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WORKING DOCUMENT

HELPING VICTIMS THROUGH FINE SURCHARGES

Lee Axon
Associate, Principal Investigator
and
Bob Hann
Principal, Project Manager

April 1994

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EXECUTIVE SUMMARY

On July 31, 1989, the federal legislation and regulation regarding a victim fine surcharge came into effect. The purpose of this legislation was primarily to generate revenue for victim services and programs and to provide a means whereby offenders may make some reparation towards victims of crime. This study examines Ontario's experience with the surcharge and also presents a review of other Canadian jurisdictions' practices.

Findings

- In Ontario, the revenue generated by the federal surcharge has declined dramatically since the initial period after the *Criminal Code* provisions and regulation came into force on July 31, 1989. From August 1, 1989, to the end of March 1990 (eight months) the revenue generated by the surcharge was $193,100; in fiscal year 1990-91 the revenue was $521,900; in 1991-92 it was $108,000; and from April 1992 to February 1993 (11 months) it was $7,000. The reason for this decline is a corresponding reduction in the frequency with which the surcharge has been imposed.

- In contrast to the low amounts of revenue actually generated, it is estimated that in Ontario, allowing for undue hardship (at a rate of about 33 percent) and default (at a rate of about 45 percent), the total amount of annual revenue that *could* have been generated if judges had imposed the regulated maximum amounts of 15 percent on fines and $35 on non-fine dispositions, is approximately $4 million (based on 1992 conviction statistics). In reality, only about 15 percent of this potential was imposed in 1992 and only 2.7 percent actually collected.

- In 1992, about 10 percent of the counts had one or more surcharges attached. Surcharges are imposed much more frequently on fines than on non-fine dispositions. Approximately one fifth of the fines and less than one percent of non-fine dispositions received a surcharge. There was considerable regional variation, with the North West and North East regions having the lowest proportion of surcharges (less than three percent), and the South West and Central South regions having the highest proportion (almost 40 percent) of surcharges attached to fines.

- With respect to the types of charges receiving a surcharge, more than 80 percent of all surcharges were imposed on what might be called "victimless" crimes: impaired driving, morals offences, wilful damage and offences against the administration of justice. More than 60 percent of surcharges attached to fines were imposed on these types of offences. An explanation for this finding is that these offences are more likely to receive fines than non-fine dispositions and, as noted above, judges are far more likely to impose a surcharge on a fine than on a non-fine disposition. With

respect to surcharges imposed on non-fine dispositions, about one out of every five surcharges was imposed on "theft/possession over $1,000", and nearly one third were imposed on the so-called "victimless" offences.

- Almost 45 percent of the surcharges were imposed on suspended sentences (which normally entail a condition of probation); almost ten percent were imposed on restitution orders; and less than one percent were imposed on probation and custodial sentences.

- The major reason for the very low rates of imposition of the federal surcharge in Ontario is judicial concern that the revenue is not being used to provide services and programs for crime victims. At present, revenue from the surcharge is not deposited in a designated fund for victims of crime, but in the province's Consolidated Revenue Fund. Although some judges stated that they objected to the surcharge because they considered it, for a variety of reasons, to be an inappropriate way of generating revenue for crime victims, nevertheless, three quarters of the judges responding to this study's survey reported that if the revenue were directed towards programs and services for crime victims, they would be more likely to impose the surcharge.

- Crown attorneys' views were similar to those expressed by judges. Defence counsel, on the other hand, were almost unanimously opposed to the surcharge. A fairly frequent comment made by both judicial and crown respondents reflected the view that a better way of raising revenue for victims of crime would be to administratively deduct a percentage of money from fines that are collected.

- While judges appear to impose the surcharge most often on the basis of the count, it is also claimed they have been imposing it on the basis of the case or the disposition as well.

- Judges do not often impose the surcharge on convictions resulting in non-fine dispositions. The reasons for this are varied: some judges tend to forget that the surcharge is applicable to non-fine dispositions; some think that it is unreasonable to impose a surcharge when the non-fine disposition involves custody — it constitutes undue hardship; and some think that the regulated maximum for non-fine dispositions of $35 fails to reflect the seriousness of offences for which there will be a lengthy custodial sentence.

- Use of the undue hardship provision varies considerably according to reports from judges and crown attorneys. About one out of every five judges estimated that she or he used the undue hardship provision in more than one-half to three quarters of cases. The rest of the judges indicated that their use of the provision ranged anywhere from less than ten percent to more than 75 percent of cases. Despite the

fact that the legislation requires judges to give reasons for using the undue hardship provision, only about one-half of the responding judges in this survey indicated that they did. In every instance, these reasons are normally very brief and given orally, with judges explaining that their courts are far too busy to permit lengthy or written reasons.

- The average amount of surcharge imposed on fines is $50. There is, however, some regional variation in Ontario, probably as a result of different percentages being used: either ten percent or the maximum 15 percent. In all of Ontario, about 41 percent of the surcharges are based on the regulated maximum of 15 percent and about 46 percent are based on ten percent. Some judges explained that they preferred using ten percent as the basis because the math is easier.

- When asked if they ever reduced the amount of the fine because they were also imposing a surcharge, about one-half of the responding judges claimed that they did not; about one-third stated that they did. About one-half of those who did estimated that they did so less than ten percent of the time; the remainder did so anywhere from 25 percent to almost 100 percent of the time. Very few judges claimed to have reduced the surcharge owing to the fact that they were also imposing a fine or other monetary penalty.

- With respect to non-fine dispositions, the average surcharge amount is about $36, although once again there is regional variation. The likely explanation for surcharge values greater than the regulated maximum of $35 is that some judges occasionally impose the surcharge on the basis of the disposition rather than the count. A little over one-half of the non-fine surcharges are $35 and about one third are $25.

- The compliance rate for surcharge payment in 1992 was a little over 50 percent. Compliance is slightly lower for surcharges imposed on fines, compared with surcharges imposed on non-fine dispositions. The calculated default rate is not the obverse of the compliance rate owing to the fact that some surcharges were not yet due at the time of the study. Overall, the default rate appears to be almost 45 percent.

- Almost one-third of the surcharges were given time in default in the event of nonpayment, although once again there is a fair amount of regional variation. In Metro Toronto, for example, time in default is imposed for almost one-half of the surcharges.

- In March 1990, an Interministerial Advisory Committee was formed to consider, in consultation with community-based groups, current victim services and programs, and to make recommendations regarding the disbursement of surcharge revenue. To date, there has been no disbursement

of the approximately $830,000 collected through the surcharge. Currently, a submission is before the Ontario Cabinet regarding the future management and disbursement of surcharge revenue.

- Respondents to this study strongly urged the government to begin disbursing the surcharge revenue. Suggestions for the use of surcharge revenue include the provision of local victim services, as well as services for victims of child abuse, domestic violence and sexual assault. Consistent with the Regulatory Impact Analysis Statement, it was also suggested that the revenue be used to fund additional services rather than simply to offset existing government services and programs. A number of Canadian jurisdictions have reconsidered integrating their criminal injuries compensation programs into one coordinated service for victims of crimes that would include other victim programs and services. A provincial needs assessment should be undertaken before disbursing surcharge revenue.

- About one-half of the study's respondents were opposed to the idea of a provincial surcharge program.

- With respect to other provinces' and territories' experiences with the surcharge, it has been found that there is a widespread dissatisfaction with the regulated $35 maximum for non-fine dispositions; that little attention has been given to informing offenders about the purpose of the surcharge; that judges are more likely to impose the surcharge on fines than on non-fine dispositions; that the surcharge has been most successful in those jurisdictions that have kept judges informed about how the revenue is being used; and that most jurisdictions have developed a designated fund for the surcharge revenue, although disbursement practices vary.

Recommendations

1. That the Ministry of the Attorney General, in conjunction with the Chief Judge's Office, provide legal interpretation and guidance with respect to the legal questions arising from the surcharge legislation, and distribute this information to the provincial crown attorneys and judiciary.

2. That instead of repealing the regulation, judges be encouraged to explain the reparative purpose of the surcharge to offenders at the time of sentencing.

3. That the Ministry of the Attorney General, with the cooperation of the Chief Judge's Office, distribute an information package both to crown attorneys and to judges containing the following:

   - surcharge schedules based on the 15 percent regulated maximum;

- the aforementioned legal interpretation of the problematic provisions in the legislation;

- information on how the surcharge is being handled in other courts; and

- information about the order of payment for partial payment of monetary penalties (which relates to the time allowed for payment).

4. That when the Ministry of the Attorney General creates a designated fund and a committee to oversee the disbursement of surcharge funds, regular reports should be sent to judges and crown attorneys regarding how the surcharge revenue has been used.

5. That once a designated fund has been created and the government is in a position to start disbursing surcharge revenue, the Interministerial Advisory Committee — or any funding committee that may be created to oversee the designated fund — conduct a needs assessment of existing services and programs for victims of crime, and that the federal Department of Justice Canada provide assistance in this area.

6. That the Ministry of the Attorney General, in conjunction with other relevant ministries, include among its priorities the development of crime prevention and recidivism-reduction programs (e.g., diversion programs) — especially for young offenders — that will help forestall future criminal activities and hence future criminal victimization.

7. That the Ontario Surcharge Coordinator assume greater administrative oversight of the program by means of regular reports (on a quarterly or semi-annual basis) from the regional courts regarding the imposition of the surcharge, including frequencies and amounts imposed, and whether default orders were attached.

8. That the province should not consider instituting a provincial surcharge at this time, but should explore this option at a later date once the federal surcharge is in full operation.

1.0 INTRODUCTION

1.1 Background

During the early 1980s the Federal-Provincial Task Force on Justice for Victims of Crime made a number of recommendations, including the creation of a fine surcharge program to fund services for victims of crime. As a result, a 1984 Federal-Provincial-Territorial Working Group on Justice for Victims of Crime further examined the proposed recommendation and developed funding options for victim programs. The Working Group concluded in its 1986 report that a victim fine surcharge should become a *Criminal Code* disposition. Bill C-89, *An Act to Amend the Criminal Code (Victims of Crime)*, was the federal government's response to the recommendations of the Task Force and the Working Group.

Bill C-89 is designed to assist victims of crime and includes, among other things, provisions for restitution, bans on a victim's identity, victim impact statements, and the victim fine surcharge. In a news release of March 1988, the federal Minister of Justice stated that "these proposals together with increased [federal] funding will help address the physical, emotional and economic costs of victimization".

Bill C-89 was passed in May 1988 and received Royal Assent on July 21, 1988. While most of the Bill C-89 provisions were proclaimed in October 1988, the victim fine surcharge provisions were delayed to permit consultations with the provinces and territories regarding proposed regulations to accompany the provisions. Authority for these regulations is provided by section 727.9, subsections (1) and (5) of the *Criminal Code*, which state:

> (1) . . . the court imposing sentence on or discharging the offender shall, in addition to any other punishment imposed on the offender, order the offender to pay a victim fine surcharge in an amount not exceeding
>
> > a) fifteen percent of any fine that is imposed on the offender for that offence or where no fine is imposed on the offender for that offence, ten thousand dollars, or
> >
> > b) such lesser amount as may be prescribed by, or calculated in the manner prescribed by, regulations made by the Governor in Council,

subject to such terms and conditions as may be prescribed by regulations made by the Governor in Council. . .

(5) The Governor in Council may, for the purposes of subsection (1), make regulations prescribing the maximum amount or the manner of calculating the maximum amount of a victim fine surcharge to be imposed under that subsection, not exceeding the amount referred to in paragraph (1)(a), and any terms and conditions subject to which the victim fine surcharge is to be imposed.

In 1988 a working group of federal, provincial and territorial officials convened to determine whether regulations should be drafted and to consider their contents. By February 1988 the Coordinating Committee of Senior Officials agreed that a surcharge regulation should be drafted prescribing a $35 maximum victim fine surcharge where no fine is imposed, and a maximum 15 percent of any fine imposed. This regulation came into force on July 31, 1989.[1]

The victim fine surcharge[2] provisions apply only where an offender is convicted or discharged under section 736 of an offence under the *Criminal Code* or Part III or Part IV of the *Food and Drugs Act* or the *Narcotic Control Act*. Subsection (2), however, makes allowance for undue hardship:

(2) Where the offender establishes to the satisfaction of the court that undue hardship to the offender or the dependants of the offender would result from the making of an order under subsection (1), the court is not required to make the order.

(3) Where the court does not make an order under subsection (1), the court shall

(a) provide the reasons why the order is not being made; and

(b) enter the reasons in the record of the proceedings or, where the proceedings are not recorded, provide written reasons.

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[1] The surcharge applies only to offences committed on or after the date of proclamation.

[2] This report will use the terms "surcharge" or "federal surcharge" to refer to the victim fine surcharge.

Subsection (4) states how revenue generated by the surcharge provisions is to be used: ". . . shall be applied for the purposes of providing such assistance to victims of offences as the Lieutenant Governor in Council of the province in which the surcharge is imposed may direct from time to time."

Lastly, subsection (6) stipulates that the surcharge is subject to the same provisions that apply to fines as specified in subsections 718(3) to (11). Essentially, these subsections stipulate the conditions applying to defaulted fines — and, by the same token, surcharges — including period of time to pay, imprisonment for default, immediate payment and extensions for the payment period. Eligibility for a fine-option program (section 718.1) does not apply to the surcharge.[3] [4]

1.2 The Purpose of This Study

The overall purpose of this study is to present information about the operation of the federal surcharge provisions in Ontario and to document trends that may assist in predicting future revenue for a victim assistance fund. More specific objectives are:

- to document the experience in Ontario courts with the federal legislation regarding the victim fine surcharge,
- to investigate the impact of the surcharge on revenue,
- to document the collection practices of courts across Ontario for *Criminal Code* fines and for other fines payable to the province,
- to document perceptions of "key players" associated with the surcharge program, and
- to assess the appropriateness of current methods and practices.

The study was funded and managed by the Department of Justice Canada and received assistance from the Ontario Ministry of the Attorney General. From the beginning, there were no illusions about the situation in Ontario. While the surcharge provisions have been in effect for about three and one-half years, it was well known that judicial imposition of the surcharge had greatly declined after the

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[3] A fine-option program does not exist in Ontario for *Criminal Code* offences.

[4] A complete copy of the *Criminal Code* provisions plus the regulation is found in Appendix H.

first year or so owing largely to judges' unwillingness to impose the surcharge when the monies it generated were not being deposited directly into a fund for victim services and programs, but were instead being deposited into the province's Consolidated Revenue Fund.

Accordingly, it was recognized from the outset that a study of the surcharge in Ontario would necessarily be limited. Since many judges have ceased imposing the surcharge (and, therefore, many crown attorneys have also ceased making representations regarding the surcharge), it was understood that findings regarding court practices would be based either on respondents' memory of the first year of implementation, or on the much less frequent practices at the present time. Hence, the findings presented here do not represent a full-fledged implementation of the surcharge legislation; instead, they mainly document what is happening at the present time and the reasons for the current situation. Similarly, the revenue being generated by the surcharge is also limited.

Despite the foregoing limitations, it was felt that the present study would provide valuable insights into the operation of the surcharge provisions — even if some were based on negative findings. Documentation of the reasons for current practices in Ontario, in addition to observations gained from the cross-country survey, could provide lessons about the significant issues relating to the surcharge provisions. These observations and insights could assist the government in taking steps to improve the current situation as well as provide some direction in the event that a provincial surcharge program might be developed in the future.

1.3 Issues

The purpose of this section is to familiarize the reader with the major issues that have arisen in connection with the surcharge. Experience with the federal surcharge legislation across the country has varied considerably; however, a number of themes have emerged that warrant attention. The issues have been grouped under several broad categories:

- The Legislation and Regulation
- Imposition: Judicial Practices
- Administration and Collection
- Default and Enforcement
- Disbursement of Funds

1.3.1 The Legislation and Regulation

1.3.1.1 The Purpose of the Legislation

If the surcharge provisions are subject to a constitutional challenge (as was the case in *R.* v. *Crowell*, Nova Scotia 1992), it is important to understand the nature of the surcharge provisions in terms of their purpose, and — as stated in the Supreme Court decision in *R.* v. *Oakes*, 1987 — an assessment of the rationality and proportionality of the means represented by the legislation.

Essentially, the surcharge provisions may be seen to have two purposes:

- to create a new source of revenue for the funding of victim services and programs by the provinces and territories;[5] and
- to provide a means whereby offenders may be involved in making some degree of reparation.

According to the *Crowell* decision, the surcharge is "neither a true tax nor a true fine, but rather a unique penalty in the nature of a general kind of restitution. As such it is penal in its pith and substance and therefore constitutional . . . ." Documentation within the Ontario Ministry of the Attorney General states, "The surcharge is based on the belief that the offender bears a special responsibility for the injuries done to the victim. The surcharge is thus the offender's method of directly defraying the costs incurred by society in compensating the victim."

In Ontario, "the costs incurred by society in compensating the victim" are substantial. Annual payments through Ontario's Criminal Injuries Compensation Program, for example, amount to about $12.3 million. Yet it is recognized that despite the fact that 180,000 victims of violent crime were identified in 1991, only 37,000 victims were compensated through the Criminal Injuries Compensation Board (CICB).[6] Apart from actual monetary compensation awards, it is also recognized that victims of crime require a variety of services that are not yet available in the province. According to the Regulatory Impact Analysis Statement (RIAS), the

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[5] *Canada Gazette Part II*, Vol 123, No. 6:3561

[6] The limit per victim is $25,000; the average award is less than $4,000.

surcharge legislation is to be used to provide a broader range of services to assist victims of crime.[7]

Within an *Oakes* framework, whether creating federal legislation was a reasonable method of accomplishing the foregoing revenue-generating and reparative goals, and whether less intrusive measures (the proportionality issue) could have been adopted is the subject of many respondents' comments in the present study. Subsequent chapters in this report present some of the arguments that have been made in this regard.

