofficial” participation.

The victim who went through the court-based restorative justice program was asked by the program staff to participate in a restorative justice process alongside the accused, and since she was under 18 years of age when she was asked to participate, her mother was asked to participate with her. The victim’s decision to participate was strongly influenced by her mother:

VICTIM - RJ: I was asked [to participate in the restorative justice process].
INTERVIEWER: What made you decide to participate?
VICTIM - RJ: My mom took control of most of the process [laughs]. So that would be her decision!
INTERVIEWER: Okay. How did you feel about [your mom] asking you to do [participate] or perhaps making you do that?
VICTIM - RJ: I feel a bit like I got dragged along!
INTERVIEWER: Would you have liked to say “no, I don’t want to participate”?
VICTIM - RJ: No, I think I would have done it anyway... it was really good for me and for the guy who hit me.

Victims’ Subjective Experiences of Participation

The victim who went through a mainstream court process was subpoenaed as a witness at the trial and was thus only allowed to attend the trial on the day when she was testifying (there were several other victims also testifying). Her testimony lasted for approximately three hours. One thing that the victim had not expected was the support she received from the police, the crown and the court-based victim services program. She had assumed that she would be treated poorly because she was street-involved:
**VICTIM – MAINSTREAM COURT:** The thing I’ll say again that I didn’t expect – that happened – was the kindness from the crown attorney and the detective and victim/witness. Didn’t expect that at all.

**INTERVIEWER:** Why didn’t you expect it?

**VICTIM – MAINSTREAM COURT:** I think at that point, I was... because of the lifestyle I was living, anyone in authority, I thought they wouldn’t believe me or something... and they really were the first people who didn’t treat me that way. And yet they weren’t social workers. You know what I mean? They were officials.

**INTERVIEWER:** Did you have bad experience before with the police or crown attorneys?

**VICTIM – MAINSTREAM COURT:** No, not really, but from where I was... the people I spent time with, I made an assumption about how I would be treated.

The victim had also not expected that the trial would be continually rescheduled (this went on for several years), and that it would be as monotonous and repetitive as it was. She also struggled with attempts to be discredited by a female defense attorney:

I didn’t expect him to have a female lawyer who was trying to discount me. I didn’t expect... I believe I did expect, intellectually, that it’s part of the defense’s job to discount me. But I didn’t expect how emotional that was going to be. (Victim – Mainstream Court)

Further, the victim found that there was a lack of formal support services; the lead police officer in her case provided her with encouragement and practical support (such as rides to court) but at no point was she offered any sort of counselling or referrals to counselling agencies. Her contact with the court-based victim services’ program was pleasant but limited. She noted that she may not have been in a place to accept support, but having it offered and knowing she had options would have made the process much more positive. She also said that she “would have liked to
take a more active... proactive role [in the court proceedings].... but wasn’t capable of it at the time” (Victim – Mainstream Court).

The victim whose case was in Mental Health Court did not officially participate in the court process, but attended the court dates and was asked on the spot by the judge to stand up in the public gallery and answer questions. He had been assaulted by a client in the group home where he worked, and he was still the legal guardian of this person at the time of the court proceedings. The judge asked him about the individual’s history, why he was placed in the group home, some of the things in his life that had led to the assault, and what his new treatment plan was. At no point was the victim asked about the assault or about himself as a victim. In addition, neither the crown nor the defense attorney invited input from the victim or even spoke to him.

“It’s weird to be designated as the victim and the care provider. I’m supporting a client while wearing the hat of the victim in court.”
(Victim – Mental Health Court)

The victim had been assaulted in the past by other clients who were then diverted into Mental Health Court, and so he had had opportunities to attend these types of proceedings. He reported that on these occasions, those in the court thought he was making a statement when he chose which side of the courtroom to sit on. He told the researcher that when he sits on the crown’s side, he can tell from tone, language and body language of everyone present that he is seen as siding with the crown (and not his client), more punishment-oriented and like he is being judged as an unfit guardian because of this. When he sits on the defense side, the opposite happens and he is seen as supportive of the client and unsupportive of the court’s
intervention; in these cases, he fears that this serves to invalidate his experience of victimization. There is no room for him to be both supportive of his client and negatively impacted by the victimization caused by that client.

The victim left Mental Health Court with a feeling that the criminal justice system in general and the court system is flawed. He had hoped that the accused would be held truly accountable for the assault so that the accused might explore what was going on in his life and consider the impact of doing harm and being criminalized had on him. Instead, the victim got the impression that the court was simply “going through the motions” in terms of accountability and that decisions were being made behind closed doors.

Despite his frustration and disillusionment, the victim was glad he participated in the court process. He believed that victims should have a choice to participate and in his case, he chose to because he wanted to witness the process and “try to make sure everything is taken care of properly”:

Yes, I’m satisfied because I participated. It’s like voting – you have an opportunity to have a voice and you need to use it. I’m not satisfied, however, with the court and its proceedings. The quality of the system is broken. (Victim – Mental Health Court)

The victim would have liked to submit a Victim Impact Statement, but the option was never presented to him. He knew he had a right to submit one as the victim designated on the court file, but thinks he would have been judged and seen as “making waves” if he had submitted one; he tied this back to the view of him as being “punishment-oriented” and an unfit guardian if he focused on the harm that was done to him and expressed his victim identity. He also wanted to have had
more support, such as free or subsidized counselling, or even a referral to somewhere in the community; nothing was offered to him and he had no contact with the court-based victim services program.

The victim who had been involved in the court-based restorative justice program had a generally positive experience throughout the whole process. She met with the restorative justice practitioners twice (once to learn more about their program and decide if she wanted to participate, and another time to talk about the victimization and what she wanted the process to look like) and then they all met with the accused for a healing/reconciliation circle. One of the biggest benefits she got out of it was learning that the assault she experienced was nothing about her: “I was just a trigger”, she said. She was comforted knowing that she had not provoked the assault and that she was not going to be targeted in the future.

This victim wished she had had more control within the process, more information about the pieces of the process she was not involved in, and been more able to make decisions for herself:

I felt I had a good place in [the restorative justice process]. I wish my mom had been less in the process and I’d been able to make more decisions for myself. Um, I think I played a good role. I would have liked... I don’t think I would have wanted to go to his court dates but I would have liked to know when they were and the outcome. (Victim – Court-Based Restorative Justice Program)

She also expressed feeling conflicted about charges being laid in the first place; she had not wanted the person who assaulted her to get in trouble but instead wanted him to get help. She reported being unsure if things would still have turned out well
if charges had not been laid and/or if the accused had gone through a mainstream court process.

The key informants from this restorative justice program emphasized that victims who participate in the process their program offers need to be given as much power and control over the process as possible:

We engage [victims] in a way that they choose, we engage them at their level of comfort, we offer them a service and they choose where they go with that service. It’s not something that’s forced upon them, it’s offered to them. We try to meet them where they’re at, at their comfort level, like I said... at whatever point of entry they want and they choose how far this goes. (Key Informant – Court-Based Restorative Justice Practitioner 1)

They also emphasized that each restorative justice process looks different, depending on the needs of the involved parties. They said that there is no “right time” for a restorative justice intervention, meaning that for some people, it is ideal if they are involved in this kind of process immediately after their victimization while others may need to enter into the process a few months down the road. One of the key informants also noted that the experience a victim has in a restorative justice process depends a lot on what else is going on in his or her life:

It’s such a... a personal decision to decide to be involved with a restorative justice program. You might have family members and support people who are very supportive of this as part of your healing process, as something you need to move past, and that’s great. But there are also people who say “you’re giving them what they want” or there’s this attitude that participating in a restorative justice process is letting the offender off or is... helping them. When participating, it’s a very personal thing. For some people, it’s what they need. It’s not giving anything away. It’s a really a personal need, a personal accomplishment. I think our hesitancy around that is just making sure it’s about what the victim actually wants and needs, and it’s not someone else speaking for them or advocating for them or anything
The two restorative justice practitioners said that victim needs vary widely and evolve over the course of any court process. They indicated that the trend in victim needs is that they initially need information (about the accused, why the victimization happened, what’s happening in the court system, what’s happening next, etc.) and support (counselling, someone to explain their options in a non-judgmental way, someone to attend court dates with them, etc.). Most of all, the key informants said that victims need answers.

The first thing that victims often say is “why me? Was I being targeted? Do they know where I live? Were they watching me? Etc. etc.” And those questions aren’t answered throughout the system. The victims aren’t engaged and given the opportunity to ask those questions... there are no answers coming. And, for the most part, it’s the offender who’s the only person who can answer those questions. And there’s no mechanism in the criminal justice system for that exchange of information. (Key Informant – Court-Based Restorative Justice Practitioner 2)

The Victims’ Voices

The victim who went through a mainstream court process felt like there was space within the proceedings for her story, experience and needs, but that her identity as someone who was street-involved and used drugs was also at the forefront of the trial:

INTERVIEWER: So you feel like your subjective experience was heard?
VICTIM – MAINSTREAM COURT: Yeah. There were a lot of times during the trial that... like I was on the stand for three hours. And there was a lot of talk about drug use, and prostitution and... this and that... I did feel a bit like the focus was on who I was, but I still feel like they saw me as a victim of violence.
This victim was also very aware that the court saw her primarily as a witness and that the crown was concerned that her credibility would be tested because of aspects of her identity other than her victimization:

They wanted my role to be [as a witness] and they were very clear that as it had been so long between the event and when we were going to trial, they were very clear that if I didn’t remember something specifically, to say I didn’t recall. They were very clear that I had to read over my statement and be very clear of what I’d said. I think because of my lifestyle – or in the case of any victim really – but because I was street-entrenched, the defense was going to attempt to poke holes in my story, so they were really clear about the boundaries.

(Victim – Mainstream Court)

The victim whose matter went through Mental Health Court did not feel like his experiences were accurately represented during the court proceedings as there was no discussion of the victimization. He said that the “elephant in the room” – the thing everyone in the courtroom knew was present but avoided touching on – was the events that had led to charges being laid as well as the context in which the events occurred (mental illness and trauma). While he was not asked about his experiences as a victim, he was asked by the judge for what he knew of the accused as his care-provider in a group home. The victim felt that the input he provided at this point was not used in the court’s decision in regards to this particular accused, but he suspects that his input – which touched on the dire need for mental health services – might be reflected on and considered in future cases.

The victim who participated in the court-based restorative justice program felt her mother had a louder voice than she did in the proceedings but that the restorative justice practitioners recognized this and worked to give her space:
I think my voice was heard. My mom's was a little louder, but yeah [laughs]. [The caseworkers at the restorative justice program] asked me a lot of questions. Um, and then when my mom would butt in they would ask me again so that they could hear my opinion. (Victim – Court-Based Restorative Justice Program)

This victim's experience having her perspective sought out is not unique within this court-based restorative justice program:

Victims are encouraged to share their subjective experiences! Their experience of the incident is their experience and it's what we want them to talk about. Knowing that it's very rare that both parties share the exact same perspective of the incident and that the stories are going to be a bit different, and that's okay, as long as the main points of the story are clear and agreed on. There's bound to be perspective differences but how it's impacted the person relates to where they were at that time in their lives and how they think about it now... so we need their subjective experience. The process wouldn't move along without it. (Key Informant – Court-Based Restorative Justice Practitioner 2)

The Impact of Participation on Victims

The victim who participated in a mainstream court proceeding reported that she was glad she participated because although it was incredibly hard, it showed her how strong she was.

Well, there were times where I... yeah, I'm more glad than not. I don't know. No! Am I glad I went through it? No! But proud, yes. Glad is a tough word. It implies “yay, I'm glad!” Would I wish that experience on myself or someone else? No. I'm pleased that I had the strength to do it. (Victim – Mainstream Court)

She described how this strength as well as the knowledge she got from seeing how criminal justice court proceedings work has led her to helping others who have been victimized navigate the criminal justice system. She also noted that it contributed to her current identity as an advocate:
VICTIM - MAINSTREAM COURT: Um, I think, at the time, I wasn’t emotionally prepared to [participate in court]. If it was now, if I was this woman going into it, I would have advocated more for myself. I would have liked to take a more active... proactive role... but I wasn’t capable of it at the time.
INTERVIEWER: Do you think that going through that process contributed to the foundation you have which allows you to now better advocate for yourself?
VICTIM - MAINSTREAM COURT: Yes. Maybe. I think, it’s part of it. I needed to do a lot of things. It definitely contributed though.

She also described the negative impact the court proceedings had on her:

The trial was really hard. I’m glad I went through it but in a way, it revictimized me and stopped the healing process from being able to start. Which is why I wasn’t able to get clean until after. (Victim - Mainstream Court)

The victim who participated in Mental Health Court was glad that he participated, although he wishes he had gotten more control over the format of his participation. He reported feeling more frustrated and disillusioned with the criminal justice court system at the end of the proceedings than he did at the beginning, but will use what he learned in his own practice as well as in information-sharing with coworkers and newcomers to his field of work (working in a residential setting with individuals who have mental health issues). He is also going to press charges for a more recent assault against him by another client he works with. He is doing this for the purposes of the documentation it will provide of what this person acts like when in crisis, not because he thinks he will have a positive or even satisfactory experience as a victim in the court proceedings.

The victim who participated in the court-based restorative justice program reported being glad she participated in the process. She said it reaffirmed a
component of her spirituality and made the transition back to school for her and the accused possible:

[Participating in a restorative justice process] had a really good impact. I'm a Christian and I don't know... we talk a lot about forgiveness, so that was something I wanted to come to through this process and I got that. Um, it felt a lot better for me going back to school because we got to talk and reconcile. Um, it was easier for the both of us to go back to school... I went back before him and people were saying really bad things about him. It really helped me to go back in with him as friends and be able to support him like that. (Victim – Court-Based Restorative Justice Program)
This section of the thesis returns to the questions posed in Chapter 2 to guide the analysis/discussion. There was much rich data in the interviews, but the focus for analysis is the therapeutic impact of participation on victims in three different court settings, and how their subjective experiences factored into their participation. In each section of the analysis, an attempt is made to answer the following questions:

- What is the victim’s impression of the court setting they were part of?
- What was the therapeutic or anti-therapeutic impact of the victim’s participation?
- Was the victim’s voice (in regards to their subjective experiences before and in court as well as their needs) heard?

*Mainstream Court*

The victim involved with a mainstream court process was part of a large trial where the accused was facing several charges and there were several victims. Her impressions of the court process were that it was monotonous, repetitive, and not what she had expected. As she was a witness, she was only allowed into the courtroom for the three hours when she was testifying; for the rest of the time, she had to wait outside and was not allowed to talk to the other victims. The legal jurisprudence around this regulation of victims’ movements in and out of the courtroom posits that if victims hear each other’s testimony and the other court proceedings, it will impact their own testimony and its accuracy. While this might
be true in some cases, it is critiqued by many (Landau, 2006), including activist, writer and sexual assault survivor Jane Doe:

I had presumed that I would be inside the courtroom for the full duration of the five days allotted for the preliminary trial. That I would get to see how my legal system dealt with what had happened to me. But was told that a woman who has been raped is expected to sit in the hall on the appointed day and wait to be called in to testify, after which she must leave the courtroom again and sit in the hall... I was cautioned that while waiting outside the courtroom I should not speak to anyone. Especially any women. The fear is that your friends or family or supporters might say something to you that would get you all confused about what really happened and then you’d mix everything up in your pretty (traumatized) little head, and your account would be tainted. This could lead to a mistrial... Are women stupid? Do we confuse what happens to us with what happened to someone else? Or with some other interpretation of what happened? (Doe, 2003, p. 66-69)

One must also question the impact of not being allowed to witness the court proceedings that your own victimization set into motion. The literature on the emotional and psychological impact that participation in criminal court proceedings has on victims points to the need to restore some of the power victims lose during their victimization. How empowerment finds its expression will vary depending on the unique needs of individuals, but will always include having as many options as possible. Taking away the ability to simply observe the court proceedings and know what is happening in them takes away many of the victim’s options.

Another impression that the victim had is that while her identity as a victim was acknowledged and appreciated by those in the courtroom, her identity as someone who was street-involved, addicted to drugs and engaged in sex work was also very much part of the court’s perception of her. “There was a lot of talk about
drug use and prostitution and... this and that... I did feel a bit like the focus was on who I was," she said. When she was being prepared to testify as a witness, the crown spent a great deal of time telling the victim to stick to her original statement and to be honest when she could not remember something (rather than give vague answers). It was apparent to both of them that who the victim was – a street-involved, drug-using women – may be just as critically examined in the trial as the accused. The victim also described experiences of being stared at by jury members in the courthouse:

The jury... the jury were interesting. I remember coming in, walking in past security... and we'd see the jury a lot in the day, taking the elevators or around the courthouse. And I think they knew what the trial was about and they must have known I was one of the victims... I don't know, they were all staring at me. And it was a fairly controversial trial – prostitution! Crack! All hot issues! (Victim – Mainstream Court)

This focus on who the victim is instead of her experiences of victimization comes up frequently. Particularly in sexual assault cases, it is used in an attempt to shift the blame for the victimization away from the accused to the victim, and it is a tactic that is often used purposefully by the defense and unintentionally by other court actors and observers. It can be comforting to believe that we have control over whether we are victimized or not, but it is disempowering and often mentally damaging to be told that we are to blame for the harm that someone else did to us.

The victim talked a great deal about the impact participating in the court processes had on her. She reported her victimization a year after the crime had occurred but a significant amount of time then passed before the person who had harmed her was found and charged. After that, the trial was repeatedly adjourned
over several years. By the time sentencing happened, four years had passed since the initial victimization. The impact of going through such a long, confusing and frustrating process was that the victim was not able to begin her own healing work until after most of the court proceedings had finished. She told the researcher that the delays in the trial and then the way in which the trial revictimized her prevented her from “getting clean” until after the trial had concluded.

Part of the reason why this victim was not able to start healing while the court proceedings were going on might simply be because describing and mentally revisiting her experience was traumatizing; the revisiting process is unavoidable in any court proceeding. However, she specifically used the term “revictimizing”: she not only remembered her previous victimization, but *experienced* harm for a second time at the hands of the court in how they treated her and her story. Another piece of this victim’s experience in being unable to begin healing during the court proceedings is that she received minimal social support during that time. She was treated well by the police and the crown, but when the court-based victim support program interacted with her, their actions were mechanical and when they spoke to her it was like they were “reading things off a chart”. She was offered no counselling, no referrals to other agencies outside of the court, and no one even sat with her inside the courtroom or in the waiting areas. She was also given minimal information about how court proceedings usually work and few updates as the proceedings actually unfolded. On several occasions, she arrived at court ready for the trial to start or to testify and was told that things had changed or been pushed back at the last minute. She described how she had put a tremendous amount of
emotional effort into getting to court and mentally preparing for the trial on these occasions, and it was quite hard and frustrating when changes were made at the last minute and no apparent effort was made to let her know.

Although most of the victim's court participation had an anti-therapeutic impact on her, she learned a lot personally from the experience. She reported being very proud of herself for finding the strength to participate at all. This discovery was one of the things that helped her deal with her addiction and become the powerful advocate and supportive person she is today. In addition, her knowledge of the court system and related programs (such as Criminal Injuries Compensation) is something she is now able to share with others who are going through these processes, and she shares her insights and navigational skills with them to make their involvement as positive as possible.

The victim felt that she was given the opportunity to share her subjective experience of her victimization through her testimony as a witness as well as in the Victim Impact Statement she submitted when the accused was sentenced. It's worth noting that although she was told she had the right to submit a Victim Impact Statement, she did not feel she was being *asked* to submit one. The court fulfilled its duty in informing her of this option, but in no way encouraged her to exercise her right to file a Victim Impact Statement. This could be because they wanted her to feel un-pressured in making her own decisions, but it's also possible that it's a reflection of the court's frustration with the involvement of victims and their perspectives, as several key informants discussed.
The victim was aware that she was in the courtroom as a witness and not a victim, and she was not being asked to recount her story because the court wanted to make sure her voice and experiences were heard. Instead, she was asked to share these things to help build a strong case against the accused. She also noted that as kind as the legal actors were, they were not supporting her for completely altruistic reasons:

I feel like I was validated by the detective and the crown, however they were doing their jobs. After that case, he got promoted from detective to staff sergeant – yay for him! And then the crown, she probably got promoted too. It’s all political, and I don’t mind helping with that, but in some way, I felt more validated later. (Victim – Mainstream Court)

While this victim’s subjective experiences in relation to her victimization were present and heard, her experiences of the court process and the needs that grew out of both her victimization and her court participation were not acknowledged. As noted above, the victim was not offered any sort of social support or counselling, even though the literature clearly tells us that this is when victims need access to a significant level of support (Konradi and Burger, 2000). The victim noted that she might not have been ready to start the emotional work of her healing at the time the court proceedings were occurring, but being offered the option of beginning that work and support in doing it would have had a very positive impact on her.

When analyzing the experiences of victims within mainstream court settings, it is important also to consider how these settings are structured. While the victim interviewed as part of this research was treated very kindly by both the crown and the lead police officer handling her case, all legal actors work within contexts that
come with certain guidelines and rules. These actors may want to include victims
and their subjective experiences in ways that are meaningful to both the victim and
the court, but they are governed by what is set out in the Criminal Code of Canada as
well as case law; a judge or lawyer may recognize that it is important for a particular
victim to be able to say what she wants to happen at sentencing, but under
sentencing guidelines and victim impact statement guidelines, she cannot be
allowed to recommend anything. All these guidelines and rules – and the need to
respect them - very much impact how victims are treated.