Another issue concerns sentence appeals from summary conviction offences contesting the surcharge. Although the surcharge legislation amends the definition of "sentence" in section 673 of the *Criminal Code* to include, *inter alia*, orders to pay or to waive the payment of the surcharge, no similar amendment was made to the definition of "sentence" in what is now section 785 for the purpose of summary conviction appeals. Consequently, there is no express indication that the Crown or defence can appeal from a summary conviction on the question of some order made by the trial judge concerning the surcharge. However, because the definition of sentence is not meant to be restricted to the items listed (i.e., it states that "'sentence' includes . . ."), it can be argued that a summary conviction appeal court is not precluded from hearing a sentence appeal concerning the surcharge.[8]

1.3.1.2 The Regulation

The *Criminal Code* provisions governing the victim fine surcharge comprise one of the few sections that have a regulation attached.[9] According to the Regulatory Impact Analysis Statement developed for the surcharge regulation, "regulations prescribing the amount of the victim fine surcharge ensure a more uniform application of the surcharge provisions and simplify the provincial/territorial administration of the victim fine surcharge revenue." The RIAS goes on to state:

> It is anticipated that regulations will provide more certainty and uniformity in the application of the surcharge across Canada, simplify administration and permit better forecasting of the surcharge revenue

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[7] *The Canada Gazette, Part II*, Vol. 123, No. 16:3560

[8] Note that the definition of sentence for indictable offences also uses the word "includes" but makes express reference to the surcharge. Apparently, the confusion referred to here is to be corrected in Bill C-90. To date there have been no appeals on the surcharge.

[9] The weapons offences section of the *Code* also has regulations.

> that would be available for victim services. In addition, prescribing a nominal maximum amount for non-fine dispositions ($35) will facilitate enforcement and collection without protracted inquiries regarding the appropriateness of the amount and the offender's ability to pay. (*Ibid.*: 3561)

Although there was some debate at the time among provincial and territorial senior officials represented in the aforementioned Working Group established to consider the options for the surcharge, the overall consensus was to proceed with regulation. Basically, the regulation was designed to preserve a number of advantages:

- simplification of the administration of the surcharge and the saving of court time that otherwise might have been necessary to determine the offender's financial status and appropriate amount[10] for non-fine dispositions;
- greater certainty for the offender concerning the amount of victim fine surcharge to be paid;
- facilitation of amendments (if these were required);
- preventing the criminal justice system from being brought into disrepute in the sense that it is better to collect 100 percent of a smaller surcharge amount than only ten percent of larger amounts;
- greater uniformity in the application of the surcharge provisions; and
- enhanced ability to forecast the revenue-generating capacity of the surcharge.[11]

Creation of a regulation necessarily limited judicial discretion. The ability of the court to tailor the amount of surcharge to the seriousness of the offence and the offender's particular circumstances was, in part, sacrificed to the foregoing advantages derived from the development of a regulation.

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[10] It will be recalled that the legislation itself provides a surcharge amount for non-fine dispositions ranging up to $10,000.

[11] March 15 telephone conversation with Ms. Catherine Kane, Counsel, Criminal Law Policy Section, Department of Justice Canada.

1.3.2 Imposition: Judicial Practices

1.3.2.1 Basis of Imposition: Case, Count or Disposition

A number of issues arise with respect to the imposition of the surcharge. One issue concerns, as the focus consultants for the British Columbia study point out,[12] whether the application of the surcharge is interpreted by the courts as charge-based or disposition-based, or even, under some circumstances, case-based. In the British Columbia study, it was found that in the majority of instances the surcharge was imposed on the count; however, there were also some disposition-based surcharges. The legislation itself does not go into detail on this issue, but it is claimed that despite the fact that a literal reading would suggest that the surcharge is to be applied to dispositions rather than counts or the case, the true intention of the legislation was for the surcharge to be imposed on the count.[13]

1.3.2.2 Frequency of Imposition

A second issue relates to the frequency of imposition and regional patterns. The only discretion granted judges by the surcharge provisions derives from subsection 727.9(3) concerning whether the offender "establishes to the satisfaction of the court that undue hardship to the offender or the dependants of the offender would result from the imposition of the surcharge". Interpretations regarding what constitutes undue hardship could vary regionally, resulting in different frequencies in imposition of the surcharge. Moreover, there is some question as to what is involved in "establishes to the satisfaction of the court" — whether the onus is on the accused or whether the court is required to request a hearing relating to the accused's financial situation.

Issues relating to the undue hardship provision were addressed in a memorandum to crown attorneys from the Criminal Law Policy Section of the Ontario Ministry of the Attorney General (September 1989). In many situations, in cases where a pre-sentence report (PSR) has been prepared, information concerning the offender's ability to pay some monetary penalty may already be available to the court when dealing with the hardship question. In addition, when the restitution provisions of Bill C-89 are proclaimed, the restitution issue will also provide the court with some indication of the offender's means. Finally, where the court is

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[12] Canada, Department of Justice Canada (1992). An Assessment of Victim Fine Surcharge in British Columbia prepared by Tim Roberts, Focus Consultants, B.C. Ottawa: Department of Justice Canada.

[13] Conversation with Mr. Tony Dittenhoffer, Senior Research Officer, Research Section, Department of Justice Canada, April 28, 1993.

considering the imposition of a fine, evidence about the offender's ability to pay will be forthcoming. In short, under these circumstances, there will be many cases where the undue hardship question can be answered on the basis of information that is already before the court.

The ministry memo stated that while the onus to prove undue hardship is on the offender, there is some question about what would be required to satisfy the court regarding undue hardship. The question is whether mere assertions from the prisoner's box or through counsel would be enough to satisfy the onus. The memo speculates that this may not be sufficient, particularly if one takes into account the possibility of a constitutional challenge to the surcharge provisions. A challenge could arise, it is claimed, either under *Charter* sections 11(d) (the presumption of innocence), 11(c) (the right against self-incrimination), or section seven (principles of fundamental justice) — especially because an offender may be liable to imprisonment for the failure to pay the surcharge.[14]

In addition to interpretations of the undue hardship provisions, other factors such as judicial objections to the legislation (and hence crown attorneys' reluctance to make submissions regarding the surcharge), ignorance of the provisions (e.g., that the surcharge applies to *both* fine and non-fine dispositions), and, to a certain extent, offender profiles, charge types, regional demographics and local economies, could all have some bearing on the frequency of imposition as well as the amounts imposed.

1.3.2.3 Amounts Imposed

Amounts imposed by the courts constitute a third issue. While the range stipulated by the regulation is not great, calculations by the Department of Justice Canada reveal that even a ten dollar difference in the amount of surcharge imposed on non-fine dispositions can make a substantial difference in the revenue generated.

Overall, the primary issue with respect to imposition practices is the extent of regional and national disparity in the use of the surcharge. There is, however, one

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[14] The memo goes on to state that because the surcharge is a matter of sentencing, this may provide a basis for excluding some of the section 11 provisions of the *Charter*. In *Lyons* v. *The Queen* (1987), the majority judgment held that the dangerous offender provisions were not subject to section 11 because these provisions are simply part of the sentencing process; a person who is the object of a dangerous offender application is not a person "charged with an offence". For a similar interpretation of the application of s. 11, see *R.* v. *Vaillancourt* (1988). Moreover, given that the offender facing a reverse onus provision at a sentencing hearing has already been proven guilty of committing the offence, it is arguable that s. 11(d) is inapplicable. Nevertheless, the scope of s. 7 is unclear and at the end of the day constitutional considerations may require that the offender need only raise a reasonable doubt about the hardship caused by the imposition of the surcharge.

other issue that arises in relation to surcharge imposition practices. It appears that, in a number of jurisdictions, judges often tend to reduce the amount of the fine when they are also imposing a surcharge in order to keep the total monetary penalty within a range that fits the offender's financial circumstances. This practice has the result of reducing revenue from fines.

1.3.3 Administration and Collection

The payment and collection of the surcharge generally follows the same procedure as fine collection and, as such, is subject to whatever limitations the provinces and territories may have identified regarding their fine collection procedures. Most jurisdictions in Canada have an automated procedure for the collection of fines which generally records the amount of the fine (and the surcharge), the time given to pay (if any), and the time to be served in custody (if any) if the offender defaults on payment ("time in default").

1.3.3.1 Order of Payment of Monetary Penalties

One of the peculiarities of jurisdictional administrative procedures relates to the order in which monetary penalties, in the case of partial payments, are to be paid. In some jurisdictions, a decision has been made to have payments directed towards the surcharge first, and then towards any court costs, court fees and the fine itself. In other jurisdictions, such as Ontario, payments are automatically first directed towards the fine.

Arguments that favour giving priority to the surcharge list the following advantages: it is consistent with the purpose of the victim fine surcharge legislation; there is greater assurance that the potential surcharge revenue will be realized, since surcharge penalties are generally smaller than fines and therefore more easily paid; and it is less costly and more convenient for the courts to implement and administer. On the other hand, disadvantages include the fact that revenues from fines will be reduced and, for offences under the *Narcotic Control Act (NCA)* and the *Food and Drugs Act (FDA)*, fines belong to the federal government with the result that problems could arise in assigning priority to surcharges.

Arguments that favour giving priority to the fine include the following advantages: it retains maximum revenue for provinces' general revenue; it avoids the issue of priority of fines under the *NCA* and *FDA*; and since the fine is, in a sense, society's penalty against the offender it should have priority over the collective interests of personal victims. Disadvantages are that it reduces the amount of money

available for victim services and programs and that it is more costly to implement and administer.[15]

1.3.4 Default and Enforcement

1.3.4.1 Constraints on Enforcement Options

The issues pertaining to default and enforcement of the surcharge are the same as those that apply to fines — exacerbated perhaps by the fact that surcharge amounts are smaller than fines, with the result that in practical terms enforcement is even less cost-effective. Essentially there are two major difficulties: a significant number of fines/surcharges are never collected, and upon default, courts have little discretion as to the next step in the process.

Moreover, a couple of case law decisions have placed further constraints on possible enforcement options. In *R.* v. *Hebb* (1989) it was held that the *Criminal Code* provisions for imprisonment for default in payment violates section 15 of the *Charter* as discriminating on the basis of economic circumstances. In the *R.* v. *Hill* (1990) decision it was held that warrants of committal issued under the Ontario *Provincial Offences Act* were issued automatically with no thought, and ought therefore to be quashed; incarceration for nonpayment of fines under the *POA* is to be imposed only as a last resort.[16]

The result is that there appears to be a lack of clarity with respect to the power to impose "time in default" and whether time should be served concurrently or consecutively with any other term of imprisonment. In a memorandum to Provincial Court (Criminal Division) judges from the Chief Judge (July 1989), it was stated that a term of imprisonment may be imposed for nonpayment of the surcharge but that this time must be served concurrently if there is another term of imprisonment imposed. This view referred to the judgment of the Supreme Court of Canada in *R.* v. *Paul* (1982), which states that an express legislative power is required to impose a consecutive sentence. While (old) section 717(4) of the

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[15] For example, if the fine were given priority, it would be necessary to maintain two separate accounts for the fine and the surcharge. It was estimated that this would increase the workload of the court office staff by 25 percent. Surcharge priority, on the other hand, enables smaller surcharge amounts to be cleared first, thereby minimizing administrative time; in addition, it minimizes the number of defaults for the surcharge and the associated costs of enforcement.

[16] Although this decision applied to provincial offences, it appears to have established, for some judges, an orientation for all defaults, including those arising in relation to the *Criminal Code.*

Criminal Code provides such a power for fine default, no such power may exist for the surcharge.[17]

Partial solutions to this problem were suggested in both the Chief Judge's memo and the previously cited memo from the Ministry of the Attorney General (MAG). The Chief Judge's memo suggested that it may be appropriate not to impose a global default period (for both a fine and a surcharge) or a consecutive default period in respect of the surcharge. Where time to pay the fine and/or the surcharge is allowed, the period should be the same for both. The MAG memo suggested that in cases where fines and surcharges are imposed, and default terms are imposed for each, these terms will have to run concurrently but should be imposed separately.

At the present time, Ontario has no fine option program for *Criminal Code* offences; however, subsection (6) of the surcharge legislation does not permit surcharge defaulters to participate in a fine-option program. In this study, opinions regarding the advisability of this subsection are reviewed in subsequent chapters.

In short, it appears that at the present time there are no practical and cost-effective means of responding to a defaulted surcharge in Ontario, apart from the few somewhat cumbersome options in the *Criminal Code* for defaulted fines (namely, reduce the penalty, extend time to pay, incarcerate, or simply ignore the default).

1.3.5 Disbursement of Funds

1.3.5.1 Creating a Designated Fund for Surcharge Revenue

While the surcharge legislation (subsection (4)) stipulates that revenue from the victim fine surcharge should be directed towards services and programs for victims of crime, it does not specifically require that a designated fund be established for these monies. This issue has taken on considerable significance within those jurisdictions that have not established a dedicated fund for the revenue generated by the surcharge (notably, Ontario and British Columbia). The problem that has arisen relates to the fact that the judiciary and crown attorneys are opposed

[17] With the possible exception of the "or otherwise" phrase contained in (old) s. 717(4)(a). See Ministry of the Attorney General memorandum (September 1988). See also the Ontario Law Reform Commission Report on the Basis of Liability for Provincial Offences (1990) in which a number of authorities are cited on this issue.

to imposing the surcharge so long as it appears these funds are not being directed to victim services but are being held in general revenue.

To some extent this issue may be more apparent than real, but it clearly has a significant impact insofar as the government's policies have not been communicated to the judiciary. The objection that is commonly heard within Ontario, for example, is that if this surcharge money is being assigned to the Consolidated Revenue Fund, it may be used to build roads rather than assist victims of crime, in which case judges feel they would be acting in "bad faith" to impose the surcharge.

It has been pointed out, however, that in a province such as Ontario where, in the past few years, the government has already allocated $98 million (1991-92)[18] to fund victim services and programs, it makes little difference whether the surcharge money (less than $1 million accumulated since the legislation came into force) is first assigned to a designated fund and then used to offset the substantial budget already allocated to victims of crimes, or whether it goes directly into the government's general revenue. On the other hand, some have argued that the revenue should be used for new services rather than to offset expenditures for existing programs.

Seen from this perspective, the issue appears to be not so much a question of creating a dedicated fund for the surcharge revenue, but a communication gap between the government and the judiciary. The judiciary wishes to be assured that the surcharge is being used according to its legislative purpose, and has not received enough information from the government to feel confident that this is happening.

1.3.5.2 Disbursement Policies and Procedures

A second issue is how to disburse revenue generated by the surcharge. Generally, the choice lies between government victim services, community-based services, or some combination of both. Each choice has its own set of problems. For example, making revenue available for both existing and new government and community-based programs could result in "competition" between government and community-based groups for scarce resources, while choosing either government services only, or community-based services only, raises political problems and risks being a less efficient method for providing services. For example, if funding of community-based services relies totally on revenue generated by the surcharge, there

[18] The Ontario government has allocated $9.8 million to the Criminal Injuries Compensation Board; $70 million to its five-year Wife Assault Prevention Initiative; and $17 million to its Sexual Assault Prevention Initiative.

may be annual fluctuations that would be detrimental to the groups that rely on this funding, at least in the initial years.

The question is further complicated by a number of other issues. First, the fact that the federal government has withdrawn its cost-sharing of provincial and territorial criminal injuries compensation has placed a new burden on the provinces and territories. In addition, these days are marked by new thinking regarding policies and procedures for criminal injuries compensation. In the past, lump sums of money were given for compensation for "pain and suffering", whereas now this is viewed as inefficient and is being replaced by compensation for counselling for pain and suffering. This, of course, presupposes that counselling services are, in fact, available — particularly whether or not they are specialized and/or in smaller communities. Given these considerations, provincial and territorial governments are reviewing their criminal injuries compensation policies and procedures in conjunction with developing methods for disbursing surcharge revenue.

Secondly, the development of administrative structures to oversee disbursement raises further questions. Issues involved here include membership of the funding committee, development of application criteria, terms of agreement for the grants, and so on. In a province such as Ontario, there is considerable disparity between the victim services that are offered in Toronto, for example, and those available in smaller communities. The task of striking a balance between competing needs and present and long-term requirements poses further complications.

As Chapter 4.0 illustrates, Canadian jurisdictions have adopted a variety of strategies for resolving these issues. The reader is referred to this chapter for a further elaboration of the types of issues involved and the solutions that have been suggested.[19]

[19] In Australia, the surcharge revenue is used solely for victim compensation, whereas in the United States it can be used for either victim compensation or victim services.

2.0 METHODOLOGY

Information for this study was obtained from five types of sources: interviews with key criminal justice personnel and stakeholders; questionnaires distributed to judges, crown attorneys and criminal defence counsel; statistical information collected from the Ministry's database (the Integrated Court Offender Network (ICON)); a file review; and a cross-Canada survey of provincial and territorial officials responsible for the surcharge in their jurisdictions.

2.1 Interviews

Interviews were conducted with the following:

- Ministry personnel with duties related to the victim fine surcharge provisions:
  - The Coordinator of the Surcharge Program (Ms. Lorraine Graham-Watson).
  - Ministry Courts Administration personnel (Ms. Maria diSimone, Ms. Sara Sandhu).
  - Ministry Policy Section Counsel with responsibility for fine collection (Mr. John Gregory).
  - Ministry Policy Analyst (Mr. Kerry Wilkins, Criminal Injuries Compensation).
- Criminal justice personnel, including:
  - Telephone interviews with judges and crown attorneys who preferred telephone interviews instead of responding in writing to the questionnaire.
  - Personal interviews with two judges randomly selected from the Toronto courts of the Provincial Division of the Ontario Court of Justice.
- Other stakeholders:
  - A focus group with representatives from organizations that serve victims of crime. The 17 representatives invited to this meeting were selected with a view to canvassing opinion from those who represent a broad range of victim groups. To ensure a greater attendance rate, the invitations to this meeting were sent out under the Policy Section of

the Ministry, followed up with telephone calls to confirm attendance. Of the 17 invited, seven replied that they would attend, but unfortunately only three representatives came to the meeting.[20]

- Telephone interviews with four representatives from organizations that serve victims of crime who were not able to attend the aforementioned meeting.