In the interviews with key informants, it was made very clear that the main
role victims play in mainstream court proceedings is as witnesses, and there was
resistance to challenging this concept:

Key Informant – Mainstream Court Crown: The main role
[victims] play is as witnesses.
Researcher: And then there's that sentencing piece.
Key Informant – Mainstream Court Crown: Mmmhmm. But
they're still... they're still there as a witness.

The approach towards understanding criminal court proceedings that the key
informants who were lawyers seemed to take was to see crime and harm as
violations of law that must be proven and deterred. As one key informant put it,
"the injection of the victim into this time-honoured, well-oiled process is not
helpful," (Key Informant – Criminal Defense Lawyer). As witnesses, victims are seen
as a necessary tool in this process. As one key informant explained it:

I just think [how victims participate] is the way our system
works. If the crown is trying to prove that somebody has
committed an offence, we have to call witnesses to do that. And
when you're talking about a case of violence, you're talking
about the man or the woman who was assaulted, so that's why
they have to participate. Because that’s who it happened to. (Key Informant – Mainstream Court Crown)

It is worth considering the impact this approach has on victims. The victim who participated in a mainstream court proceeding who was part of this research was largely satisfied with her participation in the court proceedings because she was treated well by several key players. She did, however, note how it was made very clear to her that she was primarily involved as a witness. What impact does this knowledge have on an individual who has gone through something traumatic, and this trauma is the reason court proceedings are happening? What is the emotional effect of knowing that you were not asked to participate because you have a stake in the proceedings but because you are a tool in a process to determine if the law was broken? Although they can be found in the same body, victim and witness identities are unique and distinct from one another. The subjective experience (and subjective needs) of a witness is often quite different from that of a victim. Whereas the witness is concerned with providing a true and accurate account of what happened during the incident leading up to the court process, the victim might be more concerned about the impacts of the incident and what can be done to bring about justice, healing and even punishment.

The other place where there is space designated for victims and their experiences within mainstream court proceedings is at sentencing; at this point, victims have the right to submit a victim impact statement.

[A victim impact statement is] a standardized way of presenting their uh, evidence about the way the crime has affected them. [It]
MAPPING THE SPACE FOR THE SUBJECTIVE EXPERIENCES OF VICTIMS IN CRIMINAL JUSTICE COURT PROCEEDINGS

asks them to describe how the crime has affected them, physically, emotionally, psychologically or financially. So they can complete one or all the sections depending on their needs. (Key Informant – Mainstream Court Crown)

As we can see, the way in which victims can give information to the court is heavily filtered. They are given a form to fill out and only allowed to note how the crime has affected them and nothing else (for example, they are not to talk about what they need for healing, what they think should happen in sentencing, etc.). When we tie this into the literature on victims needing to regain power and control and be heard, we have to question whether victim impact statements – one of their only options within criminal justice court proceedings – are effective at doing this.

Another thing to note is that it is the duty of the court to inform the victim of his or her right to submit a victim impact statement. The victim interviewed for this research reported that it was very clear that she was not being asked to submit one but simply being told that this was an option. There are several potential reasons why the crown might offer a victim impact statement in this manner: the first is that they might be apathetic about this aspect of the court proceeding, and not place any value in victim impact statements. The second is that they might not want to push someone into doing something and are trying to present the option neutrally so the victim can make up his or her own mind. The third is that they think victim impact statements have no place in the court proceedings, and are simply doing their due diligence in make the victim aware of this right.

How this right is presented to the victim has an impact; in the case of the victim interviewed in this thesis, it made her feel like the crown was not particularly
in favour of victim impact statements. She submitted one anyway, as might other victims in similar situations, but others might be deterred by this attitude. Considering that victim impact statements are one of the only ways to present subjective experiences in court, feeling like the court does not particularly want you to use this option can be very hard and may make victims feel invalidated.

It is also worth noting that it is the duty of the court simply to make the option of submitting a victim impact statement known; the consideration given to this statement at sentencing is at the discretion of the judge and likely varies. The ways in which it is considered, the weight it is given and the impact it has on the sentence is not currently mandated nor measured within guidelines for criminal court proceedings. From this, some might argue that victim impact statements can be empty gestures.

Mental Health Court

The victim who went through Mental Health Court reported feeling like the court proceedings were not designed for him or victims in general. Nor were any efforts made by the court personnel to validate or even acknowledge his victimization. When the victimization occurred, he was asked to provide a witness statement to the police and from that point forward, his participation in the court proceedings were informal. He attended the court proceedings and was asked by the judge to stand up in the public gallery and talk about the accused (who was in his care in a group home); at no point was he asked about his experiences as a victim or the impact the victimization had on him. The closest that discussion came to his
victimization was when the judge asked him if the nature of the care of the accused had changed since the victimization.

There is almost no literature on victims’ experiences in problem-solving courts and so it is difficult to determine if this particular victim’s experiences are similar to other victims going through similar court experiences. However, the fact that there is no literature on this particular topic and that existing literature focuses on the treatment and experience of the accused may indicate that indeed, these courts are not designed for victims. The researcher has also informally observed both Mental Health Court and other problem-solving courts over the course of her work and research, and has noted that victim needs and considerations are not focused on at any point. This is problematic: how can something strive to be a truly therapeutic structure or system if it does not acknowledge the therapeutic impacts it has on a distinct population it includes? How can a court that aims to get at the root causes of problems ignore victims almost entirely?

The other impression the victim had of Mental Health Court is that it did not ask for true responsibility from the accused: he had hoped that the court would say something to the individual along the lines “you are here today because you did X... how do you feel about that?” Instead, he felt like all decisions about what would happen to the accused were made behind closed doors and did not involve the accused taking “true accountability”. He left the proceedings feeling like the court had been just “going through the motions” of accountability and justice. The victim indicated that at the least, he would have liked for the facts of the victimization to be
read out in court. That these facts they were not included added to his feeling that his victimization was seen as somewhat invalid or unimportant.

The impact of the Mental Health Court proceedings were increased feelings of frustration and disillusionment for the victim. He had some experience with court proceedings and the criminal justice system prior to this particular incident and felt he had a realistic view of what the proceedings would look like, but he left them having less hope and faith in the criminal justice system than he had started with. He was not only discouraged with how he’d been treated as a victim but with how the accused was treated and how little support actually received from the court to deal with his mental health issues.

The victim indicated that his experiences with this court proceeding will have an impact on his future reactions to victimization. He reported that he will continue to report the victimization to police and press charges, but not out of an attempt to have his victimization validated or the accused held accountable. Instead, he intends to continue reporting these incidences so there is more of a record that the individuals with whom he works and who harm him have significant need for support and resources around their mental health issues. In his words, you need to “get really crazy to be taken as crazy” and provided with services.

This fact too, that an individual has to be in very dire need to receive services, is troubling. A good portion of the interview with this victim was spent discussing what it would look like if resources and time were spent on individuals at the onset of mental health issues; the victim speculated that this might make for longer processes, which is costly, but that this may very well save a lot of money and harm
in the future. His biggest critique of the criminal justice system in general and of Mental Health Court in particular is that they are swamped by cases and thus the push has been to clear them quickly, not necessarily thoroughly or in-depth. This “rushing” has perhaps led to little time being available for personal interactions or having the victim impact being acknowledged.

The victim reported that he was never asked about his experiences as a victim. He knew that he was entitled to submit a Victim Impact Statement but that if he were asked to do so, he would have been judged as an unfit caregiver for the accused and as wanting the accused to be punished. This view serves to construct a dichotomy where the victim either expresses hurt and wants the accused punished, or where the victim pushes aside the harm and wants the accused to be let off. This is not a realistic construction, especially in the area of mental health where many victims of individuals with mental health issues are their friends, family members or other caregivers. Some victims want punishment, some do not, but one could argue that most want responsibility for harm to be taken by the accused and most want the harm that they experienced to be acknowledged.

The victim reported that his perspective in terms of his needs as a victim was not even asked for. He indicated that he would be interested in social support or counselling due to his experiences as a victim, but these options were never discussed and he was never connected with anyone internal or external to the court who could set up this support.

In terms of voice, the victim described how he was asked to provide information about the accused’s past and what had led him to court as well as the
victim’s opinion on what supports the accused needed. While he indicated that his voice was heard on these matters, he did not feel that the input he gave was actually used by the court, either in the proceedings or the outcome. He hoped that what he said would stay with the people who were in court and that in the future, when they heard of similar cases, they would come back to his input and begin to see patterns and perhaps some solutions.

It is worth noting that the victim whose case was in mental health court was victimized in the course of his job; the individual who assaulted him was his client in a group home where most if not all of the residents had mental health issues. We must consider whether this coloured the court’s response to him: did the court see him as contributing to his victimization? Is there an element of victim-blaming occurring in which the victim is seen to have accepted the risks of this type of behaviour when he applied for and accepted the job? Or did the court think he called the police too late when the situation had already escalated to violence because he thought he could or should deal with it on his own? We cannot know the answers to these questions as we cannot track down the court personnel to ask them, but we must consider them when examining how this particular victim was treated.

The key informant who is the Mental Health Court crown noted that he is part of a committee at the Ottawa Hospital that is comprised of police officers, crown attorneys and healthcare providers:

[We get] together and meet about the victimization of medical staff and how it needs to be taken more seriously. And we try to get them to understand our processes in terms of charge-laying
and for us to understand their concerns about when charges should and shouldn't be laid... because it is a big issue. A lot of people who are having a psychotic episode are in an emergency department or a psychiatric facility and uh, the only people who can deal with the issue are health care providers. (Key Informant – Mental Health Court Crown)

The victimization of healthcare and social service providers by victims who have mental health issues is thus beginning to be recognized as a serious issue. Victim blaming is well-documented in all parts of the criminal justice system, and it is noteworthy to consider it when examining the victimization of these service providers who then become both caregiver and victim.

It is also noteworthy that for the most part, Mental Health Court does not include or consider victims. This contradicts the awareness within therapeutic jurisprudence and problem-solving court literature of the mental health impacts of being involved in the court system. Considerations of the therapeutic and anti-therapeutic impacts of both formal and informal aspects of the courts and its actors are the driving force behind the therapeutic jurisprudence movement; to consider victims rarely in these courts is to rarely consider the mental health impacts that this experience will have on them, and this is deeply troubling.

Similar to the section of this chapter that examines the experiences of victims in mainstream court settings, we must also consider the impact of the structure of Mental Health Court on the victim. One of the most noteworthy things to emerge from the interview with the key informant who is the Mental Health Court Crown is that “there’s no difference [in how victims are treated in MHC in comparison to mainstream courts].” The only difference he noted was the amount of information
that is given to the victim; more efforts appear to be made to notify the victim that the court proceedings are happening and what their outcome is than in mainstream courts. While this is laudable, it echoes the fact that victims seem to be an afterthought in what otherwise aims to be a therapeutic, healing court.

*Court-Based Restorative Justice Program*

The victim who went through the court-based restorative justice program reported that she was very impressed with the process. She was presented with the option of going through a restorative justice program (instead of a mainstream court) by the police officer who had dealt with her victimization. Although she knew it was ultimately her decision to participate or not, she was pushed into participating by her mother (the victim was under the age of 18 at the time of her victimization and involvement with the court-based restorative justice program, and so her mother was asked to participate alongside her). Throughout the entire process, her mother often answered questions for her and had a louder voice. Each time this happened, the restorative justice practitioners would thank the victim’s mother for her input and then repeat the question directly to the victim, making it very clear they wanted to hear from her. This strategy helped the victim to feel respected and that her perspective was valuable.

While the victim was ultimately happy with her decision to participate, it’s worth noting that other victims sometimes regret their decisions to participate, in particular when they were being pressured to do so by someone else. As one of the key informants noted:
It’s such a... a personal decision to decide to be involved with a restorative justice program... I think our hesitancy around [participation] is just making sure it’s about what the victim actually wants and needs, and it’s not someone else speaking for them or advocating for them or anything like that. (Key Informant – Court-Based Restorative Justice Practitioner 1)

Victims’ decisions and motivations to participate in any criminal court process, especially a restorative justice, one are influenced by many factors. The literature around the impact of victim participation on victims’ mental health tells us that it is important for the participation process to restore some power and control to the victim; if their choices are strongly guided by others, it can be argued that they are not regaining power and control. In fact, the result could be that they feel even less agency in their own lives and any positive effects participating might have had would be negated.

Although the victim who went through the court-based restorative justice program felt that the restorative justice practitioners gave her plenty of information about their own process and answered all her questions, she left the process wishing she’d had more information about the parallel court process the accused was also going through (in addition to the restorative justice process). She said that even years later, she is not sure if she would have wanted to attend his court dates, but wishes she had known when they were and known more about what he was going through. This lack of informing the victim of standard court procedures and of specifics of the case involving them is echoed in all the victims’ narratives. Not being included or even informed about proceedings that they have an interest in appears to be a source of great frustration. It should be noted that the restorative
justice practitioners also frequently encounter barriers when they try to get information about parallel court proceedings. The victim reported that going through a restorative justice process had a really positive impact on her. She said that as a Christian, the concept of forgiveness was extremely important to her and the opportunity to work towards it and achieve it after a very violent, harmful incident was very powerful and meaningful to her spiritual identity. She was able to come to this place of forgiveness by having her questions answered by the accused and by being able to tell him directly how his actions had impacted her. These interactions and their positive impact would have been impossible to reach in a mainstream court setting:

What we find, in our experience with victims, is that... primarily, at least initially, they need support and information. Information about the offender, why this happened, and information about the system, where the case is at, what's going to happen next and uh, etcetera. We've had contact with victims – as you know – who say “you mean someone was actually charged?” There is so much left out of that loop that they have no idea what's happening with the charges let alone what's happening with the person who harmed them. The first thing that victims often say is “why me? Was I being targeted? Do they know where I live? Were they watching me? Etcetera, etcetera.” And those questions aren't answered throughout the system. The victims aren't engaged and given the opportunity to ask those questions... there are no answers coming. And, for the most part, it's the offender who's the only person who can answer those questions. And there's no mechanism in the criminal justice system for that exchange of information. (Key Informant - Court-Based Restorative Justice Practitioner 2)

The victim also reported how important it was to her to be able to model forgiveness of the accused (and in general) in her school. She was met with resistance at the beginning by classmates who did not understand how she could forgive but it was important to her to persist and make the school environment
more welcoming of her experience as well as the presence of the accused. If she had not had the chance to interact directly with the accused and work through the court process together with him, she likely would have been left with all her questions and fears (was she targeted? Was he angry with her over the charges? Was she still in danger?) Not to be haunted by these questions after her victimization was remarkable.

The victim reported that she felt her voice was clearly heard. As noted earlier, her mother was a very vocal presence in the proceedings but the restorative justice practitioners respectfully and efficiently managed this and made sure that they heard from the victim herself. The victim was very upset that charges had been laid in the first place and just wanted the accused to get help; she was adamant that she did not want him to do any jail time. The restorative justice practitioners constantly sought out her story and her perspective on the impact of her victimization. They also specifically asked what she needed to heal and move forward with her life, and what she wanted to happen with the accused. Her requests that he get help were met and he was asked to participate in an anger management program to which he agreed. Having her perspective valued and her experiences validated had a very positive impact on the victim, who was most satisfied with her role in the proceedings.

Of the three settings that this research explored, the court-based restorative justice program had the most flexibility in its structure. As a small, independent program, the program director and the caseworker have a great degree of control over what their program looks like, the guidelines of the process each case goes
through, and the treatment of individuals. It is a court-based program so there are some restrictions within that context, as well as guidelines set by funders, but in comparison to other court proceedings, the court-based restorative justice program is very much independent and able to control its structure.

This flexibility was distinctly noticeable in the key informants description of their program:

We weave through that process with [the participants] always deciding where to go next. So it’s, uh... it is about healing but it’s about letting people choose what that looks like and where they want to go with it. (Key Informant – Court-Based Restorative Justice Program 1)

The key informants told the researcher that they ask victims to be as involved or uninvolved in the process as they want and need to be, and proceeded based on the victims’ comfort levels and needs. They also offer as much space and voice to both the victim and the person who caused the harm, with the caveat that any form of communication between these two parties must be mindful of not causing harm. By offering the victim one of the leading roles in deciding what the process looks like, the program seeks to restore some power, control and – in the key informant’s words – dignity.

One of the essential differences between the structure of the court-based restorative justice program and the other two court settings examined in this research is the value placed on the victim’s subjective experiences:

Victims are encouraged to share their subjective experiences! Their experience of the incident is their experience and it’s what we want them to talk about. Knowing that it’s very rare that both parties share the exact same perspective of the incident and that the stories are going to be a bit different,
that's okay, as long as the main points of the story are clear and agreed on. There's bound to be perspective differences but how it's impacted the person relates to where they were at that time in their lives and how they think about it now... so we need their subjective experience. The process wouldn't move along without it. (Key Informant - Court-Based Restorative Justice Program 2)

The key informants told the researcher that the victim's involvement in general is not just very important to the process, but essential: the restorative justice process would not be able to happen without it. It is quite conceivable that the level of importance placed on victim participation can be very empowering for victims. Alternatively, it could potentially place a lot of pressure on an individual who is not in a place where he or she is ready to participate or who is feeling incapable of make decisions and having so much power.
As with any research project, two things that emerge from this thesis are recommendations for practices that could have been conducted differently as well as more questions. This section of the thesis will examine these implications, starting by asking what a victim-friendly therapeutic court would look like. It will then discuss some of the implications for social work, recommendations for future research and study, and conclude with a brief look at some of the potential limitations of this type of study. All these implications are based on the narratives of the interviewed individuals.

What Would a Victim-Friendly Therapeutic Court Look Like?

First and foremost, there was an emphasis on the importance of information sharing in all of the interviews, both with victims and key informants. The victims all indicated that they wished they had been given more information about how the court proceedings they were involved in were going to work, what their rights were in terms of seeking support and submitting Victim Impact Statements, and what their options were in terms of different ways they could participate in the court proceedings. The victim who went through the mainstream court reported that the details of the trial (such as the date) changed several times and she was not informed of this until she showed up at court; this was a disconcerting experience for her because she had put a great deal of physical and emotional effort into preparing for and getting to court on those particular days. To have it change
suddenly for unclear reasons and not to be informed of these changes in a timely and thoughtful manner made her feel that she had even less control over the proceedings and subsequently, her life.

The victim who went through a court-based restorative justice program also reported that she would have liked to have known when the accused’s court dates were and what was happening within that process, which was running parallel to her own restorative process with him. One of the key informants from the court-based restorative justice program also described how when they call victims to canvass their interest in being part of a restorative justice process, they are often the first people from the criminal justice system to talk to the victim since the victimization occurred. Many of the victims they deal with had not even been told someone had been charged; if the accused in these cases had pled guilty but not gone through a restorative justice process, it is conceivable that their victims would never have known someone had been caught, charged, pled guilty and sentenced. Not only to be denied the opportunity to participate in court proceedings which were sparked by something that happened to them but also never to know that this process happened takes away victims’ opportunities for empowerment and perhaps healing and closure. For courts to be therapeutic, they must have a formal information-sharing system that includes victims.

Within problem-solving, therapeutic courts, a holistic approach which involves interdisciplinary collaboration is widely advocated. The victim in this study who went through a problem-solving court did not report feeling that his experiences and needs were considered by this collaborative team. Indeed, he did not have his
victimization acknowledged at all, nor was his dual role as the victim and the care provider of the accused acknowledged as a difficult position to be in and subsequently treated with care by anyone. In particular, he felt judged by different legal actors when he did certain things (sitting on a certain side of the court room or asking to submit a Victim Impact Statement, for example). If therapeutic courts are going to be victim-friendly, all legal actors must be trained to acknowledge the experiences of victims and their complex situations and needs.

The victims also reported needing better court-based social support throughout the process. This could, for example, take the form of a support person or a counsellor attending court with them and simply "being in their corner". The individuals interviewed in this research indicated that these support options were rarely offered to them and when they were, in the case of the mainstream court victim, the support they provided seemed to read from a standard "checklist" rather than a consideration of her and her experience as unique. Most victims have little previous knowledge of the criminal justice system or related support services in the community and so having these services located in the court or at least promoted through the court is essential; otherwise, victims may not know they even exist (Erez & Laster, 1999).

Several interview participants noted that when there was court-based support services for victims, these services were only for certain types of victims (domestic

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1 Problem-solving courts that focus on domestic violence cases may provide a model for discussion and planning on how to provide social support to victims. For example, the Domestic Violence Court in Ottawa refers both accused individuals and victims to the New Directions Program at Catholic Family Services Ottawa, where the goal is to address the roots of the abusive behavior and support all parties in whatever their chosen next steps are.
violence, sexual assault, murder, etc.). While the populations that court-based support services serve are certainly in need of support, so are other victims. Some victims might not go to these services for support, but it was found during this research that just knowing that there are options and that consideration has been given for emotional needs is very reassuring. Thus, for therapeutic courts to be more victim-friendly, court-based services (when available) must be more inclusive of all sorts of victims and referrals must be made to community agencies.