- Telephone interview with legal counsel for the Simcoe Legal Services regarding criminal injuries compensation issues.

2.2 Questionnaires

Questionnaires were developed for the judiciary, crown attorneys and defence counsel. The questionnaires addressed the main issues that have arisen with respect to the federal surcharge legislation and regulation, as well as enquiring about respondents' views of a provincial surcharge. The questions were grouped under broad categories relating to such things as their attitudes towards the legislation, frequency of use, amounts involved, undue hardship considerations, and default questions. Copies of these questionnaires are provided in Appendices A (judiciary), B (crown attorneys) and C (defence counsel). Respondents to the judiciary and crown attorney questionnaires were given a choice of two methods of responding: by filling in their answers to the questions on the questionnaire itself, or by responding to the questions in a telephone interview.

2.2.1 Judicial Survey

To ensure that the questions were presented in the most appropriate manner and also to obtain the greatest possible response rate, this study received the assistance of the Chief Judge's Office for the judicial survey. A draft questionnaire was prepared and the study's chief investigator met with the regional senior judges at a Chief Judge's Executive Committee meeting to obtain their comments on the questions and to discuss distribution strategies. The questionnaire was revised on the basis of comments received from the judges and then distributed by the Chief Judge's Office.

[20] Some organizations sent the investigator faxed replies to the meeting's agenda in lieu of attending.

Because approximately 95 percent of all cases subject to the federal surcharge (i.e., *Criminal Code*, *Narcotic Control Act* and *Food and Drugs Act*) are heard in the Provincial Division of the Ontario Court of Justice, the questionnaire was sent only to judges in this division. Judges were randomly selected according to the size of the regional jurisdictions. In all, 54 questionnaires were distributed — representing a sample of about one quarter of the Provincial Division criminal judges in Ontario. The response rate was satisfactory, with 31 judges responding (about 57 percent).[21] Of these, 18 responded in writing and 13 preferred a telephone interview.[22]

2.2.2 Crown Survey

To ensure a greater response rate, the study obtained assistance from the Criminal Law Division of the Ministry of the Attorney General in distributing the crown attorney questionnaires. In all, 104 questionnaires were distributed to a sample — representing about one quarter of the federal crown attorneys in Ontario — who were randomly selected according to the size and number of the regional offices. As with the judicial survey, respondents for the crown attorney survey were given a choice of filling out the questionnaire or responding in a telephone interview. Fifty-six crown attorneys responded (about 54 percent);[23] of these, 46 responded in writing and ten preferred a telephone interview.

2.2.3 Defence Counsel Survey

To ensure a satisfactory response rate, questionnaires were mailed to 111 criminal defence lawyers randomly selected according to the size of the regional populations being served. Of these, 13 respondents returned completed questionnaires.

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[21] Of those judges who did not respond to the survey, two were away on maternity leave; one was away on sick leave; one refused outright to respond to the questionnaire; three were on vacation; one had just become a judge and therefore had no experience with the surcharge provisions. The remaining reasons for nonresponse are unknown.

[22] Telephone interviews with judges lasted from one-half hour to some that were over an hour and one-half.

[23] Of those crown attorneys not responding to the questionnaire, one was away on sick leave; two had been seconded to other duties; two were on maternity leave.

2.3 Data Collection from ICON

The quantitative data analysis was based on a large sample of records with sentencing dates in 1992 downloaded from the Ministry's automated information system, ICON. In all, 315,935 records[24] were included in the sample. It is possible, however, that not all records pertaining to 1992 were available, since the Ministry purges its database every nine months; a small number of records from the early months in 1992 already may have been purged. Of the records that were available, 834 were discarded because their sentence action codes were not germane to this study.

To prepare the file for analysis, several analysis programs were written in FORTRAN and Statistical Package Program for the Social Sciences (SPSS). Records were analyzed at three separate levels: individual record level (315,101 records); individual count level (179,178 counts); and individual case level (149,033 cases). Some variables were created to facilitate the analysis (region codes, major offence grouping codes and sentence group codes). Copies of the analysis programs are available on request.

2.4 Review of Administrative Files

The study investigator was given access to ministry files relating to the federal surcharge provisions. Information about operational and policy developments regarding the surcharge was obtained, in part, from this review.

2.5 Cross-Canada Survey

Part of the study entailed contacting government officials in other provinces and territories who are responsible for the victim fine surcharge.[25] In all, 20 telephone interviews were conducted. In addition, some jurisdictions provided written documentation of their federal and provincial surcharge and victim assistance programs.

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[24] These records comprised 38,860,006 bytes of storage.

[25] A list of those contacted is provided in Appendix E.

3.0 THE IMPOSITION OF THE SURCHARGE IN ONTARIO

3.1 Frequency of Use

As indicated in Chapter 1.0, it was recognized at the outset of this study that Ontario judges were not imposing the surcharge to a very great degree. Nevertheless, examination of the frequency of imposition promised to provide some valuable insights on a number of issues: specifically, regional variations and explanations for the lack of imposition. The following tables present these findings. Actual frequencies are presented first, followed by a review of attitudes that explain these figures.

Overall, there were 149,033 cases before the courts during the period sampled. This sample represents calendar year 1992; however, because the Ministry purges the database every nine months, some of the cases appearing early in 1992 may not be included. It is probably fairly safe to assume that not very many, if any, cases were purged.

The average number of counts per case is 1.25. The average number of dispositions per case is 2.35. Of the 149,033 cases included in this sample, 12,854 cases (8.6 percent) had one or more surcharges imposed. Of the cases that included surcharges, 12,264 (95.4 percent) had only one surcharge imposed. A total of 471 cases (3.7 percent) had two surcharges imposed, and 119 (0.9 percent) had three or more surcharges imposed. As Table 1 indicates, overall there was a total of 165,574 counts in the sample of cases taken from the calendar year 1992. Of these, 151,970 (91.8 percent) did not have any surcharge attached, leaving 13,604 counts in which a surcharge was imposed.

A total of 57,335 fines were imposed in this sample. Of these, about one fifth (19.9 percent or a total of 11,419) also had a surcharge imposed.[26] Of the

[26] According to a report done five months after the legislation came into force, the number of surcharges imposed in the *six-month* period from December 1989 to May 1990 was 12,377, compared with the 13,604 surcharges imposed for approximately *12 months* in 1992.

Table 1 Frequency of Imposition of Surcharge: Regional Figures

1992	REGIONS								TOTAL
	Central East	Central South	Central West	East	North East	North West	South West	Metro Toronto	
Total # of cases	21,824	21,480	17,677	16,922	10,052	5,993	18,580	36,505	149,033
# of cases with surcharge	1,331 (6.1%)	3,549 (16.5%)	823 (4.7%)	1,516 (8.96%)	125 (1.2%)	0	4,888 (26.3%)	622 (1.7%)	12,854 (8.6%)
Total # of counts	25,841	21,224	20,895	18,598	12,230	6,605	17,294	42,887	165,574
Total # of surcharges	1,402	3,709	842	1,583	128	0	5,286	654	13,604
Total # of dispositions	49,991	41,608[1]	37,608[2]	34,510[3]	19,770[4]	10,247	36,838	70,925[5]	301,497[6]
Total # of FINE dispositions	8,649	9,115	7,195	6,175	4,459	2,218	10,317	9,207	57,335
# of FINE dispositions with surcharge	1,199 (13.9%)	3,378 (37.1%)	790 (10.98%)	1,205 (19.5%)	126 (2.8%)	0	4,111 (39.9%)	610 (6.6%)	11,419 (19.9%)
Total # of NON-FINE dispositions	39,190	30,552	28,123	26,981	14,754	7,414	25,269	54,570	226,853
# of NON-FINE dispositions with surcharge	203 (0.5%)	331 (1.1%)	52 (0.2%)	378 (1.4%)	2 (0.01%)	0	1,175 (4.7%)	44 (0.08%)	2,185 (0.96%)
Total # of DISCHARGES[7]	2,152	1,940	2,289	1,352	556	615	1,252	7,146	17,302

[1] There was one record for which the disposition was unknown.
[2] There was one record for which the disposition was unknown.
[3] There were two records for which the disposition was unknown.
[4] There was one record for which the disposition was unknown.
[5] There were two records for which the disposition was unknown.
[6] Given the foregoing regional "unknowns", there were a total of 7 records for which the disposition was unknown.
[7] Includes both conditional and absolute discharges. No surcharges were imposed on discharges.

226,853 non-fine dispositions imposed, 2,185 (0.96 percent of all non-fine dispositions) also had a surcharge imposed.[27] [28]

Looking at the regions[29] separately, there appears to be considerable variation regarding the proportion of fines with surcharges attached. The North West and North East regions[30] had the lowest proportion of fines with surcharges (0 and 2.8 percent respectively) and the South West[31] and Central South[32] regions had the highest proportion of fines with surcharges, with almost 40 percent of the fines also involving a surcharge. Metropolitan Toronto, on the other hand, shows only about seven percent of fines with surcharges imposed.

Surcharges on non-fine dispositions do not show the same degree of regional variation, although once again the South West Region had the highest proportion (4.7 percent) of surcharges imposed on non-fine dispositions.

Tables 3 and 4 present regional distributions for the frequency of surcharges imposed in terms of the types of charges. Before the surcharge figures are presented, however, Table 2 indicates the numbers and proportion of types of charges heard in each region irrespective of whether a surcharge was imposed or not. This table is presented to give the reader a picture of the relative distribution of types of charges. For all of Ontario, approximately one out of every five charges is for impaired driving. When looking at the regional distributions, it is also interesting to note that, as one judge expressed it, "Impaired driving is a rural

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[27] Non-fine dispositions include probation, restitution, community service, jail and prison terms.

[28] This leaves 224,668 non-fine dispositions that did not have any surcharge imposed. Allowing for an average surcharge of $25 per non-fine disposition, and assuming 40 percent of these dispositions would be eliminated owing to undue hardship, this means that over $5.5 million in potential revenue for these possible surcharges has been eliminated.

[29] A list of the courts in each Ontario administrative region is provided in Appendix F.

[30] These regions include, among others, Sault Sainte Marie, Timmins, North Bay, Parry Sound, Kenora, Dryden, Thunder Bay and Sudbury. See Appendix F.

[31] The courts in the South West Region include, among others, London and Windsor (see Appendix F). Although the London Provincial Court handled only 3.8 percent of the criminal charges heard in Ontario, it imposed 8.8 percent of all the surcharges imposed in 1992; similarly, Windsor Provincial Court handled only 3.5 percent of the criminal charges in Ontario, but imposed 14.2 percent of all the surcharges in the province for 1992.

[32] The courts in the Central South Region include, among others, St. Catharines, Kitchener, Cambridge, Niagara Falls and Hamilton. See Appendix F. While the Hamilton Provincial Court heard only 4.8 percent of all charges in Ontario in 1992, it was responsible for imposing 10.6 percent of all surcharges.

Table 2 Types of Charges: Regional Figures

1992 OFFENCE TYPE	REGIONS								TOTAL
	Central East	Central South	Central West	East	North East	North West	South West	Metro Toronto	
Impaired Driving	13,098 25.5%	10,174 22.5%	8,507 22.1%	8,399 23.3%	4,454 22.4%	2,146 20.9%	11,116 26.4%	9,146 12.8%	67,040 21.3%
Theft/Poss Over	6,695 13%	7,319 16.2%	4,692 12.2%	5,050 14%	2,135 10.7%	924 9%	5,387 12.8%	12,940 18.1%	45,142 14.3%
Crimes Against the Admin of Justice[1]	6,658 13%	6,105 13.5%	4,512 11.7%	4,602 12.8%	2,598 13.1%	1,721 16.8%	5,908 14%	10,775 15.1%	42,879 13.6%
Other Property[2]	6,265 12.2%	4,357 9.6%	5,473 14.2%	3,993 11.1%	3,123 15.7%	917 8.9%	4,933 11.7%	8,095 11.3%	37,156 11.8%
Assault - Common	4,480 8.7%	4,544 10%	3,726 9.7%	3,943 10.9%	1,903 9.6%	1,549 15.1%	3,915 9.3%	8,282 11.6%	32,342 10.35%
Wilful Damage	2,377 4.6%	2,049 4.5%	1,940 5%	1,877 5.2%	1,306 6.6%	698 6.8%	2,172 5.2%	3,297 4.6%	15,716 5%
Break & Enter	2,298 4.5%	1,488 3.3%	1,584 4.1%	1,493 4.1%	942 4.7%	423 4.1%	1,168 2.8%	2,230 3.2%	11,716 3.7%
Other Driving Offences	2,301 4.5%	1,976 4.4%	1,592 4.1%	1,358 3.8%	647 3.3%	224 2.2%	1,576 3.7%	1,460 2%	11,134 3.5%
Assault - Weapon/BH	263 1.9%	213 2%	236 2.6%	257 1.7%	136 1.9%	89 4.3%	157 1.9%	429 1.5%	1,780 1.9%
Weapons Offences	754 1.5%	693 1.5%	580 1.5%	528 1.5%	361 1.8%	203 2%	619 1.5%	1,385 1.9%	5,123 1.6%
Threats - BH/Death	690 1.3%	691 1.5%	767 2%	540 1.5%	253 1.3%	117 1.1%	577 1.4%	731 1%	4,366 1.4%
Other *Criminal Code & NCA, FDA*[3]	9.2%	8.4%	8.9%	7.9%	7.1%	7.3%	7.5%	10.3%	8.4%

[1] This category includes: Breach of Release, Obstruction of Law, Interfere Police, Breach of Probation and Peace Bond

[2] Includes: Other Theft/Possession, "Other" Property Offences and "Other" Fraud.

[3] The rest of the charge types each constitute less than 1% of the total charges and have therefore been grouped into this one category which includes: Trafficking and Possession for the Purposes of Trafficking (*NCA* and *FDA*), Possession (*NCA* and *FDA*), Theft Under, Fraud Under and Over, Sexual Assault, Homicide, Child Victim, Robbery, Nuisance Offences and Morals Offences.

offence — people drive to taverns and bars since there are no taxis." Thus, while in all the other regions impaired driving represents more than 20 percent of the charges heard in courts in 1992, in Metropolitan Toronto this offence represents only 12.8 percent of all charges disposed of.

Tables 3 and 4 present the types of charges that have surcharges attached. The interesting fact about these tables is that more than 80 percent of all surcharges imposed were associated with offences that some might argue are "victimless" — at least in the sense of not having a direct victim. For example, Table 3 (surcharges imposed on fines), shows that for all of Ontario more than one third of the surcharges are imposed on impaired drivers. If one includes the other types of so-called victimless crimes such as morals offences, wilful damage, and offences against the administration of justice, it is seen that 61.7 percent of the surcharges imposed in Ontario fall into these categories of "victimless" offences. An explanation for this finding is that these are the types of offences for which judges normally impose fines and, as noted previously, the surcharge is being imposed far more frequently on fine dispositions than non-fine dispositions (at least with respect to 1992 figures).[33]

Theft/possession over $1,000 accounts for about 12 percent of the remaining fine surcharges that have been imposed, while common assault, other property, and wilful damage comprise the rest of the surcharges imposed in Ontario. The remaining 15 percent (approximately) of the surcharges *not* shown in Table 3 are disbursed among the other *Criminal Code* and drug offences (*Narcotic Control Act* and *Food and Drugs Act*), with the latter drug offences accounting for only 0.4 percent of all the surcharges imposed.

While this picture may be viewed with discomfort by some, a certain amount of caution is needed in projecting these patterns into the future. If, in future, steps are taken to encourage judges to impose the surcharge provisions more frequently, it is likely these patterns will change — particularly if judges start imposing the surcharge on non-fine dispositions more frequently.[34] In this eventuality, there may be less reliance on so-called "victimless" offences to generate surcharge funds. On the other hand, others may argue that there are no true "victimless" crimes in so far

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[33] See the section on Judicial Practices, p.32, *infra*.

[34] For 1992, the relative distribution of dispositions for the entire province were: probation (25.0 percent); suspended sentence (22.6 percent); fines (18.2 percent); restitution (9.8 percent); absolute and conditional discharge (5.5 percent); jail (2.3 percent); and community service order (1.7 percent).

Table 3 Types of Charges Given Fines with Surcharges Imposed: Regional Figures

1992 OFFENCE TYPE	REGIONS								TOTAL
	Central East	Central South	Central West	East	North East	North West	South West	Metro Toronto	
Impaired Driving	721 60.1%	1,420 42%	313 39.6%	600 49.8%	73 57.9%	0	1,644 40%	216 35.4%	4,987 43.7%
Theft/Poss Over	59 4.9%	408 12.1%	124 15.7%	179 14.9%	8 6.4%	0	477 11.6%	84 13.8%	1,339 11.7%
Crimes Against the Admin of Justice[1]	85 7.1%	381 11.3%	78 9.9%	75 6.2%	5 3.97%	0	515 12.5%	64 10.5%	1,196 10.5%
Assault - Common	64 5.3%	307 9.1%	58 7.3%	109 9.1%	9 7.1%	0	384 9.3%	45 7.4%	976 8.6%
Morals Offences	23 2.2%	165 4.9%	16 2.1%	34 2.8%	1 0.8%	0	139 3.4%	80 13.1%	478 4.2%
Other Property[2]	45 3.8%	124 3.7%	47 5.95%	36 2.99%	6 4.8%	0	192 4.7%	24 3.9%	474 4.2%
Wilful Damage	19 1.6%	102 3.0%	29 3.7%	38 3.2%	8 6.4%	0	160 3.9%	23 3.8%	379 3.3%
TOTAL % of surcharges	**85%**	**86.1%**	**84.3%**	**88.99%**	**87.3%**	**NA**	**85.4%**	**87.9%**	**86.2%**

[1] This category includes: Breach of Release, Obstruction of Law, Interfere Police, Breach of Probation and Peace Bond.