Finally, for courts to be considered a therapeutic option for victims, they must consider the therapeutic or anti-therapeutic impact on victims of participating in court processes. Victims want to be meaningfully engaged, and it must be acknowledged that this engagement may be very different from case to case. Some victims want to be very involved, submitting Victim Impact Statements and victim input when appropriate, others just want to be present in the courtroom to witness the process, and some simply want to know that the accused is being held accountable. For this meaningful engagement to occur, there must first be more training for legal actors on victim experiences and needs, and ways to positively interact with victims. Second, the court system must be structured so that concerted efforts are made to involve the victim.

Implications for Social Work

For the most part, the victims interviewed in this thesis were not supported by social workers or any other social service provider. The victim who was connected to a social worker had been offered the services of the court-based victim services
agency because she fit into the somewhat limited mandate of which victims were to be served. The support she received was appreciated, but she felt as though they were “reading from a checklist” and not connecting with her on an individual level.

That the victims were not being supported by social workers is troubling as two victim participants expressly stated that they would have benefitted from having the option of being connected to these kinds of resources. The third victim went through a court-based restorative justice process and it was evident that her emotional and social needs were purposely addressed by the restorative justice practitioners, who continuously checked in with her, asked how she was doing, and asked what she needed in order to heal from her victimization. That said, it is also possible that she would have benefitted further by having external social support offered to her.

The key point to note in all of this is that simply having the option of accessing a social worker is a positive factor in itself. One of the victims stated that if one had been offered to her, she wasn't sure if she would have been able to start working through her emotions towards healing, but just knowing that she had options for this kind of support would have made her feel more cared for and empowered. If victims did access social workers, the roles social workers would play would also likely vary. Some victims may need a social worker to be a source of information, explaining the court process and what the victim’s options are within the process. Other victims may need emotional support from their social worker, and perhaps accompaniment to court. Some might need short- or long-term counselling, both centered on their experiences with victimization and on their experiences within
the courts and the criminal justice system at large. In follows from these diverse needs that social workers dealing with victims, either within a court-based organization or within an external community organization, must offer flexible, accessible services with a model of working from client needs and not a pre-established model of service.

In addition to individual support, there is also an advocacy role for social workers to play. Victims’ experiences seem to be largely excluded from court proceedings. This is problematic in terms of their own healing as well as the theoretical model of problem-solving courts which are meant to be collaborative and responsive to social needs. There is a great deal of advocacy needed for the reform of victims’ roles within the court system, particularly in problem-solving courts. There is also much advocacy required for inclusive social service provision for victims as well.

Areas for Future Research and Study

The end of any complex research project inevitable brings with it new questions and the desire for more knowledge. Several areas for future research and study have emerged from this thesis. The first concerns the long-term impacts of participating versus not participating in criminal justice court proceedings. The individuals that were interviewed as part of this research effort had all participated in different court proceedings within the past three to seven years; given more time and resources, a longitudinal study of the impacts of participating over time and after a significant amount of time would be very interesting. A potential barrier to doing
this kind of research is recruiting participants; even in this study, and particularly given the tight time frame to complete the research, it was hard to find victims via general advertising and even harder to find them via organizations and individuals to whom they had been connected in court. After the proceedings are over, many services and social workers cease to interact with the victims they have served and connections are lost. It could also be argued that only those for whom participation had a particularly strong impact would be interested in taking part in a study. Consequently, this would not accurately capture the diversity of impacts participation could have. It would also be difficult to tie the experience of participation to specific impacts, as victims have numerous other life experiences before and after their participation that also affect them.

Another area for future research is on victims in problem-solving courts. The literature on these courts tends to focus on cases of domestic violence and while this research branched out and looked at victims in Mental Health Court, it was still limited in its scope. Looking at the full range of victims in problem-solving court would provide a clearer picture of how they are included – or not – in court settings that are designed to be therapeutic. The findings of this research suggest that there is a resistance to any attempt to tailor court processes to meet victim needs for inclusion, expression of voice, and counselling; a perceived need to rigidly abide to the guidelines for victim involvement set out by the *Criminal Code of Canada* was cited as the reason for this. What is particularly interesting about this is that problem-solving courts could easily be tailored so that they have a more therapeutic impact on accused individuals while still abiding by the requirements set out in the
Criminal Code of Canada. The same rules of evidence must be met and all the factors that must be considered (general and specific deterrence, and appearance of justice, etc.) are indeed considered and the therapeutic journey of the accused is not accorded any higher value than other factors. Why then can we not take this same approach to victim involvement? A study looking at victims’ experiences of these courts may produce recommendations of how the approach of problem-solving courts could be tailored further to meet their needs.

An additional area for future research is victim feelings about the case they are involved in being diverted to a problem-solving court. There is a widely held notion about diversion being “soft” on crime or a way for the accused to not being held truly accountable. There are also biased and limiting societal attitudes about mental illness, addiction, the impact of culture, etc. and it would be interesting to explore how individuals’ attitudes about these attitudes impact their feelings about the case they are involved in being diverted. In this researcher’s experience, some people are knowledgeable about the underlying issues that would lead a case to be diverted to a problem-solving court and even if they are not, have a desire for the accused to get help. Others, whether knowledgeable about the underlying issues or not, see diversion as the court not taking the incident seriously. This was reflected in an interview with one of the key informants from the court-based restorative justice program, who stated that some victims refuse to participate in her program because it is diversion and they want “their day in court” and for the matter to be “taken seriously”. Studying this area could provide further insight on trends in attitudes, the impacts of participating in a diversion program because of a characteristic of the
accused (mental health issues, for example), and ways in which stigma and prejudice about these characteristics can be challenged and changed.

**Research Challenges and Potential Limitations of this Study**

This study faced a number of challenges at various stages of the research process. One of the primary ones was limits on time and resources. The researcher had only 12 months to complete this entire study, from writing the research proposal to defending a final version of the thesis. Recruiting suitable participants took longer than expected and this cut into analysis and writing time. This meant that the first individual to come forward who met the exclusion criteria for each category of participant was usually accepted as a participant. Consequently, their experiences as victims were not as comparable as they perhaps could have been; for example, all the victims were not victims of the same offence (a physical assault, for example). It is possible that their experiences were partially due to the diversity of their victimization and not solely the diversity of the three court proceedings they went through. However, there were some similarities in needs and experiences across all the victims narratives, and this might lend itself to generalizability.

A second challenge or potential limitation of this research is that it is conceivable that only victims who had a very positive or very negative experience participating in a court proceeding volunteered for this study. Indeed, some individuals who applied to participate but ultimately did not meet the exclusion criteria informed the researcher that they were participating only because they had extremely negative experiences and felt compelled to speak out against the criminal
justice system. While their experiences and motivation for participating are still valid, it means that those with less personal reasons for participating likely did not come forward. The same can be argued for the key informants: perhaps only those who felt strongly about the research topic volunteered to participate.

Another potential limitation is the small number of people who were interviewed. While the decision was made to interview only one victim from each court setting so that the benefits of the case study approach could be maximized, it would have been interesting to hear more about different experiences within the same court settings. The same applies to the key informants.

Limits on time and resources also meant that only Mental Health Court was examined and not all problem-solving courts. Mental Health Courts vary in structure and execution from jurisdiction to jurisdiction, and this is also true for Drug Treatment Courts, Aboriginal courts, etc. They also operate very differently from one another, as the underlying issues they are attempting to address vary widely. The literature on problem-solving courts in general does not discuss victims very much, but it would be interesting and insightful to see if victims’ experiences of exclusion are similar across the board.
8. Conclusion

Using therapeutic jurisprudence as its lens, this research examined the history and structure of victim participation across a variety of types of Canadian criminal court proceedings. Eight participant subjects (three victims and five key informants) from a range of court settings were interviewed, and their opinions and experiences with victim participation reflected the diversity of experiences within various courts as well as public and academic debates about the roles of victims within court proceedings. A need to stick closely to the guidelines set out by the Criminal Code of Canada was emphasized by some, while others noted that how these guidelines are interpreted and put into practice is making victim experiences of participation confusing, chaotic and disempowering.

One of the most noteworthy findings is that the problem-solving courts, while couched in therapeutic jurisprudence, are not creating spaces that are therapeutic for victims. In reviewing the literature on victims within problem-solving courts and therapeutic jurisprudence in general, it was discovered that there is very little written on this topic. In interviewing a key informant and victim from a problem-solving court, Mental Health Court, it became clear that there is little space for victims in this setting and the experience of participating and sharing subjective experiences within these court proceedings was invalidating and highly frustrating for the victim. This exclusion and negative experiences are ironic given the amount of attention and thought that is given to the mental health impacts of individuals’ contact with the criminal justice system within therapeutic jurisprudence theory.
and literature. It illustrates that there is much work to be done to make these court
settings therapeutic for all parties involved and not solely the accused. The previous
chapter of this thesis provides ideas for what could make courts more victim-
friendly and refers to other models (such as Domestic Violence Court) as sources for
discussion on this matter.

Another notable finding is that the victim who was most satisfied with her
participation in a criminal justice court proceeding was the one who was
encouraged to share her subjective experiences and detail what she needed in order
to heal from her victimization and move on. This victim, who went through a court-
based restorative justice program, had her social support needs sought out and met
by the program facilitators and appears to have had a generally therapeutic
experience in this court setting.

The most notable finding within the mainstream criminal court proceeding is
that the victim’s negative experiences with not being given information about how
the court system works and how her case would unfold in particular, the
revictimization she experienced as she testified, and the lack of formal social
support she received were somewhat negated by the positive, respectful way she
was treated by two of the legal actors involved in her case. It was encouraging to
find that individuals’ actions could have a strong therapeutic impact that
outweighed an otherwise negative and anti-therapeutic experience with court
proceedings.

A final key finding is that within all court settings that were explored, at least
some of the victims’ basic needs, such as information about how the system works
and what options are available to them, were not being addressed. Indeed, many were not connected with any sort of social support, either court- or community-based. Even the victim who was strongly supported by restorative justice practitioners stated that she wanted more information about the court proceedings. In order for victims to feel like they have control, power and a chance for therapeutic outcomes, they must be given the basic details about the system they are part of and what to expect in terms of experience and options.

Another notion that emerged from this research is that the assumptions upheld by the victims’ rights movement must be challenged more. This research found that the subjective experiences and needs of many victims do not reflect the needs that victims’ groups argue must to be addressed (a need for punishment and avengement, for example) nor the solutions they propose for the more meaningful engagement of victims. On the same note, there is a need to problematize whether increased victim participation is always therapeutic for victims. Even within the most victim-friendly court, victims will have different needs in terms of healing and dealing with the harm they have experienced; it is important that they have increased options for participation, and not necessarily increased \textit{participation} itself.