[2] Includes: Other Theft/Possession, "Other" Property Offences and "Other" Fraud.

Table 4 Types of Charges Given Non-fine Dispositions with Surcharges Imposed

1992 OFFENCE TYPE	REGIONS								TOTAL
	Central East	Central South	Central West	East	North East	North West	South West	Metro Toronto	
Theft/Poss Over	45 22.2%	123 37.2%	11 21.2%	84 22.2%	0	0	196 16.7%	15 34.1%	474 21.7%
Crimes Against the Admin of Justice[1]	15 7.4%	21 6.3%	4 7.7%	50 13.2%	0	0	208 17.7%	0	298 13.6%
Assault - Common	40 19.7%	50 15.1%	9 17.3%	84 22.2%	0	0	103 8.8%	9 20.5%	295 13.5%
Impaired Driving	34 16.8%	43 12.99%	10 19.2%	41 10.9%	2 100%	0	164 13.96%	0	294 13.5%
Other Property[2]	17 8.4%	22 6.7%	5 9.6%	24 6.4%	0	0	200 17.0%	1 2.3%	269 12.3%
Wilful Damage	11 5.4%	14 4.2%	4 7.7%	24 6.4%	0	0	52 4.4%	3 6.8%	108 4.9%
Other Driving	4 1.97%	9 2.7%	3 5.8%	14 3.7%	0	0	73 6.2%	0	103 4.7%
Other Criminal	13 6.4%	14 4.2%	5 9.6%	13 3.4%	0	0	35 2.98%	5 11.4%	85 3.9%
Morals Offences	4 1.97%	6 1.8%	1 1.9%	10 2.7%	0	0	23 1.96%	10 22.7%	54 2.5%
TOTAL % of Surcharges	**90.2%**	**91.2%**	**100%**	**91.1%**	**100%**	**NA**	**89.7%**	**97.8%**	**90.6%**

[1] This category includes: Breach of Release, Obstruction of Law, Interfere Police, Breach of Probation and Peace Bond

[2] Includes: Other Theft/Possession, "Other" Property Offences and "Other" Fraud

as there may always be an indirect victim, or that society is the victim of any crime.[35]

Table 4 shows a slightly different picture in terms of the types of offences receiving both non-fine dispositions and surcharges. For all of Ontario, about one out of every five surcharges imposed on non-fine dispositions is attached to theft/possession over $1,000. Nevertheless, nearly one third of all the surcharges imposed on non-fine dispositions are attached to what have been called the victimless offences (i.e., offences against the administration of justice, impaired driving and morals offences).[36]

Table 5 presents the distribution of surcharges attached to non-fine dispositions in terms of the types of dispositions. Given judges' attitudes towards the inappropriateness of the surcharge for custody sentences, it is not surprising to find that a very small proportion (0.1 percent) of the surcharges are imposed on custody sentences. It is also not surprising that very few surcharges are attached to probation orders in so far as probation is often imposed with other types of dispositions such as jail (in which case the judge would be unlikely to impose a surcharge) or a fine (in which case the surcharge would be attached to the fine).[37] On the other hand, the figures indicate that the largest proportion of surcharges (almost 45 percent) are imposed on suspended sentences (which normally entail conditions of probation of up to three years in lieu of other potential dispositions). It is also interesting to note that about nine or ten percent of the surcharges are being imposed on restitution orders.[38]

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[35] See the section on respondents' comments regarding the legislation, p. 29.

[36] The section on Judicial Practices (p. 34) further discusses these findings.

[37] This assumes that judges are more likely to impose the surcharge on the basis of the count than on the basis of the disposition — which the self-report responses tended to confirm (see p. 32).

[38] The foregoing findings raise the issue of whether judges are imposing the surcharge on the basis of the case, the count or the disposition. According to the responses received in the judicial survey, about one-half of the responding judges are basing the imposition of the surcharge on the count. See the section on Judicial Practices, p. 32.

Table 5 **Distribution of Surcharges on Non-fine Dispositions by Type of Disposition: Regional Figures**

1992 DISPOSITION TYPE	REGIONS								TOTAL
	Central East	Central South	Central West	East	North East	North West	South West	Metro Toronto	
Total # of Surcharges	203	331	52	378	2	0	1175	44	2,185
% of Surcharges on Custody Sentences	0	0	0	0	0	NA	0.09%	5.6%	0.10%
% of Surcharges on Probation Orders	6.6%	14.2%	4.4%	19.8%	0	NA	30.4%	23.2%	0.2%
% of Surcharges on Suspended Sentences	44.9%	46.4%	76.1%	35.1%	0	NA	46.4%	50%	44.9%
% of Surcharges on Restitution Orders	9.2%	10.5%	4.4%	10.5%	100%	NA	8.5%	0	9.1%
% of Surcharges with Extension Denied	4.6%	3%	4.4%	1.98%	0	NA	4.2%	11.1%	3.7%
% of Surcharges with Extension Granted	34.7%	25.5%	10.9%	32.6%	0	NA	10.1%	33.3%	18.7%

3.1.1 Attitudes Towards the Surcharge

3.1.1.1 Judicial Attitudes Towards the Surcharge

The foregoing findings are paralleled by reports from judges who responded to our survey. Of the 31 judicial respondents, three out of four said that they had imposed the surcharge in the past three years, although some noted that they had imposed it only during the first few months after it came into force. The remaining 25 percent of the judicial respondents noted that they did not impose the surcharge because they were opposed to it. Eighteen of the responding judges (58 percent) had imposed the surcharge more than 15 times.

Of those judges who had imposed the surcharge, only one indicated that he imposed it 100 percent of the time — but only on fines. A little under half of those imposing the surcharge indicated that they imposed it less than ten percent of the time. As many as three out of every five judges claimed they had waived the

surcharge for reasons other than undue hardship — either because of their general objections to the surcharge or because they felt it was unsuitable for the cases in question (i.e., most commonly cases for which they were giving custody). More than 70 percent stated that they never gave reasons for waiving the surcharge.[39]

These findings are not surprising if judges' attitudes towards the surcharge are examined. In this study, more than 60 percent of the judges stated that they had philosophical concerns about the idea of a surcharge. The most common objections included (in order of frequency) the perception that the surcharge is a "tax grab"; that while the idea of supporting victims is favoured, the surcharge is an inappropriate method of generating revenue for victim services and programs; that there were already other methods in place to compensate victims; that it was not a court function to raise revenue this way; that it was contradictory to the judicial process — an intrusion on judicial discretion; that a better way of raising revenue for victims would have been to raise fines marginally and automatically deduct a percentage of fine revenue once it had been collected; and that the revenue was not being directed towards victim services but was deposited in the province's Consolidated Revenue Fund.

This latter perspective is especially interesting in view of the fact that three quarters of the responding judges claimed that they *would be more likely* to impose the surcharge if the government were to distribute the surcharge revenue to victim programs and services. This claim was underscored by judges' responses to the question concerning whether they would like to receive further information about the surcharge: nearly one-half of the responding judges noted that they would like more information about the services that are being funded by the surcharge revenue.[40]

Less common objections to the surcharge included the viewpoints that some crimes are "victimless"; that it was difficult to enforce; that many offenders cannot afford to pay this extra penalty; that it takes up too much court time, particularly in relation to the undue hardship provision, which potentially could require a hearing; and that it was merely a political manoeuvre by the federal government to avoid its commitment to assist victims (a reference to the termination of the federal government's participation in cost-sharing of criminal injuries compensation and victim assistance).

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[39] See p. 34 for a discussion of the use of the undue hardship provision.

[40] Other requests for information included information about the provisions themselves, especially enforcement provisions and other case law on the surcharge; information about other court practices regarding the surcharge; and schedules for amounts of surcharges to impose on levels of fines.

On a more positive note, judges who supported the surcharge observed, among other things, that it made sense to deposit the funds into general revenue as this saved accounting costs and could still be used to assist the government's large commitment to crime victims ($98 million budgeted in 1991-92);[41] that by enacting the surcharge legislation the federal government was giving a public profile to victims, which in turn has stimulated further provincial initiatives for victims (notably, a number of provincial and territorial victim assistance acts);[42] and that they were generally in favour of having offenders make reparation for their crimes.

In addition to enquiring about judges' general attitudes towards the surcharge, the survey also asked about particular aspects of the surcharge legislation. In response to a question about the mandatory nature of the legislation, a little over half of the 20 judges responding to the question stated that they were not concerned with its mandatory nature, while a little less than one-half claimed that they were. Comments in favour of the mandatory nature of the legislation included the views that making it mandatory was desirable because otherwise it was likely that judges would either forget about it or ignore it; that it was probably more equitable by being mandatory; and that the undue hardship provision provided sufficient discretion. In contrast, those who objected to the legislation being mandatory claimed that making anything mandatory was undesirable because it sacrificed flexibility, and that when it is mandatory it ceases to be a judgment and is instead administrative.[43]

It is worth noting that more than one judge expressed concern that the surcharge may be an illegal penalty. The concern here arises from the judicial interpretation of (old) section 737(1)(b) in *R.* v. *Blacquiere* (1975), where the decision was that there is a limitation on a power to impose a sentence consisting of, for example, a term of imprisonment, a fine and a probation order. However, according to a memorandum sent to crown attorneys from the Criminal Law Policy Section of the Ontario Ministry of the Attorney General in anticipation of the surcharge legislation coming into force, this section does not apply to victim fine surcharges. The memo stated that a judge can order an offender to serve a term of

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[41] See footnote 16.

[42] At the present time Ontario does not have a victims' assistance act or a victims' bill of rights.

[43] This perspective was also expressed by the crown attorneys (see below). The fact that there is an undue hardship provision did not impress those respondents who opposed the mandatory nature of the legislation because they believed it was, as one judge put it, "smoke in mirrors" in the sense that the surcharge amounts were by and large too small to be concerned about undue hardship, and that if one was not going to impose a fine then, by the same token, one would not impose a surcharge. This view, however, is based on the commonly found misperception that the surcharge applies only to fines.

imprisonment, be subject to a probation order upon release, and pay a surcharge (in this case, for example, of up to $35).

With respect to the potential objection that some crimes are "victimless", one-half of the judges had no complaints, arguing either that there were indirect victims or that society was the victim. Those who were concerned about this issue stated that if the surcharge provisions had been made discretionary, then the "victimless" crimes would not be a problem. Similarly, of the few judges claiming that young offenders should be required to pay a surcharge, it was claimed that this would be acceptable if the provisions were discretionary. The majority of responding judges, however, favoured the exclusion of young offenders, arguing that they normally have very little money and that it would be inconsistent with the *Young Offenders Act*.[44]

Lastly, the majority of judges who responded to a question about the advisability of the regulation for the purposes of stipulating the maximum amount of the surcharge, claimed that they favoured the regulation because it would be easier to amend if changes were required and because it minimizes diversity in the application of the surcharge amounts.

3.1.1.2 Crown Attitudes Towards the Surcharge

Because crown attorneys have a potentially significant role to play in relation to the imposition of the surcharge, the survey also investigated their attitudes and observations about the legislation.[45] Three out of every five crown attorneys responding to the questionnaire had concerns about the surcharge legislation. Comments about their concerns included the view that the surcharge is merely a tax; that it is unwieldy and causes court delays; that it is an inappropriate use of the courts; that some crimes are victimless; and, lastly, that the revenue is not being used for victim assistance programs. Those in favour of the surcharge commented that they supported reparation from offenders, and that victims required more services.

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[44] In contrast, some representatives of organizations that serve victims of crime felt that young offenders should be taught responsibility for their actions and that either restitution or the surcharge would therefore be appropriate.

[45] For example, more than one judge claimed that it was up to the crown attorney to make representations regarding the surcharge and they had never heard from crown attorneys in this regard.

With respect to the mandatory nature of the legislation, the majority of crown respondents had no objections, although several observed that judges were using their discretion in any case. As well, the majority of crown respondents had no objections to the fact that some crimes might be called victimless and to the fact that young offenders are excluded from the surcharge provisions. Lastly, nearly all crown respondents supported the fact that the surcharge maximum amounts are stipulated in a regulation, although some observed that criminal courts do not like regulations or that the regulation should be included in *Martin's Criminal Code.*

A fairly frequent comment made by crown attorneys was that a better way of accomplishing the objective of raising revenue for victims of crime would have been to administratively deduct a percentage of money from fines that had been collected — a view also shared by many judicial respondents.

In summary, crown attorneys' views of the surcharge legislation were very similar to judicial views. In contrast, defence counsel, as might be expected, had quite different opinions.

3.1.1.3 Defence Counsel Attitudes Towards the Surcharge

On the whole, the few defence lawyers responding to the survey were opposed to the surcharge legislation. Only one respondent was in favour of the surcharge. Comments opposing the surcharge included the following: it is unconstitutional; it brings a civil dimension into the criminal law; it is unnecessary, there are already too many taxes; offenders as a group can least afford it; and the revenue is not being used to assist victims.

With respect to the fact that the legislation is mandatory, the majority of defence counsel respondents claimed that it should be discretionary. Although three out of the 13 respondents noted that there are no "victimless" crimes, the remaining respondents commented that this was one aspect that underlined the unfairness of the mandatory nature of the legislation, particularly with respect to drug offences and offences against the administration of justice. Others stated that the *Criminal Code* is there to protect society, not compensate society, and that other mechanisms were available for victim compensation. One respondent pointed out that often even the offender is or was a victim of previous wrongdoing.

All of the respondents thought that the fact that the legislation excludes young offenders is appropriate, although one pointed out that many offenders are neither more mature nor in a better financial position than young offenders. About one-half claimed that the regulation was confusing and should not have been included in the legislation.

3.1.2 Judicial Practices

3.1.2.1 Basis of Imposition

It will be recalled that there was some question as to whether judges are imposing the surcharge on the basis of the case in its entirety, on the basis of each count (meaning there could be more than one surcharge per case), or on the basis of each disposition (meaning there could be more than one surcharge per count). About one-half of the judges responding to the question about this matter indicated that they imposed the surcharge on the basis of the count. Three stated that they treated the case as a whole, and two stated that they imposed the surcharge on the basis of each disposition. The remaining judges either did not answer the question or indicated that it was not applicable because they were not imposing the surcharge.

According to observations made by the crown attorneys responding to the survey, the majority of surcharges were imposed on the case; however, about a third claimed that judges in their courts imposed the surcharge on the count, and a handful had seen the surcharge imposed on the basis of the disposition. These observations may be qualified by the fact that most judges impose the surcharge on fines rather than non-fine dispositions, and so it might well appear that they were imposing the surcharge on the basis of the case. Responses received from defence counsel indicated that judges were imposing the surcharge with equal frequency between the case, the count and the disposition.

3.1.2.2 Reports Regarding the Frequency of Imposition

As noted, the figures received from the Ministry of the Attorney General's database indicated that judges are far more likely to impose a surcharge on fines than non-fine dispositions. Judicial survey responses reflected this finding: more than 85 percent of the judges who were actually imposing the surcharge claimed they are more likely to impose it on a fine than on a non-fine disposition. Only one judge claimed that this issue was irrelevant to his practices. Among the comments received about why this is the case, judges stated that they were reluctant to impose the surcharge for custody sentences because in their minds this qualified as undue hardship; or that they didn't realize the surcharge applied to non-fine dispositions; or that they naturally associated the victim *fine* surcharge with fines and tended to forget about non-fine applications; or that they did not think it was appropriate to impose it on non-fine dispositions because frequently these sentences (i.e., custodial sentences) were given to serious crimes that would be trivialized by the small

surcharge amount of $35; or that if they had decided not to impose a fine (i.e., a monetary penalty) then, by the same token, they would not impose a surcharge.[46]

With respect to the types of charges on which judges impose a surcharge, it appeared from the judicial responses that this issue is not particularly germane to their practices regarding the surcharge. Rather, as mentioned above, the issue that is more likely to determine the imposition of a surcharge is whether the judge is imposing a fine. Since first-time impaired driving offenders are normally given fines, this explains the large proportion of surcharges imposed on this type of offence.

The vast majority of crown attorney respondents had seen the surcharge imposed more than 15 times, although it was also claimed that judges tended to impose the surcharge less than 25 percent of the time. Only three respondents claimed to have seen judges impose the surcharge more than 75 percent of the time. Nearly one third of the crown respondents observed that judges in their courts waived the surcharge over 75 percent of the time for reasons other than undue hardship and, as was found for judicial respondents, written reasons were very rarely given.

Some crown attorneys claimed that they had initiated representations regarding the surcharge but did so less than ten percent of the time. When they do make representations, they are more likely to do so when fine dispositions are involved. The reasons for this included the view that the $35 regulated maximum is inappropriate, as well as the presence of some confusion about the fact that the surcharge also applied to non-fine dispositions. Nevertheless, the majority of respondents did not often make representations regarding the surcharge, claiming that although they used to do so, they ceased making submissions once they realized the judge was opposed to the surcharge — a finding that underscores the significance of the role of the judiciary in this matter. Crown attorneys were rarely asked by the judge to make a submission and they had rarely observed another court member (e.g., court clerk or probation officer) mention the surcharge.

With respect to the types of offences crown attorneys are more likely to make representations on, the most frequently mentioned charge was impaired driving. Other fairly frequent types of charges included theft, break and enter, and mischief. It is interesting to note that crown attorneys rarely made submissions with respect to drug offences (*NCA* and *FDA* offences). Their observations about judges' practices in this regard were similar: in their experience, judges were most likely to impose

[46] When respondents' views are presented, they are reported in order of frequency, beginning with the most frequently found reason.

the surcharge on impaired driving convictions, followed by theft, break and enter, and mischief (again, rarely on drug offences). It was also observed that the nature of the charge was less important than whether a fine was involved.

3.1.2.3 Undue Hardship

Although it was not possible to obtain information about the use of the undue hardship provision from the Ministry's database, the judicial and crown attorney surveys provided some information about this matter. According to the judges responding to the undue hardship questions, their use of the hardship provision varied considerably. About one out of every five judges estimated that he or she used the undue hardship provision in over one-half to three quarters of the time. The rest of the judicial respondents indicated that their use of the provision ranged anywhere from less than ten percent of the time to more than 75 percent.[47] About a third of the judges agreed that their use of the undue hardship provision had changed owing to recent economic conditions.

Despite the fact that the legislation requires that judges give reasons for using the undue hardship provision, only about one-half of the responding judges indicated that they did. In every instance, these explanations are very brief and given orally — with the judges explaining that their courts are far too busy to permit lengthy or written reasons.

Judges' attitudes towards the undue hardship provision were, on the whole, favourable: most judges thought the provision to be both sufficiently clear and appropriate. Comments regarding the provision included the views that it is appropriate but it should not be necessary to provide written reasons because there is not enough time for this; that it provides judges with some degree of discretion; and that it is necessary because it forestalls the possibility of constitutional challenges. More than one judge raised questions about whether the onus is on the accused and whether, to adequately fulfill the phrase "establishes to the satisfaction of the court", there ought to be a separate means inquiry.[48]

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[47] Only one judge indicated that he/she sometimes imposed a nominal surcharge in cases where there is evidence of some undue hardship but subsection 727.9(3) is not satisfied. According to defence counsel respondents, judicial use of undue hardship was never more than 25 percent of the time.

[48] See the discussion of this issue presented in Chapter 1.0, p. 8. An internal report by the Ontario Ministry of the Attorney General (1990) discusses the fine default problem and possible solutions. It points out that "[T]he cost of [an] initial means inquiry may be money well spent if it precludes the utilization of expensive enforcement options at a future date." Defence counsel respondents indicated that they too were unclear about the burden of proof as well as the precise meaning of "undue".

Among the criteria used to establish undue hardship, judges indicated that the most common circumstances involved those lacking financial means, social assistance recipients and unemployment insurance recipients.[49] Opinion was more divided with respect to whether students or injured workers would qualify for undue hardship; most judges stated that this would depend on the individual circumstances. There was greater variety of opinion as to whether different types of sentences might qualify as undue hardship. For example, while most judges indicated that long prison terms would probably qualify as undue hardship, relatively few thought a short sentence of imprisonment or a large fine would qualify as undue hardship.[50] A little less than a third of the respondents thought that convictions on numerous counts would qualify.

For the most part, judges are informed of the accused's financial situation when they are considering a fine disposition. In addition, judges indicated that they occasionally obtain this information from pre-sentence reports, defence counsel submissions, evidence at trial, or the accused.

The undue hardship provision raised a number of issues for crown attorneys. While the majority of crown respondents thought the provision was clear and appropriate, some commented that they did not think it was necessary because the surcharge amounts are so low, or that they opposed it because it was a "waste of the court's time". As indicated in Chapter 1.0, some crown respondents had questions about the burden of proof with respect to the undue hardship provision and others queried what "undue" meant.

According to crown attorneys' observations, the undue hardship provision is being used less than ten percent of the time, although a few respondents claimed that in their courts it was being used over one-half of the time. Only a handful of crown respondents thought that the judges in their courts sometimes imposed a nominal surcharge when undue hardship was suspected but not proven. Judges were generally seen to provide reasons for using the undue hardship provision, but these reasons were mostly given orally.

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[49] One judge commented that since a large proportion of the offenders he sees are on either UI support or welfare, the surcharge amounts to nothing more than shifting money from one government agency to another — simply a recirculation of government funds.

[50] This finding is somewhat surprising in light of the fact that very few surcharges in 1992 were imposed on custodial sentences. See Table 5, p. 27.

3.1.2.4 Judicial and Crown Knowledge of the Surcharge

One final comment regarding respondents' answers to the survey: frequently, crown and judicial respondents expressed a desire for more information about the federal surcharge. At times, some respondents did not know about certain aspects of the legislation; for example, that it applied to non-fine dispositions as well as fines, or that it was intended to raise revenue to fund victim services and programs. When asked if they would like further information about the surcharge, the vast majority of respondents said "Yes", and the most frequently requested information concerned how the funds are being used. Other requests for information included legal interpretation of some of the issues raised in Chapter 1.0 (e.g., burden of proof for undue hardship, use of time in default), and how other courts and the Ministry are administering the surcharge.

3.2 Amounts Imposed

Having looked at the use of the undue hardship provision, it is interesting to consider the amounts of surcharge actually being imposed. According to the figures presented in Table 6, the average amount of surcharge imposed on fine dispositions is a little over $50. Similarly, the modal value is also $50 (the term "modal" refers to the most common amount). In this case, the most common amount of surcharge imposed on fines in 1992 was $50, which was the case for approximately one fifth (21 percent) of the surcharges imposed on fines. On the other hand, there is some regional variation found, with the North East Region imposing much higher modal amounts ($75 in about one quarter of the cases), the South West Region imposing a very small amount ($10 in almost 16 percent of the cases), the Central South Region imposing only $30 in a similar percentage of cases, and the East Region imposing $35 in about a third of the cases.

These variations in amounts cannot simply be explained by the average amounts of fines in these regions because, as Table 6 indicates, while there is some variation in the average amounts of fines given, these variations are not related to the variation in surcharge amounts. A more likely explanation is that the judges in these regions are basing the surcharge amounts on different percentages of the fines imposed.

Table 6 Distribution of Percentages Used for Imposition of Surcharge on Fines: Regional Figures

1992	REGIONS								TOTAL
	Central East	Central South	Central West	East	North East	North West	South West	Metro Toronto	
Total # of surcharges on fines	1,119	3,378	790	1,205	126	0	4,111	610	11,419
# and % of surcharges @ 15%	303 (25.3%)	1,400 (41.4%)	654 (82.8%)	640 (53.1%)	59 (46.8%)	NA	1,022 (24.9%)	543 (89%)	4,621 (40.5%)
# and % of surcharges @ 10 - 14%[1]	512 (42.7%)	1,856 (54.9%)	126 (15.9%)	373 (31%)	67 (53.2%)	NA	2,085 (50.7%)	62 (10.2%)	5,081 (44.5%)
# and % of surcharges @ 5 - 9%	312 (26%)	115 (3.4%)	9 (1.1%)	103 (8.5%)	0	NA	486 (11.8%)	5 (0.8%)	1,030 (9%)
# and % of surcharges @ below 5%	72 (6%)	7 (0.2%)	1 (0.1%)	89 (7.4%)	0	NA	518 (12.6%)	0	687 (6%)
Average value of fines	$456.43	$382.42	$391.33	$355.52	$383.72	$222.95	$324.62	$391.53	$384.74
Average value of fines that have been given surcharge	$509.84	$415.80	$344.13	$417.18	$535.51	NA	$416.41	$392.21	$421.14
Modal value of surcharge on fines	$50	$30	$75	$35	$75	NA	$10	$45	$50
Modal frequency	31.4%	15.9%	18.1%	30.7%	24.6%		15.9%	21%	21%
Average value of surcharge of fines	$44.93	$45.92	$44.64	$51.79	$58.55	NA	$52.90	$51.53	$51.91

[1] It is probably safe to assume that the actual percentage used in this category was 10% given the self-report responses of judges.

As Table 6 shows, about equal numbers of surcharges are based on the 15 percent and the ten percent rates (40.5 and 44.5 percent respectively).[51] Although the table indicates that the latter percentage of 44.5 refers to a surcharge range often to 14 percent, the findings from the judges' survey suggest that it is likely that the actual percentage being used here is ten percent of the fine — mainly because the math is easier to calculate at ten percent.[52] Relatively few surcharges (15 percent in total) are based on a percentage of less than ten percent of the fine.

Table 6 also reveals a noticeable amount of regional variation with respect to surcharge amounts imposed on fines. While the Metro Toronto and Central West provincial courts are far more likely to base the surcharge on 15 percent of the fine (more than 80 percent of the surcharges), the courts in the Central East and South West regions use this basis in only about one quarter of the surcharges imposed.[53]

Table 7 presents surcharge values for non-fine dispositions. For all of Ontario, the average amount of surcharge imposed on non-fine dispositions is approximately $36, although once again there is evidence of regional variation. For example, in the Toronto courts, the average value of the surcharge on non-fine dispositions is over $80, but in the South West courts the average falls to about $26. On the other hand, the modal value of the surcharge being imposed on non-fine dispositions in the Toronto Courts is only $35 — that is, the regulated maximum, with over one-half (55 percent) of the surcharges having this value. The likely explanation for surcharge values greater than the allowed maximum of $35 is that some judges are occasionally imposing the surcharge on the basis of the disposition, with the result that there may be more than one surcharge per count.[54]

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[51] Although the aforementioned ministry memo to judges advising them of the new legislation contained a schedule indicating the amounts of surcharges to be imposed on different fine values (based on 15 percent of the fine), it appears that very few of the judges responding to the survey made use of this schedule.

[52] See p. 45.

[53] See Appendix F for a list of the court locations in these regions.

[54] There are roughly 1.8 dispositions per count.

Table 7 Average and Modal Average for Surcharge on Non-fine Dispositions: Regional Figures

1992	REGIONS								TOTAL
	Central East	Central South	Central West	East	North East	North West	South West	Metro Toronto	
Modal value of surcharges on NON-FINE dispositions	$35	$35	$35	$35	$35	NA	$25	$35	$35
Modal frequency	88.7%	63.1%	90.4%	91.3%	100%		53.2%	55%	51.2%
Average value of surcharge on NON-FINE dispositions	$36[1]	$31.63	$35	$35.51[2]	$35	NA	$25.62	$81.48[3]	$35.73

[1] Average surcharges over $35 are probably explained by the possibility that some judges are occasionally imposing the surcharge on the basis of the disposition with the result that there may be more than one surcharge per count, adding up to more than $35 per count.

[2] Same as above.

[3] Same as above.

Table 8 indicates that the frequency with which surcharges greater than the regulated maximum of $35 occurs is quite rare — in only 2.8 percent of the surcharges. A little over one-half of the non-fine surcharges imposed are $35. The next largest proportion (32.5 percent) of surcharge amounts range from $25 to $29, although the responses from judges strongly suggest that the value actually being used in this range is $25. Relatively few surcharges on non-fine dispositions have a value of less than $25. Once again, there is an indication of regional variation. For example, while the provincial courts in the Central East, Central West and East regions are highly likely to impose the $35 maximum amount, those in Metro Toronto and the Central South Region are less likely to do so.

To sum up, it appears that the surcharge amounts being imposed for fines and non-fine dispositions are not very high — commonly nothing greater than $45. It is perhaps worth keeping these values in mind in conjunction with discussions about the use of the undue hardship provision and enforcement options.

Given the foregoing patterns in the amounts of surcharges imposed, calculations regarding the amount of revenue actually and potentially generated by the surcharge are quite revealing. In Table 9, calculations are presented with respect to revenue from the surcharges imposed on *fines*. The first set of calculations indicates that at the most (leaving aside undue hardship and default), the maximum amount that could have been generated from fines alone is upwards of $3.3 million. In contrast, in 1992 a total of only $544,973 in surcharges was imposed: 16.5 percent of the potential maximum.

The second set of calculations, rows (f) to (j), were done to provide a point of comparison in terms of revealing how close actual surcharge imposition rates come to generating the maximum potential revenue based on these rates. The calculations show that if one considers only those fines that did, in fact, have a surcharge imposed (again, leaving aside undue hardship and default), the maximum amount of surcharge revenue that could have been generated (i.e., if judges had used the maximum of 15 percent) would have been $721,350. From this perspective, the actual amount imposed for the entire province is more satisfactory: more than 75 percent of the potential maximum.

Table 8 Distribution of Surcharge Amounts Imposed on Non-fine Dispositions: Regional Figures

1992	REGIONS								TOTAL
	Central East	Central South	Central West	East	North East	North West	South West	Metro Toronto	
Total # of surcharges on Non-Fine dispositions	203	331	52	378	2	0	1,175	44	2,185
# of surcharges @ over $35[1]	8 (3.9%)	14 (4.2%)	2 (3.9%)	10 (2.7%)	0	NA	7 (0.6%)	21 (47.7%)	62 (2.8%)
# of surcharges @ $35	180 (88.7%)	209 (63.1%)	47 (90.4%)	345 (91.3%)	2 (100%)	NA	318 (0.6%)	22 (47.7%)	1,123 (51.4%)
# of surcharges @ $30 - $34	5 (2.5%)	11 (3.3%)	0	3 (0.8%)	0	NA	5 (0.4%)	1 (2.3%)	25 (1.1%)
# of surcharges @ $25 - $29[2]	4 (1.97%)	74 (22.4%)	3 (5.8%)	6 (1.6%)	0	NA	622 (52.9%)	0	709 (32.5%)
# of surcharges @ $20 - $24	0	0	0	0	0	NA	0	0	0
# of surcharges @ $15 - $19	0	9 (2.7%)	0	1 (0.3%)	0	NA	3 (0.3%)	0	13 (0.6%)
# of surcharges @ $10 - $14	6 (2.96%)	5 (1.5%)	0	5 (1.3%)	0	NA	4 (0.3%)	0	20 (0.9%)
# of surcharges @ less than $10	0	9 (2.7%)	0	8 (2.1%)	0	NA	216[3] (18.4%)	0	233 (10.7%)

[1] It is likely that these figures represent instances where more than one surcharge was imposed on a count with one or more non-fine dispositions.

[2] It is probably safe to assume that the actual amount imposed in this category was $25 given the self-report responses of judges.

[3] It is possible that this figure represents a number of nominal surcharges being imposed when there is evidence of some undue hardship but subsection 727.9(3) is not satisfied.

Table 9 Amount of Surcharge Imposed on Fines Compared to Potential Amounts

1992	REGIONS								TOTAL
	Central East	Central South	Central West	East	North East	North West	South West	Metro Toronto	
a) Total # of FINE dispositions	8,649	9,115	7,195	6,175	4,459	2,218	10,317	9,207	57,335
b) Total value of FINES	$3,947,642	$3,485,742	$2,815,609	$2,195,360	$1,711,012	$494,495	$3,349,118	$3,604,785	$22,058,763
c) Potential maximum amount of surcharge (b) X 15%)	$ 592,146	$ 522,861	$ 422,341	$ 329,304	$ 256,651	$ 74,174	$ 502,368	$ 540,717	$ 3,308,814
d) Actual amount of surcharge imposed on FINES	$ 59,108	$ 168,214	$ 40,602	$ 62,634	$ 8,972	0	$ 170,151	$ 35,292	$ 544,973
e) Percentage of actual re maximum potential imposed on FINES	9.98%	32.2%	9.6%	19%	3.5%	0	33.9%	6.5%	16.5%
f) Total # of FINE dispositions with surcharge	1,199	3,378	790	1,205	126	0	4,111	610	11,419
g) Total value of FINES with surcharge	$ 611,295	$1,404,575	$ 271,860	$ 502,701	$ 67,474	0	$1,711,848	$ 239,250	$ 4,809,003
h) Potential maximum amount of surcharge (g) X 15%)	$ 91,694	$ 210,686	$ 40,779	$ 75,405	$ 10,121	0	$ 256,777	$ 35,888	$ 721,350
i) Actual amount of surcharge imposed on FINES (same as d)	$ 59,108	$ 168,214	$ 40,602	$ 62,634	$ 8,972	$ 74,174	$ 170,151	$ 35,292	$ 544,973
j) % of actual surcharge re potential amount based on actual amount of FINES with surcharge	64.5%	79.8%	99.6%	83.1%	88.7%	0	66.3%	98.3%	75.6%

Table 10 applies similar calculations in relation to surcharges imposed on *non-fine* dispositions. Again, leaving aside undue hardship and default considerations, the first set of calculations reveals that the maximum potential amount of surcharge that could have been generated from non-fine dispositions in 1992 is almost $8 million. In reality, a total of only $64,992 in surcharges was imposed, representing 0.8 percent of the maximum potential for all of the province. However, in the second set of calculations, if one considers only those non-fine dispositions on which a surcharge was actually imposed, the percentage improves to about 85 percent of the potential maximum (i.e., assuming judges impose the regulated maximum of $35).

Overall, the picture could only be called less than satisfactory. Of a total maximum potential of $11 million (apart from undue hardship and default), less than $1 million was actually imposed. If one factored in undue hardship and default, the picture would, of course, change. As indicated above, the use of undue hardship varies considerably according to the judicial responses received from the survey; however, it might be assumed, for the purpose of argument, that an average rate of about 33 percent is not too far from reality, particularly with respect to non-fine surcharges.

As will be indicated below, the default rate appears to be about 45 percent. What these new calculations would mean is this: if one third of the fines were eliminated because of undue hardship, the total number of 1992 fines available for the surcharge would have been 38,145. If 45 percent of these are eliminated because of default in payment, the total number of fines drops to 21,128. As Table 6 indicated, the average value of fines is $385. If judges were imposing the maximum of 15 percent on these fines, the total amount of revenue generated would have been about $1.2 million for surcharges imposed on fines; in fact, judges imposed a little less than one-half this amount.

When allowance is made for undue hardship and default in relation to surcharges on non-fine dispositions, the calculations would be as follows. If one third of the non-fine dispositions were eliminated because of undue hardship, the total number of 1992 non-fine dispositions available for the surcharge would have been 151,991. If 45 percent of these are eliminated because of default in payment, the total number of non-fine dispositions drops to 83,595. If judges were imposing the maximum of $35 per disposition, the total amount of revenue generated would have been about $2.9 million. In fact, judges imposed a little over two percent of this amount.