The information that has emerged from this research offers several ideas for social work practice, advocacy and future study and research. Mainly, it recommends that there is a strong need for an increased level of involvement of social workers within the criminal justice court system in general and with victims in particular. It also speaks to the need for increased collaboration between legal
actors; after all, interdisciplinary work and collaboration is at the heart of therapeutic jurisprudence.

This thesis journey has been a very meaningful one for me as a researcher. It not only offered an opportunity to develop new skills and refine others (such as conducting research interviews, analysing a wealth of often contradictory information, and persisting despite setbacks) but also encouraged - and in some cases forced - me to challenge my own beliefs and assumptions. I am concluding this research with some revised beliefs about the Canadian criminal justice system and its court system in particular. I have come to see it not as broken, but rather incomplete, as it does not yet have the space, structure or options for meaningful victim participation. I have also come to appreciate the court system and its actors as far more complex than I have ever had the opportunity to see or understand before, and this gives me a great deal of hope for its continued development and evolution.


*Contemporary Justice Review, 1*(1), 47-56.
Appendix A: Ethics Proposal

Graduate Student Research Ethics Protocol Application

SECTION 1: PROJECT REGISTRATION

1.1 Principal Applicant Information: (Must be the faculty supervisor for the project)

Name: Cecilia Taiana
Department/School: School of Social Work, Public Affairs
University E-mail Address: cecilia_taiana@carleton.ca

1.2 Student Researcher Information:

Name: Hannah McGechie
Department/School: School of Social Work, Public Affairs
University E-mail Address: hmcgechi@connect.carleton.ca

Status: X Master's programme

1.3 Project Title:

Mapping the Space for the Subjective Experiences of Victims in Criminal Justice Court Proceedings (Working Title)

1.4 Purpose of the research (one or two sentences):

This research will explore how victims' subjective experiences are present (or absent) in criminal justice system court proceedings. It will look at how victims are characterized, how they are allowed to be present in the different settings, whether
they are allowed to be passive or active participants in the proceedings, and what they would have liked their experiences to have been.

1.5 Proposed Research Dates:

Start date (01/01/2011) Expected date of completion
(30/4/2011)

1.6 Research funding: Is this project funded? □ Yes X No

Funding source and program

Agency reference number (if applicable)

Amount

Funding period

1.7: In-kind contributions: Will this project receive any form of in-kind contributions?

□ Yes X No

1.8 Signatures:

Principal Applicant:

I have assisted with, read and approved the research ethics protocol. I will ensure that the student researcher conducts the research in accordance with the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans, the Carleton University Policies and Procedures for the Ethical Conduct of Research and the conditions of clearance established by the Carleton University Research Ethics Board and agree to provide all necessary supervision to the student.

Signature ___________________________ Date: ______________________

Student Researcher:

I agree to conduct this research in accordance with the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans, the Carleton University Policies and
PROCEDURES FOR THE ETHICAL CONDUCT OF RESEARCH and the conditions of clearance established by the Carleton University Research Ethics Board.

Signature ___________________________ Date: __________________

SECTION 2: Research Project Information (Please complete each section below. Do not omit any section.)

2.1 Description or a summary of the research project: (See guidelines. Limit 500 words.)

This research will explore how victim's subjective experiences are present (or absent) in criminal justice court proceedings. Through secondary research and qualitative interviews with criminal justice court personnel and victims, I will compare the experiences of victims participation in three court settings: a regular trial court, a "problem-solving" court and a restorative justice diversion program.

Definitions of Terms:
- Problem-solving courts are those which aim to be therapeutic and address the underlying problems of those before them and include drug-treatment and mental health courts. (Bakht, 2005).
- Restorative justice is an alternate approach to justice and crime focused on the harm done and how it can be fixed; its goal is healing for all parties involved rather than punishment, and it relies on the collaboration of all parties. (Winick & Wexler, 2003).
- A diversion program is a court-based program where accused individuals are diverted from the court system. Participation is voluntary (the individual can choose to remain before the court) and focuses on addressing the root causes of the crime. These programs usually involve gestures to right the wrong that has occurred, and may involve the accused writing a letter of apology, paying for damages or participating in community services opportunities. (Winick & Wexler, 2003).

Through this research, the following questions will be asked and analyzed:
- In what ways are victims experiences allowed to be present in each court setting? What is the rationale behind each of these forms of participation?
- How are victims formally and informally categorized in criminal justice court systems and programs?
- Under what circumstances are victims allowed to be passive or active participants in criminal justice court systems and programs?
- How do victims perceive the ways in which they are allowed to be present? What were their experiences?
- What do victims wish their experiences had been?

While acknowledging that this research does not speak for all victims in all contexts, its goal is to better understand the experiences of individuals who have gone through a traumatic experience and are brought into an environment which aims to achieve justice. All the victims will be speaking about experiences that happened at least
three years prior to the date of the interview. My hope is that through this process, the needs of these individuals will be better understood and light will be shed on the effects of participating in court proceedings.

References


2.2 Methodology/Procedures:

I will conduct six interviews: the first three will be with key informants and will focus on the functioning of the different court/diversion models and their conceptions of the role of victims in their processes. The last three interviews will be with victims from each of the two courts and a restorative justice diversion program (restorative justice diversion program) about their experiences in the criminal justice system.

The interviews with key informants will take place in January 2011 and the questions they will be asked are based on the court/diversion models literature. The interviews will focus on how the jurisprudence and policy behind each model translates into practice. Each person will be interviewed once and the interview will last approximately an hour. Before the interview, we will review the letter of information and they will be asked to sign the consent section (Appendix D).

The interviews with victims will take place between February and April 2011. Each individual will be interviewed twice. During the first interview, the purpose of this research as well as the expectations of the individual will be explained, and potential risks (such as the psychological ramifications of reflecting on trauma) will be identified and explored, as well as the mechanisms that are being put in place to reduce these risks (such as having a counsellor available); the letter of information will be the tool used to review all these items (Appendix E). This interview will last between 30 minutes and an hour. Each individual will then be asked to take some time to think about whether this research is something they would like to be involved in. If they decide it is, a second interview will take place and the consent section of the letter of information will be signed. This interview will focus on the individual’s experience of participating as a victim in one of the courts or restorative justice program, as well as what they would have liked their experience to be. This interview will last between one and two hours, with the opportunity for a break at the one-hour mark.

All interviews will take place wherever the individuals feel are safe spaces for them and may be at their workplaces, coffee shops, or rooms or offices on Carleton University’s campus (among other possibilities). With the individuals’ permission, the interviews will be taped.

2.3 Location(s) where the research will be conducted:

X Carleton University

X Region of Ottawa-Carleton
2.4 Additional reviews: (See guidelines)
X None
☐ Yes, documentation attached
☐ Yes, documentation to follow

Name of other boards, committees or agencies: Provide the name, address and contact information/person for each board or committee.

2.5 Visa or research license required: ☐ Yes X No

If Yes:
☐ Documentation attached ☐ Documentation to follow

SECTION 3: Research Participants

3.1 Recruitment

a) Describe how potential research participants will be identified and recruited.

I will recruit the key informants by directly contacting the crown’s offices at the Ottawa Courthouse and [redacted] (a court-based restorative justice program located in Ottawa). They will be sent a recruitment email (Appendix A).

Ottawa-based services who deal with victims will be approached and asked to spread the word of this research. Each will be sent a recruitment email and a recruitment poster (Appendices B and C). They will be asked to distribute these to victims who they have dealt with and whose experiences participating in court or a restorative justice diversion program occurred at least three years prior; as it would be a breach of confidentiality for them to release names of victims to me, I will be relying on individuals to see the email, letter of information and/or poster and contact me.

b) Explain participant inclusion and exclusion criteria.

All participants must be adults aged 18 or older. As the [redacted] does not accept domestic violence cases, participants from the other two court settings will only be accepted if they have been involved with a case that does not involve domestic violence. All of the cases must have been resolved at least three years prior to these interviews.
c) Proposed number of participants in the study:

Six

d) Research population with special needs: X Not applicable

Describe steps to be taken to ensure that the needs of these research participants are respected and the collection of data method will ensure the safe and ethical conduct of the research.

This research will not be looking at a population with special needs but some individuals may, by chance, have special needs. We will respect these needs and meet them if they come up.

e) Vulnerable populations: □ Not applicable

Describe your knowledge, training and experience working with this population and what steps you will take to ensure the safe and ethical conduct of research with the identified population.

The individuals I interview who have been victimized qualify as a vulnerable population due to the likelihood that their experiences were traumatic for them. I have worked extensively over the past five years with individuals in various courts and diversion programs who have been victimized and have received education and training about the experiences and needs of victims in general. The interview guides are informed by the literature around victimization and trauma, and I am very aware of the stigma and pain that can come with the experience and label of victim. I will take great care to not recreate traumatic settings and experiences and provide support if the individuals are struggling during any stage of the interviews. Individuals will have the opportunity to pause or end their participation in the research at any point without repercussions. I will also be providing individuals with the name of a counsellor who is able to see them immediately if they wish.

3.2 Append the required recruitment documents. (See guidelines.)

Appendix A – Recruitment Email I: Recruitment of Key Informants
Appendix B – Recruitment Email II: Recruits of Victims
Appendix C – Recruitment Poster

SECTION 4: Conflict of Interest/Power Relationships

4.1 Are potential research participants employees, clients or persons you have worked with in a professional or volunteer capacity (past or present)?

X Yes □ No

If Yes explain your relationship to or authority over the potential participants and what steps you will take to ensure that the participants’ decision to take part in the research will not be influenced by their relationship to you.
I did a placement at [redacted] in 2009. The two staff members were my supervisors and there is a possibility that one of them may be approached to be interviewed as a key informant about restorative justice diversion programs. I was not in a position of authority over them, and while we continue to have positive relationships with one another, nothing exists within those relationships which would make them feel they owed me anything. In asking them to participate in this research and help me with recruitment, I would make it explicitly clear that there will be no hard feelings if they choose not to participate and that they will be able to skip questions or withdraw from the research at any time. They are also not being asked personal questions but rather theoretical ones about the structure of restorative justice diversion programs.

4.2 Are potential research participants, friends, relatives or students? ☐ Yes ☒ No

If Yes explain your relationship to or authority over the potential participants and what steps you will take to ensure that the participants' decision to take part in the research will not be influenced by their relationship to you.

4.3 Do you or any members of the research team have any financial and/or commercialization interest in the research results? ☐ Yes ☒ No

If Yes explain in detail your interest.

4.4 Do you or any members of the research team have a volunteer or paid role with any organizations that is a part of this study? ☐ Yes ☒ No

If Yes explain in detail your interest.