Table 10 Amount of Surcharge Imposed on Non-fine Dispositions Compared with Potential Amounts

1992	REGIONS								TOTAL
	Central East	Central South	Central West	East	North East	North West	South West	Metro Toronto	
a) Total # of NON-FINE dispositions	39,190	30,552	28,123	26,198	14,754	7,414	25,269	54,570	226,853
b) Potential maximum amount of surcharge (a) X $35)	$1,371,650	$1,069,320	$984,305	$916,930	$516,390	$259,490	$884,415	$159,950	$7,939,855
c) Actual amount of surcharge imposed on NON-FINES	$ 7,120	$ 10,677	$ 1,820	$ 13,782	$ 70	0	$ 28,123	$ 3,400	$ 64,992
d) Percentage of actual re maximum potential imposed on NON-FINE dispositions	0.5%	1%	0.2%	1.5%	0.01%	0	3.2%	2.1%	0.8%
e) Total # of NON-FINE dispositions with surcharge	203	331	52	378	2	0	1,175	44	2,185
f) Potential maximum amount of surcharge (e) X $35)	$ 7,105	$ 11,585	$ 1,820	$ 13,230	$ 70	0	$ 41,125	$ 1,540	$ 76,475
g) Actual amount of surcharge imposed on NON-FINES (same as c)	$ 7,120	$ 10,677	$ 1,820	$ 13,782	$ 70	0	$ 28,123	$ 3,400	$ 64,992
h) % of actual surcharge repotential amount based on actual amount of NON-FINES with surcharge	100.2%[1]	92.2%	100%	104.2%	100%	0	68.4%	220.8%	85%

[1] Explanations for the percentages over 100 include the possibility that there were one or more instances in which more than one surcharge was imposed per count (i.e., as discussed previously, some judges are imposing the surcharge on the basis of dispositions rather than convictions), or, less likely, one or more surcharges greater than $35 were imposed.

In short, taking into account undue hardship and default, the province might have generated a maximum of about $4 million in 1992 — assuming judges were willing to impose the regulated maximums. In actuality, they imposed only about 15 percent of this potential.

3.2.1 Respondents' Views of the Amounts

The responses received from the judicial survey substantiated the foregoing findings regarding amounts of surcharge imposed. Of the judges who have been imposing the surcharge, about one-half claimed they used the 15 percent maximum for surcharges imposed on fines. A little less than one-half claimed to use a basis of ten percent because it was easier to calculate. For surcharges imposed on non-fine dispositions, most judges did not give a response because the majority of them do not impose a surcharge on non-fine dispositions. All of the relatively few judges (four) in this survey who do impose a surcharge on non-fine dispositions claimed they used the $35 maximum.

Judges were asked if they ever lessened the amount of the fine in light of the fact that they were also imposing a surcharge. About half of the responding judges claimed that they did not do so, while about a third stated that they did. For those who did reduce the fine, about one-half estimated that they did so less than ten percent of the time; the remainder did so anywhere from more than 25 percent to almost 100 percent of the time. Judges were also asked if the obverse were true; that is, if they ever reduced the amount of the surcharge in light of the fact that they were imposing a fine. The majority of judges claimed they did not do so.

Judges' opinions were solicited regarding the regulated amounts. More than one-half of the responding judges stated that they thought the amounts were inappropriate — largely with respect to non-fine dispositions, particularly custody. As previously mentioned, opposition to the non-fine surcharge amount centred on the view that $35 tends to trivialize serious offences, and it is thought that there is little possibility of collecting these surcharges once the offender is incarcerated.

While most judges were not in favour of greater discretion specifically regarding the actual amounts imposed, about a quarter of the responding judges stated that they would have preferred not dealing with the surcharge at all. Instead, as mentioned above, they would prefer that the surcharge be automatically deducted from fines after they are collected. Others would prefer one flat fee for all dispositions, rather than having to calculate percentages for fines. A handful of judges indicated that they made use of the schedule provided by the Chief Judge's

Office for the fine surcharges, while about one-half indicated that they spent some time deliberating the amount.[55]

Crown attorneys expressed views similar to those of the judiciary. Opinion was divided about the appropriateness of the regulated amounts, with the majority of objections having to do with the $35 maximum that can be imposed on non-fine dispositions. About one-half of the crown respondents thought judges should have greater discretion in determining the amount of surcharge, especially with respect to non-fine dispositions. Crown attorneys appeared to be unaware that judges frequently reduce the amount of fine to accommodate a surcharge, although about one third of the respondents observed this to have happened.

Defence counsel were also evenly divided on the appropriateness of the regulated surcharge amounts; however, like crown attorneys, they thought judges should be given greater discretion. Defence respondents claimed never to have seen a judge reduce the amount of the fine in order to accommodate the surcharge. Representatives of organizations that serve victims of crime felt that the amounts involved were barely adequate, in view of the often large costs to victims.

3.3 Default and Enforcement

Table 11 provides information on the compliance rate for surcharges imposed in 1992. The compliance rate is based on the number of surcharges paid to date; it does not include those surcharges for which payment is not yet due. This explains why, in Table 12, the default rate is not simply the obverse of the compliance rate. Overall, the compliance rate is a little over 50 percent. This rate is slightly lower for surcharges imposed on fines, compared with surcharges imposed on non-fine dispositions.

Two methods were used to calculate the default rate: the surcharge was deemed to be in default either if the date on which payment was due had already passed, or, in lieu of any payment date, if 45 days had passed since the surcharge was ordered.

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[55] See footnote 51. Overall, however, judges claimed that the amount of court time spent on the imposition of the surcharge (including financial assessment, terms of payment, etc.) was negligible. One defence counsel observed, however, that while the amount of time per case was only a few minutes, overall the amount of time per day could be substantial — perhaps up to an hour of the court's time.

Table 12 shows that the overall default rate is 44.5 percent. With respect to default, surcharges imposed on fines do slightly better than those imposed on non-fine dispositions (44.1 and 46.5 percent respectively).

As Table 13 indicates, a fairly high proportion of surcharges were given time in default for failure to pay the surcharge — although not nearly as high a proportion as with fines.[56] For example, for all of Ontario, 85.4 percent of the fines were given time in default for nonpayment. In contrast, only 30.7 percent of the surcharges were similarly given time in default for nonpayment.

There appears to be a substantial amount of regional variation on this matter. While courts in the Central West Region are very likely to impose time in default for nonpayment of the surcharge (88.2 percent of the surcharges), those in the Central South and East regions are much less likely to do so. The courts in the remaining regions apply time in default in about one third of the surcharges, with the exception of Metro Toronto courts, where the rate is nearly one-half (48 percent). Although it is unlikely that time in default is given for surcharges imposed on non-fine dispositions, the second set of calculations in Table 13 provides these figures in order to give the reader a sense of the overall picture with respect to all surcharges.

A number of statistical tests were performed to see if there was any relationship between the amount of the surcharge imposed and subsequent default: there appears to be no correlation. Owing to the large number of cases in which there was no information on whether or not time in default had been imposed on the surcharge, it was impossible to determine if there was any relationship between compliance and the presence of a default order.

[56] "Time in default" is the alternative time the offenders would have to spend in custody if they fail to pay the penalty by a certain date.

Table 11 Surcharge Compliance Rates: Regional Figures

1992	REGIONS								TOTAL
	Central East	Central South	Central West	East	North East	North West	South West	Metro Toronto	
Total # of surcharges	1,402	3,709	842	1,583	128	0	5,286	654	13,604
Total # of surcharges paid	711	1,987	563	775	79	NA	2,481	299	6,895
Overall compliance rate	50.7%	53.6%	66.9%	48.96%	61.7%	NA	46.9%	45.7%	50.7%
FINES:									
# of surcharges on FINES	1,199	3,378	790	1,205	126	0	4,111	610	11,419
# of surcharges on FINES paid	597	1,761	517	586	77	NA	1,941	270	5,749
Compliance Rate for FINE Surcharges	49.8%	52.1%	65.4%	48.6%	61.1%	NA	47.2%	44.3%	50.3%
NON-FINES:									
# of surcharges on NON-FINES	203	331	52	378	2	0	1,175	44	2,185
# of surcharges on NON-FINES paid	114	226	46	189	2	NA	541	29	1,147
Compliance Rate for NON-FINE surcharges	56.2%	68.3%	88.5%	50%	100%	NA	46%	65.9%	52.5%

Table 12 Surcharge Default Rates: Regional Figures

1992	REGIONS								TOTAL
	Central East	Central South	Central West	East	North East	North West	South West	Metro Toronto	
Total # of Unpaid Surcharges	691	1,720	279	808	49	NA	2,802	355	6,704
Total # of Surcharges Not Yet Overdue	79	232	37	70	6	NA	220	11	655
Total # of Surcharges Now Overdue[1]	612	1,488	242	738	43	NA	2,582	344	6,049
Overall Default Rate	43.7%	40.1%	28.7%	46.6%	33.6%	NA	48.5%	52.6%	44.5%
FINES:									
# of Surcharges on FINES Now Overdue	523	1,386	237	554	43	NA	1,966	329	5,038
Default Rate for Surcharges on FINES	43.6%	41%	30%	45.96%	34.1%	NA	47.8%	53.9%	44.1%
NON-FINES:									
# of Surcharges on NON-FINES Now Overdue	89	104	5	184	0	NA	618	15	1,015
Default Rate for Surcharges on NON-FINE dispositions	43.8%	31.4%	9.6%	48.7%	0%	NA	52.6%	34.1%	46.5%

[1] Surcharges were defined as overdue if they had not been paid within the time stipulated by the judge, OR, in lieu of time to pay, if they had remained unpaid 45 days after the sentence date.

Table 13 Proportion of Fines and Surcharges Given "Time in Default" for Nonpayment

1992	REGIONS								TOTAL
	Central East	Central South	Central West	East	North East	North West	South West	Metro Toronto	
Total # of Fines	8,649	9,115	7,195	6,175	4,459	2,218	10,317	9,207	57,335
# of FINES Given Time in Default for Nonpayment	8,068 (93.3%)	8,552 (93.8%)	6,730 (93.5%)	4,129 (66.9%)	4,344 (97.4%)	2,169 (97.8%)	7,983 (77.4%)	6,972 (75.7%)	48,947 (85.4%)
Total # of Surcharges on Fines[1]	1,199	3,378	790	1,205	126	0	4,111	610	11,419
# of Surcharges Given Time in Default for Nonpayment	408 (34%)	652 (19.3%)	697 (88.2%)	65 (5.4%)	38 (30.2%)	NA	1,347 (32.8%)	293 (48%)	3,500 (30.7%)
Total # of Surcharges for both FINES & NON-FINES[2]	1,402	3,709	842	1,583	128	0	5,286	654	13,604
# of Surcharges Given Time in Default for Nonpayment	408 (29.1%)	652 (17.6%)	697 (82.8%)	65 (4.1%)	38 (29.7%)	NA	1,347 (25.5%)	293 (44.8%)	3,500 (25.7%)

[1] The figures in this row are based on the number of surcharges that have been imposed on fines because they are more likely than surcharges on non-fine dispositions to have been given "time in default" for nonpayment.

[2] Although it is unlikely that time in default would be given to surcharges imposed on non-fine dispositions, the figures in this row are presented in order to provide a basis of comparison for the foregoing figures.

3.3.1 Profile of Fine (and Surcharge?) Defaulters

An issue that would have been interesting to explore in this study is the profile of surcharge defaulters. Although it was not possible to go into detail on this subject, most respondents thought it highly likely that those who defaulted on the surcharge also defaulted on their fines; accordingly, available profile information about fine defaulters would apply to surcharge defaulters. This view was corroborated by the 1992 figures reviewed for this study: there were no instances in which a fine was paid but a surcharge was defaulted, nor were there any instances in which a surcharge was paid and the fine was defaulted (allowing, of course, for the few cases in which monetary penalties were not yet due).

Ontario writes off several million dollars in fines every year,[57] but an insignificant portion of this total is related to federal offences. Information about fine defaulters is available primarily from statistics regarding fine default admissions to Ontario correctional institutions. In a recent study by Hann (1992) on this subject, it was found that alcohol-related offences have consistently accounted for a high and relatively stable proportion of fine default admissions to Ontario correctional institutions: over the past 11 years, *Criminal Code* drinking and driving offences and provincial liquor offences have together accounted for between 42 percent and 46 percent of fine default admissions.[58]

According to Hann's analysis (1992:58-59, 64), most fine defaulters are recidivists and most are admitted with convictions for multiple offences. In comparison with the overall custodial population, they also tend to be slightly older (with an average age of 31.9 versus 27.8), less likely to be employed (29.4 percent versus 37.3 percent), and disproportionately native offenders (17.6 percent of the fine defaulters, but only 5.4 percent of the entire sample, are aboriginal persons).

Whether defaulters will pay their fines after admission varies by type of offence. For example, at one extreme are four offence groups that exhibit a much higher likelihood (over 75 percent) of post-admission payment: sexual/non-violent assault; trafficking/importing; miscellaneous morals; and *Criminal Code* traffic offences. At the other extreme are two offence groups whose likelihood of post-

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[57] In 1992-93, the Ontario government did not write off fines, but instead undertook a collection letter campaign.

[58] Hann notes, however, that to determine whether these trends reflect the number of fines given out by the courts, or changes (or stability) in the likelihood of different types of offenders defaulting on their fines, would require analysis of data from the courts -- data that are not currently readily available. Nevertheless, these findings are interesting in light of the fact that at present, a large proportion of the surcharges imposed are attached to impaired driving.

admission is substantially below average: miscellaneous public order offences and *Liquor Control Act* offences (both 38 percent).

3.3.2 Judicial, Crown and Defence Attitudes Towards Default and Enforcement Issues

To see if attitudes were being influenced, judges and crown attorneys were asked if they knew in what order offenders' monetary penalties were deemed paid in the case of partial payments.[59] The majority of judges claimed they did not know the order, and of those who made a guess, the majority guessed incorrectly. In fact, in Ontario (but not all jurisdictions), partial payments are applied to the fine first, and the surcharge last. Judges' comments on this issue were divided: some preferred that the surcharge be paid first (it was considered more in keeping with the objective of the surcharge — i.e., to assist victims of crime), while others preferred that the fine be paid first because this would be fairer to those who were unable to make full payments (i.e., in terms of the time in default they could potentially serve).

Only four of the responding crown attorneys, and one of the defence counsel respondents, knew the order for partial payment of monetary penalties. One crown attorney observed, however, that this information was important in relation to determining length of time to pay.

About one-half of the responding judges indicated that they were in favour of imposing time in default for nonpayment of the surcharge, and about one-half were opposed. A number of judges stated that there is no authority for their giving time in default on the surcharge.[60] Three out of every five judges responding to the survey stated that they had never imposed time in default for nonpayment of the surcharge; those that had imposed default time sometimes stated that they made both the payment period and the time in default the same as for the fine default.[61] Some who supported time in default stated that the imposition of the surcharge had to

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[59] It is roughly estimated that the proportion of fines for which partial payment is made is 10 to 15 percent (conversation with Ms. Maria diSimone, Court Administration, May 19, 1993).

[60] See the discussion in Chapter 1.0, pp 11-12. Apparently some judges refuse to sign warrants when it is for the surcharge.

[61] This is the approach recommended in the ministry memo to crown attorneys: "When both a fine and surcharge are imposed, there should only be one time to pay for both penalties. There would not appear to be any prejudice to the offender as long as sufficient time is given to pay both the fine and surcharge."

"have teeth"; others thought the procedure was, for example, "totally unacceptable and inappropriate"; that is, they objected to the idea of a debtors' prison.[62]

It will be recalled that the legislation excludes surcharge defaulters from participating in a fine-option program. Ontario does not, at the present time, have a fine-option program for *Criminal Code* fines. When asked their views about exclusion from a fine-option program, a little less than one-half the surveyed judges stated they would favour surcharge defaulters being allowed into such a program if it were available, with the following comments: "if reasons for being allowed on a fine option are good enough for fine defaulters, they're good enough for surcharge defaulters"; "if the offender has defaulted on the fine, he has probably defaulted on the surcharge as well, so it makes sense." On the other hand, those favouring the legislation's provision on this matter commented that the cost of supervising a defaulter on a fine-option program would be far greater than the actual amount of the unpaid surcharge; it would be counterproductive to allow participation in a fine-option program because the whole idea behind the surcharge is to raise money for victims.[63]

Although most crown respondents pointed out that there is no fine-option program for *Criminal Code* offences, the majority of those responding did not think it would be appropriate to allow surcharge defaulters to participate in a fine-option program, commenting that this would be counterproductive to the aim of the legislation — to raise money for victims. Similar views were expressed by the defence counsel respondents.

With respect to the appropriateness of attaching time in default to surcharges, crown respondents were largely in favour, commenting that it was the only reasonable way of enforcing the surcharge. Some observed that new court forms would facilitate the administration of this order, and others noted that the time should be served consecutively in order to have any impact. Defence counsel, on the other hand, were strongly opposed to time in default.

When asked about other enforcement options, most judges stated they did not think there were any other viable or cost-effective options, although a couple of judges suggested following the civil procedures used for default on compensation

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[62] None of the survey respondents knew of any offender being imprisoned for default on the surcharge alone, although some assumed this must have happened for offenders defaulting on their fines in addition to the surcharge.

[63] The reader is referred to the study by Hann (1992:69-70) for some revealing findings and conclusions about fine-option programs that have been tried in Ontario and other jurisdictions.

orders (e.g., garnishment) or attaching compliance to the issuance of licences (e.g., driver's licences, vehicle plate licences, fishing and hunting licences).[64]

Crown attorneys suggested a number of alternatives, including the aforementioned refusal to issue driver's licences to fine or surcharge defaulters, and other civil measures such as garnishment and deductions from other government monies received by offenders. A handful mentioned using either a fine-option alternative or community service. Others commented that in view of the small amounts involved, it was unlikely that any of these alternatives would be cost-effective.

3.4 Disbursement of Surcharge Funds

3.4.1 The Present Situation

Since the legislation was imposed in July 1989, Ontario has collected surcharge revenue in the amount of approximately $830,000.[65] The funds have accumulated in the Consolidated Revenue Fund and been used to offset general government expenditures. In March 1990, an Interministerial Advisory Committee with representatives from the ministries of the Attorney General, Correctional Services, Community and Social Services, Solicitor General and Health, and the Ontario Women's Directorate, was established to consider, in consultation with community-based groups, current victim service programs and to recommend to Management Board through the Attorney General, allocation of funds received from the surcharge. Since that time the Committee has met regularly to assess policy and operational considerations regarding the victim fine surcharge.

In November 1991, the Interministerial Advisory Committee authorized a brief review of existing victim/witness assistance services to determine the most appropriate service delivery model that could guide decisions regarding resource allocations. In addition to a document review, this study was to canvass opinion

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[64] For a further discussion of options, see Chapter 4.0, particularly the section on British Columbia.

[65] Revenue for the fiscal years since the legislation came into force is: 1989-90 (eight months): $193,100; 1990-91: $521,900; 1991-92: $108,000; and 1992-February 1993: $7,000. The declining amounts of revenue reflect a corresponding decline in the imposition of the surcharge.

from organizations that service victims of crime.[66] Recommendations resulting from this study included, among others:

- That court preparation services available through the Ministry of the Attorney General's Victim/Witness Assistance Program should be equally available to all crime victims.[67]

- That Victim/Witness Assistance Program staff should encourage and assist community organizations in developing the capacity to provide specialized counselling and support services to victims/witnesses where this capacity is required.

- That under specific conditions, the Ministry may choose to have community organizations provide a component of the court preparation function . . . and receive funding from the Ministry for these services.[68]

At the present time the Ministry of the Attorney General operates a number of other programs in addition to the Victim/Witness Assistance Program:

- The Designated Domestic Assault Coordinator Program

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[66] The consultants (the ARA Consulting Group) contracted to undertake this study met with or interviewed representatives from the following groups and provincial ministries: Ontario Association of Interval and Transition Houses, Advocacy Resource Centre for the Handicapped, Institute for Prevention of Child Abuse, London Family Court Clinic, Metropolitan Toronto Special Committee on Child Abuse, Advocacy Centre for the Elderly, Ontario Coalition of Rape Crisis Centres and Metro Action Committee on Public Violence Against Women and Children (METRAC), Ontario Ministry of Community and Social Services, Ontario Ministry of the Solicitor General, Ontario Ministry of the Attorney General personnel responsible for the Victim/Witness Assistance Program and crown attorneys, and the Ontario Women's Directorate.

[67] The Victim/Witness Assistance Program was begun in 1987 "to enhance victims' and witnesses' understanding of, and participation in, the criminal justice process." Its specific aims are to provide victims and witnesses with courtroom orientation, information about the criminal justice system process, case-specific information (e.g., bail, probation conditions) and court accompaniment. The Program is designed to enhance victims' participation in the existing system and is not designed to advocate on their behalf. See Ontario, The Advisory Board on Victims' Issues 1991:16-17.

[68] In Chapter 4.0, the New Brunswick respondent comments on the advisability of divorcing victim/witness assistance programs from the courts because, as he points out, being a good witness may not be good for the victim. This view is substantiated by observations gained in the study undertaken by the Ontario Advisory Board on Victims' Issues (1991:16). For example, it notes that the only official recognition that victims receive is as witnesses. Many victims do not want to participate in the criminal justice system because they consider the crime too minor, they do not see any benefit, they feel intimidated by the offender, or they believe the general inconvenience and expense of the process or the fear of giving their evidence in a public courtroom is not worth their effort. Those who do participate often feel swept away in a process they have no control over or input into.

- The Designated Child Abuse Coordinator Program
- The Sexual Assault Coordinator Program
- Emergency Legal Advice for Victims of Domestic Assault

Other programs offered by other ministries include family-focussed support services, educational and prevention programs, and research initiatives (see Appendix G for a list of services and programs available).

Currently, a submission is before Cabinet regarding the future management and disbursement of the surcharge revenue. According to the Regulatory Impact Analysis Statement (1989:3359) prepared for the surcharge legislation and regulation, the revenue generated by the victim fine surcharge is intended to be used to provide a broader range of services to assist victims of crime than is available via criminal injuries compensation.

Among respondents in this study the most common comment about the disbursement of funds was simply "to do it". Judicial views included the comments that they would like to see *local* victim services funded — a desire also expressed by some crown attorneys; that services for victims of child abuse, domestic violence, sexual assault should be funded. A couple of judges suggested that a needs assessment ought to be done before allocating funds. Others noted that they would like to be consulted on this matter. Two judges stated that they would like to see the revenue used for actual *additional* services and not absorbed by administrative expenditures or used to offset existing services.

Interestingly, several judges, crown attorneys and defence counsel have suggested using part of the revenue to fund rehabilitative or crime prevention programs, noting that this was one of the most direct ways of protecting potential victims of crime. One judge quite strongly described the concern she feels when she sees young victims of crimes such as child abuse in court, whom she may well see again in ten years as young offenders. This view was also expressed by a defence counsel. Other suggestions in this vein included references to the Ministry's diversion programs for first-time impaired drivers and shoplifters.

It was surprising to learn that some representatives of organizations that serve victims of crime did not know about the surcharge legislation.

3.4.2 To CICB or Not To CICB

Only one crown attorney and one defence counsel suggested using the revenue for criminal injuries compensation. Judges, however, were asked a separate question regarding the appropriateness of using surcharge revenue for criminal injuries compensation. About one third of the judicial respondents favoured this idea but with a few caveats such as: "not if it means that no other services are funded"; "only if it allowed for a wider range of compensation"; and "possibly, if the government is not going to create a designated fund". A handful of judges were opposed to the idea.

Representatives of organizations that serve victims of crime, however, were generally opposed to allocating surcharge revenue to the Criminal Injuries Compensation Board (CICB), preferring instead that the revenue be used to complement the CICB. In the view of some, for the government to use the surcharge revenue for the CICB would be tantamount to reneging on its commitments.

A number of issues related to criminal injuries compensation have implications for the use of surcharge revenue. While it may not be advisable to direct some or any of the surcharge revenue towards criminal injuries compensation (given the significant demands for other kinds of victim assistance), there are needed services associated with both criminal injuries compensation and victim services in general. For example, it has been observed that in Ontario, unlike other Canadian jurisdictions, eligible applicants for criminal injuries compensation include child abuse victims (whose victimization may have occurred years earlier) who do not have access to trained practitioners either to diagnose their condition or treat it. There is, for example, a lack of practitioners who have training in Multiple Personality Disorders (a not uncommon sequel to child abuse, particularly sexual abuse) and Post-traumatic Stress Disorder.

This lack of services affects not only CICB applicants but crime victims in general. With respect to CICB applicants, it has been noted that every time an applicant moves to a new address, he or she is moved to the bottom of the waiting list, yet people suffering from Post-traumatic Stress Disorder tend to move frequently. Some of these, for example, are "street people" because of early victimization.

These observations suggest that while there are strong reasons for limiting funding to short-term projects that directly service crime victims, there is also a need to fund more long-term programs directed towards the training and accreditation of those practitioners who may be in a position to treat victims of crime.

A related issue is whether the CICB should offer cash awards for pain and suffering or provide payment for counselling for pain and suffering. As will be seen in Chapter 4.0, a number of provinces have opted for the latter approach. However, it has been pointed out that, given the lack of trained practitioners, it is not always easy for a victim to find treatment in his or her community. By providing victims with cash awards they are enabled to find their own treatment — which may or may not be recognized or accredited according to CICB standards (e.g., holistic treatment, or alternative treatment methods such as Transactional Analysis).[69] Moreover, smaller communities would start getting therapists if there were a demand for them. In addition, allowing victims to find their own private treatments and therapists would allow public service agencies like Family Services to move their waiting lists, which under present conditions are frequently backlogged with sexual assault victims.

In its report to the then Ontario Attorney General, Howard Hampton, the Ontario Advisory Board on Victims' Issues (1991) made a number of recommendations regarding victims' rights, needs and services. With respect to the role of the CICB in the overall array of victim services, the advisory board report recognized a need for coordination of victim services but did not recommend that this should be the responsibility of the CICB owing to, among other things, a lack of resources at the CICB. It did, however, recommend that:

> funding for government-based and community-based victim services be received from the Province and that government interact with the community to create a forum for joint decision-making and planning; and
>
> coordination should be accomplished through a provincial interministerial committee to rationalize resources . . . . (1991:33-34)

The report also went on to recommend that services for victims — especially specialized services — should be expanded and that the CICB should be permitted, through amendment to the Ontario *Compensation to Victims of Crime Act* (1980), to grant interim awards for counselling services in the short term, especially for disempowered victims (e.g., women, children, the elderly) (1991:35).

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[69] It has also been observed that this approach is less "paternalistic" than paying for counselling for pain and suffering. It has also been pointed out that some victims claim that no amount of money can compensate them for their pain and suffering but they nevertheless would prefer a cash award because, for them, it is a symbolic validation of their pain and suffering.

3.5 Administration and Costs

It was originally estimated that Bill C-89 could result in substantial extra costs for the court system, owing largely to the restitution provisions. A portion of the overall costs would relate to the surcharge. It is difficult to distinguish administrative costs for the federal surcharge from other administrative costs, since these have been included in existing staff responsibilities. As well, it may be anticipated that costs will rise if the federal surcharge program receives full implementation.

In the spring of 1990 it was necessary to institute changes in ICON (Integrated Court Offender Network) to accommodate the surcharge; these changes normally involve contracts with consultants. Other costs have clearly arisen from the fact that ICON does not produce warrants — these must be done manually. Requests for extensions of payment periods, which are done outside the courtroom, also involve administrative costs. Other key decision points that may have produced or will produce additional costs include additional court time directed towards informal or formal means inquiries, and institutional costs arising from default orders.

3.6 Respondents' Views of a Provincial Surcharge Program

Among judicial respondents, opinion was opposed to the idea of a provincial surcharge at a rate of about three to one. Comments in this regard included: "a provincial scheme would only compound the problems that already exist with the federal surcharge"; "just another burden on the court"; "not the business of the court"; and "most provincial offences are victimless". It will be seen in Chapter 4.0, however, that a provincial surcharge need not have any significant impact on the court. A very common comment from those judges who favoured the idea was that it should be done automatically by an administrative deduction from fine revenue. Those judges who supported a provincial surcharge also noted that young offenders and parking infractions should be excluded. Most judges and crown attorneys in favour of provincial surcharge legislation preferred that it be based on a straight percentage of fines.

Among crown respondents, the opinion was split evenly between those in favour and those against a provincial surcharge. Those in favour of the idea stated that they supported the idea of reparation but like judges, crown attorneys had a few caveats: "only if the revenue is actually used for victim services"; "only if judges are given more discretion"; and "only if it were imposed on fines alone". By far the most frequent suggestion was that this should be handled automatically, not legislatively, through a deduction from fine revenue. Other comments opposed to a

provincial surcharge included the views that most provincial offences are victimless; that it would be inconsistent with the principles of sentencing; that the primary business of the courts is to deter and rehabilitate and not to collect revenue; and that if the federal surcharge had been implemented correctly there would be no need for a provincial surcharge.

Not surprisingly, defence counsel respondents were overwhelmingly opposed to the idea of a provincial surcharge program.

4.0 CROSS-CANADA SURVEY

The purpose of this chapter is to bring the reader up to date on recent developments concerning the federal surcharge across the country.[70] In addition to broadening the base of knowledge about the federal surcharge provisions in different provinces and territories, this review also notes specific approaches to implementing the surcharge provisions that have proved to be more or less effective. The last section of each provincial/territorial description provides a discussion of the provincial surcharge program, if there is one in that jurisdiction. The chapter ends with a summary of key themes and observations.

In the review for each jurisdiction, several categories of information are used, to standardize the coverage of the available information:

- Imposition of the Surcharge: Attitudes and Practices
- Use of the Undue Hardship Provision
- Amounts Imposed
- Default and Enforcement
- Administration and Costs
- Revenue and Disbursement of Funds

However, coverage is somewhat variable, depending on the areas that have received greater or lesser attention in each jurisdiction.

[70] In addition to direct telephone interviews, this review also incorporates findings from other sources including the 1991 survey conducted by the Department of Justice Canada, the survey conducted by the researchers (Focus Consultants Inc.) for the DOJ study of the surcharge in British Columbia, and the Ministry of the Attorney General survey notes.

4.1 Yukon

4.1.1 Federal Surcharge Program

Imposition of the Surcharge: Attitudes and Practices

As in other jurisdictions, there have been judicial objections to the $35 maximum for non-fine dispositions in Yukon. There is little other information about imposition rates in the territory, although it is claimed that most judges are in favour of the surcharge and impose it regularly. As in other jurisdictions, Yukon respondents pointed out that an important factor in judicial support is assuring judges that the revenue is being used for victim services.

Use of the Undue Hardship Provision

Apparently, in Yukon the undue hardship provision is rarely used. When it is used, however, the provision usually is applied to situations in which the offender is unemployed, not simply on unemployment assistance or welfare. When the provision is used, judges apparently provide written reasons.

Amounts Imposed

Yukon judges commonly impose the regulated maximums for the surcharge.

Default and Enforcement

As in other jurisdictions, enforcement of the surcharge is the same as for fines although, unlike some jurisdictions, the amount of time in default is one day in jail for $35. Although Yukon has experimented with civil collection methods (e.g., garnishment, demand letters and schedules), apparently this approach has not proved cost-effective: too much time spent on too small amounts. About 40 percent of fines are paid voluntarily, and it is assumed that a similar rate may apply to the surcharge payments. The territory has been interested in the strategy employed by Nova Scotia, wherein bench warrants were sent out randomly to fine defaulters with the result that 50 percent of these outstanding fines were paid.

Administration and Costs

The order for partial payment of monetary penalties is surcharge first, fine second. No special administrative costs for the surcharge have been identified. In the past couple of years, Yukon's record-keeping system has been undergoing extensive modifications.

Revenue and Disbursement of Funds

Recently, according to territorial calculations, the surcharge revenue has reached about 59 percent of the total amount imposed (although this may not reflect the potential that could have been imposed). For example, in fiscal year 1991-92, $34,000 was imposed and about $20,000 collected; in 1992-93, $24,600 was imposed, with $14,500 collected to date.

Revenue to date has been insufficient to warrant disbursement to community organizations. For example, the territory's Victim/Witness Services Program alone costs $150,000 annually. Consequently, the surcharge revenue (about $54,500 as of February 1993) has been held in an interest-bearing trust fund with the intention of distributing it to community service groups in the future.

4.1.2 Yukon Territorial Surcharge Program

In May 1992, Yukon instituted its territorial surcharge program under the authority of the *Victim Services Act*, which established a designated fund for surcharge revenue and a victim service committee. The committee has not yet been formed, as the territory would like to see the fund grow before making disbursements. The terms for surcharge amounts are 15 percent of fines and a $20 flat fee for non-fine dispositions. The projected annual revenue from the territorial surcharge is about $60,000.

Part of the territorial surcharge revenue will be directed towards criminal injuries compensation owing to the fact that the federal government has withdrawn from cost-sharing in this area. Criminal injuries compensation costs Yukon $410,000 annually, with about 76 percent of this amount going towards awards for pain and suffering. As a result, the Yukon respondent claimed that the government may need to reconsider its criminal injuries compensation system. A possible future strategy may entail less emphasis on lump sums for pain and suffering and a greater emphasis on services for victims of crime. This may require a consolidation of victim services — a strategy sometimes referred to as "one-stop shopping" — which has been tried in a number of American jurisdictions (e.g., Connecticut).

4.2 Northwest Territories

4.2.1 Federal Surcharge Program

Imposition of the Surcharge: Attitudes and Practices

Most judges in the Western Arctic of the Northwest Territories are imposing the surcharge, at least on fines. However, there is less use of the surcharge in the Eastern Arctic, especially with respect to non-fine dispositions. Commonly, surcharges are imposed on the count rather than the disposition or case. Like judges in other jurisdictions, N.W.T. judges have objections to the $35 maximum for non-fine dispositions. Again, the importance of keeping judges informed of how the surcharge revenue is being used was emphasized; in the Northwest Territories, judges receive annual reports.

Use of the Undue Hardship Provision

Apparently the use of the undue hardship provision is variable, with many instances occurring in the Eastern Arctic. Written reasons for not applying the surcharge in these cases are rarely given.

Amounts Imposed

When the surcharge is imposed it appears that, on fines, judges impose either ten percent (more commonly in the Eastern Arctic) or 15 percent (Western Arctic), and that they impose the full $35 on non-fine dispositions (although imposition of the surcharge on non-fine dispositions is quite rare).

Default and Enforcement

The surcharge is collected and enforced in the same manner as fines. It is estimated that the majority of fines and surcharges are paid voluntarily. Very few offenders (less than four per year) are incarcerated for fine default unless they are also serving concurrent time for another purpose. It is customary for judges to impose time in default for most fines.

Administration and Costs

The N.W.T. *Victims of Crime Act* (1989) stipulates that in the case of partial payments, monies are to be directed towards the surcharge first. Existing Department of Justice Canada staff administer the surcharge, although some committee expenses have been paid out of the Victims Assistance Fund.