SECTION 5: Risks and Benefits

5.1 Minimal risk:

☒ The risk to participants is minimal. (If you check this box provide an explanation below and then move to 5.3)

Explain why the project should be accessed as minimal risk.
5.2 Risks to participants: (Check all that apply)

☐ Physical harm or discomfort. (Including any bodily contact, application of equipment, management of any substance.)

☒ Psychological/emotional harm. (Including feeling demeaned, embarrassed worried or upset, discussing personal sensitive information.)

☒ Social and/or economic harm. (Including possible loss of status, privacy and/or reputation, disclosure of sensitive information by others, possible loss of income, threat to employment.)

Explain in detail all possible risks to research participants.

I will be asking some research participants about their experiences with crime and victimization. This will involve them reflecting on experiences that have a high likelihood of having been traumatic. Because of the small sample size, there is also the possibility that some participants may be identifiable if they provide very specific, unique examples of their experiences.

5.3 Managing risk: Describe what steps will be taken to reduce harm to participants.

Only individuals whose cases were resolved at least three years prior to the time of the interview will be included as participants in this research; this distance in time makes it more likely that participants have had time to deal with their emotions and any trauma they experienced is not fresh. The nature of the research and details about what they will be asked will be explained to and discussed with participants beforehand so that they are aware of what is being asked of them. It will be made clear to them that if they wish to pause the interview, come back to it, skip any questions or withdraw from the research at any time, that will be respected. A list of community and counselling resources will be provided to each participant. I have also contacted the head of the counselling team at Family Services à la Famille Ottawa (Jan Christensen, 613-725-3601) to make arrangements for a counsellor to be available immediately should any of the participants feel they need to speak to someone. All identifiers will also be removed from their responses to minimize the risk that they will be identified.

5.4 Deception: Is there any deception involved in this research project? ☒

Yes ☒ No

If yes please describe why participants will be deceived, how the deception will be carried out and how and when you will debrief participants.

5.5 Are there any risks to you or the researcher team? ☒ Yes ☐ No

If yes describe the steps that will be taken to ensure researcher safety.

This research will entail that I am hearing about trauma others have experienced and witnessing any long-term effects. This may have a strong negative emotional impact on me. To minimize this risk and impact, I will engage in regular debriefing with my
supervisor and allow some time (a minimum of 48 hours) between each interview to process and not become overloaded.

5.6 What are the benefits of the research to the participants?

The research participants who will act as key informants are being offered the opportunity to reflect on the systems they work in and contribute to a clearer understanding and representation of these systems in this research project. The participants who are victims may benefit from the opportunity to engage in self-reflection as well as being able to voice their subjective experiences in whatever way, shape or form they want and need. There is also the possibility that recommendations for the more meaningful involvement of victims in criminal justice court proceedings and programs may emerge from this research, and the information gained from each participant would play a major role in these recommendations.

5.7 If you are working with an agency or community group describe what benefits they may receive from this research.

X Not applicable

SECTION 6: Compensation

6.1 Will research participants receive compensation for their participation?

☐ Yes  X No

If Yes:

a) Describe the compensation (money, gift, transportation, childcare costs, etc.)

b) What is the monetary value of the compensation?

c) Explain how the compensation be distributed?

SECTION 7 – Anonymity and Confidentiality

7.1 Anonymity (treatment of the identity of participants)

a) Will the identity of participants be known to the researcher(s) during the collection of information, data gathering or testing?
b) Will the identity of participants be revealed in any reports, papers, research articles, presentations, etc?
  □ Yes ◯ No

c) Will the identity of participants be known to other participants in the study?
  □ Yes ◯ No

d) Will the identity of participants be known to non-participants in the study?
  (Example: colleagues, family friends of the participants)
  □ Yes ◯ No

7.2 Confidentiality: (attribution of responses and data)

a) The responses/data collected will be anonymous and non-attributed to participants.
  □ Yes ◯ No

b) The data collected will be attributed to participants
  □ Yes ◯ No

If Yes to b):
Will participants have the opportunity to request that certain responses remain non-attributed?
  □ Yes ◯ No

Because the sample size is so small, it is possible that participants may be identified if they provide very specific, unique examples of their experiences. All identifiers will be removed from their responses to minimize this risk.

7.3 Limitations on Anonymity and Confidentiality: (See guidelines)

If researchers anticipate any conflict between the research project procedures and data gathering and the law please describe those potential conflicts in detail.

If any of the participants disclose the abuse of a child or their intent to cause harm to themselves or others during the course of the interviews, I will have to report this to the authorities. Participants will be told this at the beginning of the research and the consent form includes a section on this.

SECTION 8: Informed Consent

8.1 Describe the procedures for obtaining informed consent for each part of the research project. If the researcher is seeking oral consent, explain why and the procedure that will be used to obtain consent.

Each participant will be required to sign a consent form (see Appendix D and E).
8.2 Participant withdrawal: Participants have the right to withdraw from a research project. Please explain the procedures for withdrawal from the research.

Until April 30, 2010, participants may withdraw from the research at any time without needing to give an explanation. All the data collected from him/her will be immediately destroyed.

8.3 Append the required informed consent form (See guidelines). NOTE: All consent forms must be on Carleton University letterhead.

Appendix D – Letter of Information with Consent Section I: Key Informants
Appendix E – Letter of Information with Consent Section II: Victims

SECTION 9: Data Collection, Storage & Dissemination

9.1 On-line survey section only:
Is the host server company Canadian?  □ Yes □ No

If No in what country will the host data be stored?

Describe the process for transferring the data from the host server to you and verification that the host server is no longer in possession of the data.

9.2 Translation and transcription of data:

Will the research project require the services of a translator? (Check No if researcher is translator)
□ Yes  X No

If Yes; describe what steps will be taken to ensure the privacy and confidentiality of the participants. Attach a copy of the confidentiality agreement for the translator.

Will the project require a transcription service? (Check No if researcher is the transcriber)
□ Yes  X No

If Yes; describe what steps will be taken to ensure the privacy and confidentiality of the participants. Attach a copy of the confidentiality agreement for the transcription service.
9.3 Storage of data: Explain how the data will be stored during the course of the study. If the data will be used in future studies explain how it will be stored.

Consent forms and hand-written notes will be stored in a locked filing cabinet in the researcher’s home. Electronic data will be stored on a password protected USB key.

9.4 Access to data: Explain who will have access to the data during the course of the study.

Cecilia Taiana and Hannah McGechie.

9.5 Disposition of data (after analysis and completion of report)

Data will be:

☐ Returned to participants (Describe how the data will be returned and by what date.)

☐ Archived (Describe how the data will be stored; including the storage format)

☒ Destroyed (Describe how the data will be destroyed and by what date. This includes all audio tapes, digital recordings, videos and photographs.)

Data will be destroyed five years after this research is completed. During this time period, if the researcher wishes to use the data for another project, she will seek approval from the Ethics Review Board as well as written consent from the participants.

Until the five years are up, consent forms and hand-written notes will be stored in a locked filing cabinet in either the researcher’s home. Electronic data will be stored on a password protected USB key. Consent forms and hand-written notes will be destroyed by being shredded, and the electronic data will be deleted off the USB key and this USB key will also be wiped.

9.6 Dissemination of data: (Check all that apply)

☒ Thesis request
☒ Academic journals
☒ Book(s)
☒ Conferences
☐ Final report to organization presentations/exercises

☒ Final report to participants, upon request
☒ Web site/publication (open to the public)
☒ Workshops
☐ Course research paper
☒ Classroom
SECTION 10: Research Instrument
Append a copy of all research instruments for the project. This includes
questionnaires, interview guides, sample questions, written tests and assignments,
descriptions of apparatus and equipments.

Appendix F – Interview Guide for Key Informants
Appendix G and H – Interviews Guides for Victims
Appendix A of Ethics Proposal – Recruitment Email I: Key Informants

Dear Sir or Madam:

I am writing in search of participants for a research study on the experiences of victims who have participated in criminal justice court proceedings. I have worked in the field of criminal justice for the past six years and am conducting this research study as part of the thesis component of the Master’s of Social Work Program at Carleton University. It is my hope that this research will contribute to a greater understanding of the roles and experiences of victims as participants in different criminal justice court settings. I am interested in talking to you in your capacity as an attorney/restorative justice program worker about the court setting you work in, what role victims play in this setting and the jurisprudence behind this. Interviews may take place at Carleton University, your workplace or another mutually acceptable location. Interviews will last approximately an hour.

If you are interested in taking part in this study, or have any questions about this research or me, please don’t hesitate to contact me.

Hannah McGechie
hmcgechi@connect.carleton.ca
Dear Sir or Madam:

I am writing in search of participants for a research study on the experiences of victims who have participated in criminal justice court proceedings. I have worked in the field of criminal justice for the past six years and I am conducting this research study as part of the thesis component of the Master’s of Social Work Program at Carleton University. It is my hope that this research will contribute to a greater understanding of the roles and experiences of victims as participants in different criminal justice court settings. I am interested in talking to you about your experiences as a victim in a court setting, how and in what form you were able to share your subjective experiences, how you felt about your role in the court proceedings and what you wish had been different (if anything). Interested participants must be 18 years of age or older, the victim of an offence other than domestic violence, and the court proceedings you were involved in must have been resolved at least three years prior to today. Interviews may take place at Carleton University, your workplace or another mutually acceptable location. Participation in this research will consist of two interviews: the first will last between 30 minutes and an hour, during which time I will explain the study in greater detail and answer any questions you might have. The second interview will last between one and two hours and will focus on your experiences of participating in a court setting as a victim.

If you are interested in taking part in this study, or have any questions about this research or me, please don’t hesitate to contact me.

Hannah McGechie
hmcegechi@connect.carleton.ca
Appendix C of Ethics Proposal – Recruitment Poster

Have you been the victim of a crime?
Did you participate in the court proceedings relating to that crime?
Are you interested in contributing to the body of research on victims’ experiences in court settings?

A Carleton University Master’s of Social Work student is conducting a qualitative research study on victims’ experiences in criminal justice court proceedings.

The study is interested in your opinions about:

- Your experiences of participating in the court proceedings that followed your victimization,
- What role you played in these court proceedings,
- How and in what form you were able to share your subjective experiences, and
- What you wish had been different (if anything).

To be eligible for this study, you must be 18 years of age or older, the victim of an offence other than domestic violence, and the court proceedings you were involved in must have been resolved at least three years prior to today.

If you are interested in participating in or finding out more information about this study, please contact Hannah McGechie at hmcgechi@connect.carleton.ca or (cell phone).
Appendix D of Ethics Proposal – Letter of Information with Consent Section I: Key Informants

Mapping the Space for the Subjective Experiences of Victims in Criminal Justice Court Proceedings

Date of Ethics Clearance: December 16, 2010

Ethics Clearance for Data Collections Expires: May 31, 2011

Dear Sir or Madam,

My name is Hannah McGechie and I am a Master’s of Social Work Student at Carleton University. I am conducting a study on the experiences of victims who participated in Canadian criminal justice court proceedings as part of the thesis component of my Master’s program. This research project will be supervised by Dr. Cecilia Taiana who is a professor at Carleton’s School of Social Work.

I am contacting you to ask if you would consider taking part in this research as one of the key informants. I will be interviewing key informants from different criminal courts and court programs to gain a better understanding of the intended roles of victims and the purposes they are meant to serve in these settings.

If you agree to participate in this research, you will be interviewed in January 2011; the interview will last approximately an hour and will be held at a mutually convenient location. With your permission, the interview will be taped on an audio recorder. While participants’ identities will be known to Dr. Taiana and myself, they will be kept confidential and identifying information will not be included in my thesis. Data will be kept in a locked filing cabinet in my home; electronic data will be kept on a password protected USB key. Data is being collected for the primary purposes of being used in my thesis; however, there is a chance I may also want to use it for another project. If this is the case, I will ask you for your written consent.

Participation in this study is voluntary and you may withdraw from the study at any time before April 30, 2011. At that time, the information you have provided will be destroyed.
You may receive some indirect benefits through your participation in this study. These benefits include increased knowledge about the functioning of various criminal justice court proceedings and diversion programs in the academic community as well as in the legal community. The published study will be made available to you upon request. There will be no financial remuneration for participation in this study.

This study was reviewed and received ethics clearance from the Carleton University Research Ethics Committee. Any questions or concerns about this research study can be directed to the ethics committee chair.

Professor Antonio Gualtieri, Chair
Carleton University Research Ethics Committee
Office of Research Services
Carleton University
1125 Colonel By Drive
Ottawa, Ontario K1S 5B6
Tel: 613-520-2517
E-mail: ethics@carleton.ca

Questions About the Research? If you have any questions about this research project, the researcher, or your role in this study, please contact Hannah McGechie, principal researcher, hmcgechi@connect.carleton.ca or or research supervisor Dr. Cecilia Taiana, cecilia.taiana@connect.carleton.ca or 613-520-2600 ext. 3577.

Signature ___________________________ Date ________________
Researcher

Signature ___________________________ Date ________________
Supervisor
I, __________________________, have read the above letter on the *Mapping the Space for the Subjective Experiences of Victims in Criminal Justice Court Proceedings* study. I voluntarily consent to participate in the study as described above.

__________  __________
Signature of participant  Date

__________  __________
Signature of researcher  Date

Thank you for participating in this study. Please take one copy of the consent form with you for further reference.
Appendix E of Ethics Proposal – Letter of Information with Consent Section II: Victims

Mapping the Space for the Subjective Experiences of Victims in Criminal Justice Court Proceedings

Date of Ethics Clearance: December 16, 2010

Ethics Clearance for Data Collections Expires: May 31, 2011

Dear Sir or Madam,

My name is Hannah McGechie and I am a Master’s of Social Work Student at Carleton University. I am conducting a study on the experiences of victims who participated in Canadian criminal justice court proceedings as part of the thesis component of my Master’s program. This research project will be supervised by Dr. Cecilia Taiana who is a professor at Carleton’s School of Social Work.

I am contacting you to ask if you would consider taking part in this research. I will be interviewing victims from different criminal courts and court programs to gain a better understanding of victims’ experiences of participating in court proceedings, what roles victims play in different court proceedings, how and in what form victims were able to share their subjective experiences and what they wished had been different (if anything).

If you agree to participate in this research, you will be interviewed twice between February and April 2011. The first interview will be between will be an information sharing session about this project and during the second interview I will ask you about your experiences of participating in the court proceedings. This first interview will be between 30 minutes and an hour in length, and the second interview will be between one and two hours; each interview will be at least a week apart. They will be held at a mutually acceptable location. With your permission, the interviews will be taped on an audio recorder. While participants’ identities will be known to Dr. Taiana and myself, identifying information will not be published. Data will be kept in a locked filing cabinet in my home; electronic data will be kept on a password protected USB key. Data is being collected for the primary purposes of being used in my thesis; however, there is a chance I may also use it for another project. If this is the case, I will ask you for your written consent.
The only circumstance in which I will **have to disclose identifying information about you to a third party** is if you disclose the unreported abuse of a child or that you intend to harm yourself or others. In these circumstances, I am legally required to report this information to the authorities. **All other identifying information will not be disclosed to third parties.**

Participation in this study is voluntary and you may withdraw from the study at any time before April 30, 2011. At that time, the information you have provided will be destroyed.

The interviews and the reflection process that comes with them may bring up some sensitive or disturbing feelings, it is possible that you may experience some distress over the course of involvement in this research. You can pause or stop the interviews at any time, and a list of resources in the community and counselling services will be provided. I have also arranged for a counsellor from Family Services à la Famille Ottawa to be available immediately if you wish to speak to someone.

You may receive some indirect benefits through your participation in this study. These benefits include increased knowledge about the functioning of various criminal justice court proceedings and diversion programs in the academic community as well as in the legal community. The published study will be made available to you upon request. There will be no financial remuneration for participation in this study.

This study was reviewed and received ethics clearance from the Carleton University Research Ethics Committee. Any questions or concerns about this research study can be directed to the ethics committee chair.

**Professor Antonio Gualtieri, Chair**  
Carleton University Research Ethics Committee  
Office of Research Services  
Carleton University  
1125 Colonel By Drive  
Ottawa, Ontario K1S 5B6  
Tel: 613-520-2517  
E-mail: ethics@carleton.ca
Questions About the Research? If you have any questions about this research project, the researcher, or your role in this study, please contact Hannah McGechie, principal researcher, hmcgechi@connect.carleton.ca or research supervisor Dr. Cecilia Taiana, cecilia_taiana@connect.carleton.ca or 613-520-2600 ext. 3577.

Signature ___________________________ Date __________________
Researcher

Signature ___________________________ Date __________________
Supervisor
I, ______________________, have read the above letter on the *Mapping the Space for the Subjective Experiences of Victims in Criminal Justice Court Proceedings* study. I voluntarily consent to participate in the study as described above.

________________________  ____________
Signature of participant  Date

________________________  ____________
Signature of researcher  Date

Thank you for participating in this study. Please take one copy of the consent form with you for further reference.
Appendix F of Ethics Proposal - Interview Guide I: Key Informants

1. What is your role in the criminal justice court system?

2. In what ways is the court/program you work in different from others within the criminal justice court system?

3. Does the court/program you work in a) require, b) ask, or c) allow victims to volunteer to participate in the court proceedings?

4. What role(s) do victims in the court/program you work in play?

5. Have you noticed a change in victim participation in the past few years?

6. What is the jurisprudence behind victim participation in the court/program you work in?

7. Is it part of your role in the court/program you work in to work with victims? If yes, in what capacity do you work with victims?

8. Are the victims allowed to share their subjective experiences in the court/program you work in? If yes, how are they allowed to share these experiences?

9. Does the court/program you work in hold any responsibility to victims? If yes, please describe this responsibility and how attempts are made to fill it?

10. Is there any question you thought I was going to ask and didn’t? If yes, what was it?

11. Is there anything else about the participation of victims in the court/program you work in that you’d like to tell me about that we haven’t touched on?
Appendix G of Ethics Proposal - Interview Guide II

Thank you for agreeing to meet with me today. We’re here so I can tell you about the research I’m doing and give you the opportunity to consider whether you would like to participate. We will be reviewing the letter of information that has a consent section (see Appendix E).
Appendix H of Ethics Proposal - Interview Guide III: Second Interview with Victims

1. Were you **required** to participate in the court proceedings of the person who harmed you?
   If answer is “no”, move on to question 2
   If answer is “yes”:
   a) Would you have liked to refuse to participate?
   b) Were you glad you were required to participate?
   c) How did you participate? What was your role in the court proceedings?
   d) Did you get to choose how you wanted to participate, or was this decided by the court for you?
   * skip questions 2 and 3

2. Were you **asked** to participate in the court proceedings of the person who harmed you?
   If the answer is “no”, move on to question 3
   If the answer is “yes”:
   a) Did you agree to participate? Why or why not?
   b) Would you have liked to refuse to participate?
   c) Were you glad you were asked to participate?
   d) How did you participate? What was your role in the court proceedings?
   e) Did you get to choose how you wanted to participate, or was this decided by the court for you?
   * skip question 3

3. Did you **volunteer** to participate in the court proceedings of the person who harmed you?
   If the answer is “no”, move on to question 4
   If the answer is “yes”:
   a) Why did you volunteer to participate?
   b) How did you participate? What was your role in the court proceedings?
   c) Did you get to choose how you wanted to participate, or was this decided by the court for you?

4. Did you observe the court proceedings of the person who harmed you from the public gallery?

5. What did you hope your experience of participating in these court proceedings would be like? What did you hope the outcome would be?
6. What were the realities of your experience of participating in these court proceedings? What were the outcomes?

7. What impact did your experience of participating in these court proceedings have on you?

8. Are you satisfied with the role you played in the court proceedings? Would you want anything to have been different?

9. Do you feel like your voice was heard during the court proceedings?

10. Do you feel like your experiences were accurately represented during the court proceedings?

11. Is there any question you thought I was going to ask and didn’t? If yes, what was it?

12. Is there anything else about your experiences that you’d like to tell me about that we haven’t touched on?
Appendix B: Sample of Coding

**Thesis Coding Level 1**
*Lens: Participation*

The phenomenon I examine here is victim participation in criminal court proceedings. I am mainly looking at how victims are formally supposed to participate (set by the *Criminal Code of Canada* as well as program frameworks) and how they actually participate. The key words I use are thus derivatives of court proceedings, participation, ways of participating, and their derivatives.

Key words (italicized in following text): court, court proceedings, trial, require participation, participation, ask for participation, volunteer to participate, witness, victim impact statement, victim input

*Coding*

I was a witness. Was I *required*? I guess so because once I was subpoenaed, I was *required* to be there... Okay yeah, because at first I volunteered to *participate* and then I was *REQUIRED* to.  

...they tried to have his sentenced as a dangerous offender, that’s when I went to read my *victim impact statement*.  

They didn’t *ask* me to submit a *victim impact statement*, they just told me I could if I wanted. And I did and I came and read it in court.

**Thesis Coding Level 2**
*Lens: Participation*

Clusters in which quotes from first level of coding were divided into: participation jurisprudence, victim experiences of participating, reasons for participating, impact of participating

**Thesis Coding Level 3**
*Themes developed from clusters in the second level of coding*: impact of participating, victim needs and wants in participation, participation jurisprudence, reasons that victims participated, victims’ subjective experiences, victim feelings, did victims feel they had a voice?