Revenue and Disbursement of Funds

In 1991-92, more than $71,000 was collected through the federal surcharge. Both the federal and territorial surcharge revenue goes into a revolving designated fund, the Victims Assistance Fund, administered by the Victims Assistance Committee appointed by the territorial Minister of Justice under the *Victims of Crime Act*.

Until recently, the Victims Assistance Committee was a three-person unit, comprising two representatives from government services responsible for assistance to victims of crimes and one community representative. In March 1993, the Committee was expanded to include two new community representatives and one new government member. Members of the Committee serve a three-year term.

Submissions for funding are made by formal request to the Committee, which reviews proposals and makes recommendations to the Minister, who has final authority for approval. Preference is given to voluntary and nongovernment organizations that assist victims of crime and wish to undertake projects that support community initiatives in victim assistance. Funding under this program is not to duplicate money received from any other source; the emphasis is on the development of new services or the enhancement of existing community services. Most programs that have received funding are short-term projects involving training of those who work with victims of crime (e.g., conferences and workshops).

4.2.2 Northwest Territorial Surcharge Program

The territorial surcharge legislation stipulates 15 percent for fines and a flat fee of $25 for non-fine dispositions. Young offenders and municipal by-law offenders are exempted. The territorial surcharge is administered in the same way as the federal surcharge. Separate revenue accounts are maintained, but the revenue from both programs is considered part of the Victims Assistance Fund and no differentiation is made in relation to the disbursement of the monies.

Unlike other jurisdictions, there are more charges made under federal statutes (*Criminal Code, NCA* and *FDA*) than territorial statutes, with the result that the territorial surcharge revenue in 1991-92 was less than that for the federal surcharge; that is, $62,000.

4.3 British Columbia

4.3.1 Federal Surcharge Program

Imposition of the Surcharge: Attitudes and Practices

Much of the information provided for British Columbia is derived from the study undertaken for the federal Department of Justice Canada by Focus Consultants Inc. (otherwise referred to here as the Focus Report). Its findings are based primarily on 1990 data. Like those in Ontario, judges in British Columbia have been reluctant to impose the surcharge (only ten percent of eligible cases have a surcharge imposed in the four major sites examined by the study),[71] largely owing to their objections to the surcharge legislation (e.g., it's a "tax grab", many crimes are "victimless"). Also, as in Ontario, there is a tendency for judges to lower fines to accommodate the imposition of the surcharge. And, again like those in Ontario, judges in British Columbia are more likely to impose the surcharge on fines than on non-fine dispositions (e.g., in the smaller sites examined, 61 percent of fines versus 12 percent of non-fine dispositions involved a surcharge). Comments in this regard reflected the view that the $35 maximum for non-fine dispositions trivializes the seriousness of offences receiving long custodial sentences.

The most common type of charge receiving a surcharge is also the same as in Ontario: impaired driving and related motor vehicle offences. But unlike Ontario, the next most common types of charges receiving surcharges in British Columbia are mischief and drug offences (*NCA* and *FDA* offences). Also unlike Ontario, it appears that in relation to non-fine dispositions, very few surcharges are imposed on probation; in Ontario, about 45 percent of the surcharges imposed on non-fine dispositions are attached to suspended sentences (which involve a condition of probation).

Other comments about the legislation were similar to those found in Ontario. More than one-half of the judges surveyed in British Columbia expressed a desire for greater discretion, and some disagreed entirely with the idea of a surcharge.

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[71] It was found, however, that in smaller sites in British Columbia, the rate of imposition of the surcharge was four times higher (i.e., 42 percent of all eligible cases).

Use of the Undue Hardship Provision

Some judges in British Columbia who are resistant to the surcharge have been automatically using the undue hardship provision. Written reasons for not imposing the surcharge were recorded in less than one percent of the cases where such reasons should have been given.

Amounts Imposed

As in Ontario, it was estimated that the most frequent surcharge percentage used for fine dispositions in British Columbia is ten percent of the fine (63 percent of fines received a ten percent surcharge, compared with 44.5 percent of fines in Ontario). For non-fine dispositions, it was estimated that about 41 percent received the regulated maximum of $35 (compared with about 51 percent in Ontario); but nearly one-half (47 percent) received non-fine surcharges of less than $10. There is, however, considerable variation among courts.

Default and Enforcement

According to the Focus Report, the overall compliance rate in British Columbia is 69 percent, with 70 percent of the value of the surcharge collected, although there is considerable regional variation. It appeared from the analysis that the primary factor responsible for compliance was the existence of a default order (i.e., time in default). Payments were made in 76 percent of cases where default orders were attached, compared with 53 percent where no default order was attached. On the other hand, in 52 percent of the surcharge cases, no default action was necessary to enforce payment. Overall, default orders were attached to 61 percent of the surcharges imposed (compared with 25.7 percent in Ontario). An interesting finding from the British Columbia study is that there does not appear to be any relationship between large surcharges and default.[72]

Surcharge collection and enforcement methods are the same as those used for fines. Recently, the British Columbia Ministry of the Attorney General, like the Ontario Ministry of the Attorney General, has undertaken a study of fine collection procedures. While the bulk of overdue fines relate to motor vehicle offences, many of the options considered in these reviews could equally apply to the surcharge. Among the options that have been examined is the practice of linking fine payments

[72] Focus Consultants Inc. study for the Department of Justice Canada (1992).

to the issuance of driver's licences.[73] At the present time, British Columbia driver's licences are renewed every five years. An alternative would be to require annual renewal and tie this to outstanding fines, although it is noted that this could result in considerable administrative costs. Related to this option is the possibility of linking fine default to refusal of any government service. Legal opinion suggests that this might give rise to constitutional challenges; on the other hand, it is possible that a challenge could be defeated.

Extending refusal to licences such as those for hunting or fishing is not considered advisable because the issuance of such licences is too widespread to be cost-effective in terms of administration and enforcement. A more efficient approach, it is claimed, is to employ the services of one central agency. The British Columbia Ministry of the Attorney General has been examining the possibility of transferring fine collection and enforcement to the government's Central Government Debt Collection Agency (which is part of the Loan Administration Branch and is responsible for collection of all other types of government loans such as student loans and commercial loans). Ontario has already taken steps to transfer outstanding fines to Central Collection Services (CCS). The advantage of doing this includes the fact that the infrastructure, a highly sophisticated management information system (MIS) and tracing ability have already been established. In conjunction with this approach, another option is to apply interest charges after a period of time (e.g., three months) to outstanding fines or, as is the practice in Ontario, adding an enforcement cost (e.g., a flat fee of $20 per fine to cover the costs of administration and enforcement). British Columbia hopes that by issuing a series of escalating warning letters before turning the matter over to the Loan Administration Branch, collection rates could perhaps be improved from the present voluntary payment rate of 40 to 50 percent to 70 or 80 percent.

Additional options include improvement in procedures for voluntary payment, such as use of credit cards or debit cards,[74] and broadening payment locations. For example, in California, it is possible to go to a government kiosk, like an automated bank terminal, to perform a number of transactions such as payment of fines,

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[73] This strategy has been employed in Ontario, Quebec and Saskatchewan. A corollary to this approach would be to amend legislation regarding driving without a licence to permit automatic seizure and impoundment of the vehicle. Otherwise, experience has shown that the driver will commonly continue to drive without a licence and simply incur another fine. In Quebec, for example, police are empowered to charge and incarcerate anyone who they have reason to suspect may not pay or will skip the jurisdiction.

[74] Debit cards are cards which are now coming into vogue for use in grocery stores, etc.

renewal of driver's licence, initiation of a small claims suit, and so on.[75] Some of these options have already been considered in Ontario.

Administration and Costs

Unlike Ontario, the order for partial payment of monetary payments in British Columbia is restitution first, surcharge second, and fine third.[76] All administration of the surcharge is undertaken by existing ministry staff in conjunction with their other responsibilities. No information about administrative costs is available because it has not been possible to distinguish them from other administrative costs.

Revenue and Disbursement of Funds

In 1991-92, the federal surcharge in British Columbia generated $264,002. British Columbia is the only other jurisdiction in Canada (along with Ontario) that has not established a designated fund for the surcharge revenue. In British Columbia, for the year 1991-92, $4.5 million was spent on victim programs and services and $15.6 million for criminal injuries compensation awards (excluding administrative expenses).

4.3.2 British Columbia Provincial Surcharge Program

In June 1988, the British Columbia legislature passed the *Victims' Rights and Services Act* (Bill 31-1988). This Bill provided, among other things, for a surcharge on fine dispositions for provincial offences (exempting young offenders and including an undue hardship provision). It was originally intended that proclamation of the Bill would roughly coincide with the coming into force of the federal surcharge legislation, but the provincial Bill was not proclaimed at that time.

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[75] As the Focus Report points out, in some jurisdictions other alternatives have been developed. For example, California provides an incentive scheme for fine collection. The state promises to pay 25 percent of the amount repaid provided the entire amount is recovered. In Tennessee, the agency carrying out the sentence (e.g., correctional facility, probation office) is responsible for collection when fines have not been paid to the courts.

[76] There are several exceptions to this order of payment: if the offender indicates that she or he wishes to serve time and pay restitution, monies will be applied to restitution; or if the date on which the fine and/or victim surcharge becomes payable precedes the date on which a restitution order; or if time in default is ordered for the fine and not for the victim surcharge; or if time in default has been ordered for both the fine and the surcharge where the due date on the fine is prior to the due date on the surcharge; or if the court orders that monies are to be applied differently.

4.4 Alberta

4.4.1 Federal Surcharge Program

Imposition of the Surcharge: Attitudes and Practices

No figures are available regarding the rate of imposition of the surcharge in Alberta, although some judges object to the regulated maximum of $35 for serious offences. Like those in Ontario and British Columbia, Alberta judges have decreased fines to accommodate the imposition of the surcharge. It appears that since judges have received information about how the revenue is being used, more of them are imposing the surcharge. Judges receive a biannual newsletter, as well as an annual report at year end, advising them of how the surcharge revenue has been used. In addition, there are regular meetings with judges to discuss, among other things, the victim impact statements and the surcharge.

Use of the Undue Hardship Provision

It is estimated that the undue hardship provision is used in about 30 to 40 percent of the cases. In most cases, no reasons are provided; when reasons are given they are usually verbal.[77] It was suggested that perhaps it would have been better to have made the surcharge mandatory, with the accused having to apply for exemption for undue hardship reasons.

Amounts Imposed

It is estimated that the usual amount of surcharge imposed on fines is ten percent; for non-fine dispositions it is $35.

Default and Enforcement

The surcharge may be enforced through the imposition of time in default. It is estimated that voluntary payment occurs between 50 and 60 percent of the time, although other estimates claim that after 90 days the default rate is about 40 percent, and rises to about 80 percent after six months. Most surcharges enforced by judgment are written off 45 days following conviction.

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[77] Occasionally, judges impose a nominal amount of $1 or 1 percent when there is suspicion of undue hardship but section 727.9(3) has not been satisfied.

Administration and Costs

In Alberta, partial payment of monetary penalties is first applied to the surcharge, and then to the fine. Two positions have been created to administer the surcharge and victim services program. Administrative costs are not easily discernible from other administrative costs, although $15,000 was spent in updating the Ministry's automated MIS to accommodate the surcharge.

Revenue and Disbursement of Funds

For 1991-92, the revenue generated by the surcharge was $650,000. In January 1991, Alberta proclaimed a *Victims' Programs Assistance Act* which, among other things, authorizes the establishment of a Victims' Programs Assistance Fund (a revolving trust account which, it is claimed, greatly speeds up the allocation process) and a Victims' Assistance Committee to oversee the disbursement of funds. The legislation specifically stipulates that surcharge revenue may not be applied to criminal injuries compensation; instead, it is intended to benefit the greatest number of victims. Originally the Victims' Assistance Fund held revenue from the federal surcharge as well as federal cost-sharing contributions for victim assistance; however, since the federal government's two-year cost-sharing program has now ended, only surcharge revenue is currently deposited into the Fund.

The Victims' Assistance Committee has nine members, including representatives from government, nongovernment and police services, who are appointed for two-year terms. An important characteristic of members is that they should be very familiar with victims' needs; according to survey respondents interviewed for this report, the Committee should include not only representatives from government victim services but also representatives from community-based services. The Committee reviews applications by individuals, groups and organizations that provide service to assist victims of crime.

One of the Committee's policies for awarding funds is to ensure that the award actually goes towards community-driven services. Originally, the Committee allocated funds to police victim service units, but it appeared this was not the most effective way of funding services because there was a tendency for the money to be absorbed into other police expenditures. Nowadays, funds are awarded directly to community groups and police are asked for their support.

Another important policy decision was to make sure that those receiving funding were also able to provide their own funding. This is to discourage organizations from becoming dependent on the surcharge revenue: there are too many groups requiring funding, and the surcharge revenue is limited. The strategy is to have the service organization receive 100 percent funding the first year, 50

percent funding the second year and 25 percent funding the third year. A corollary to this strategy is that grants are to be awarded on a one-year basis and a final report must be completed upon termination of the grant before reapplication.

In addition to the foregoing disbursements, the Fund also supports a provincial needs assessment, the Victim Impact Statement Program, a provincial training program for Victim Services Unit coordinators, publication of the provincial newsletter, and administrative costs. Respondents to the present report's survey emphasized the importance of the victims' needs assessment, which entailed an inventory of what already exists and where there are service gaps.[78] It is observed that the services required in one area may not be needed in another. The needs assessment is critical for the establishment of funding priorities and criteria.

Another important program funded by the Fund is the newsletter, which is distributed to judges. Respondents stressed the importance of keeping the judiciary informed of how surcharge revenue is being used in order to assure their cooperation with the legislation.

4.4.2 Alberta Provincial Surcharge Program

Although Alberta drafted a paper concerning a provincial surcharge program, a bill was never introduced into the legislature.

4.5 Saskatchewan

4.5.1 Federal Surcharge Program

Imposition of the Surcharge: Attitudes and Practices

There is limited information about the federal surcharge in Saskatchewan at this time; however, a proposed fines review and an administrative internal audit might provide additional information in the future. Saskatchewan has not surveyed the judiciary to determine their attitudes towards the imposition of the surcharge or the frequency with which judges have been imposing it.

[78] A report on this needs assessment was, at the time of writing, in its first draft stage.

Use of the Undue Hardship Provision

Reviews have not been undertaken to obtain information about the use of the undue hardship provision.

Amounts Imposed

A study conducted during the first seven-month period following introduction of the surcharge on August 1, 1989, indicated that the average federal surcharge for fines and non-fine dispositions was $32.45 (compared with an average in Ontario of $42.87).

Default and Enforcement

Surcharge payments are collected by the court staff together with fines payments or as a separate disposition. The court issues a "Notice of Fine and Surcharge", setting out the fine information and instructions for payment, including default dates. Payments are made through the mail or accepted at the court office. According to the study done during a seven-month period from August 1990 to February 1991, approximately 68 percent of fines and surcharges were being paid voluntarily. If the surcharge is not paid and the judge has ordered default time on the surcharge, a warrant is issued and incarceration may eventually result for nonpayment.

An offender serving a default sentence for failure to pay a federal surcharge may be eligible for release under early release programs. An offender serving a concurrent sentence on a federal offence and surcharge can opt to serve the part of the time that is applicable to both fine and surcharge, and then pay the remaining portion of the fine and be released. A portion of an inmate's allowance may be used to pay part of the surcharge.

Administration and Costs

In the case of partial payment of monetary penalties, the surcharge is paid off first, unless the offender specifically asks the court to order otherwise. Existing staff and resources are used to administer the surcharge.

Revenue and Disbursement of Funds

There are no annual figures for the revenue collected to date, but by March 31, 1990, about $80,000 had been collected. The revenue from both the federal and the provincial surcharge is distributed in the same manner as described in the following section on the provincial surcharge program.

An important policy decision in the Saskatchewan victim assistance program was not to fund social services such as counselling, which could involve long-term service. Instead, the intention is to fund short-term programs and services that enhance victims' satisfaction with the criminal justice system. Accordingly, victim programs are very much police-based — funding victim assistance programs through police victim assistance units. Future funding will be directed towards court-based victim services.

4.5.2 Saskatchewan Provincial Surcharge Program

The *Victims of Crime Act* was proclaimed on August 1, 1989. This *Act* established the provincial program, created the provincial surcharge and designated a Victims Fund to be used for the revenue from both the provincial and federal surcharges. The provincial surcharge is based on a graduated schedule whereby:

- where the fine imposed is less than or equal to $100, the surcharge is $10;
- where the fine imposed is greater than $100 but less than or equal to $200, the surcharge is $20;
- where the fine imposed is greater than $200 but less than or equal to $500, the surcharge is $30;
- where the fine imposed is greater than $500, the surcharge is ten percent rounded off to the nearest dollar amount; and
- where no fine is imposed, the surcharge is $20.

The provincial surcharge exempts parking and municipal by-law violations; however, there is no undue hardship provision. Defaulters on the provincial surcharge may participate in a fine-option program. For nonpayment of provincial fines on driving offences, Saskatchewan has removed incarceration and substituted refusal to issue driver's licences, which are issued on an annual basis.

The revenue generated by the provincial surcharge is greater than that from the federal surcharge owing to the greater volume of provincial offences. The *Victims of Crime Act* sets out that revenue from both the federal and provincial surcharges is to be administered at the discretion of the Minister of Justice for the purposes of promoting and delivering services and benefits to victims, conducting research into victims' needs, distributing information in respect of victim services, crime prevention, and any other purpose that the Lieutenant Governor in Council

considers necessary to further the intent of the *Act*. All victim programs are funded by contributions from the Victims Fund at the discretion of the Minister of Justice.

The Victims Services Program assists victims with the criminal justice process including police-based victim assistance units, crown-based victim/witness services, court-based facilities, victim/offender mediation services, victim conferences and relevant research. Saskatchewan replaced the Criminal Injuries Compensation Board with a victim compensation program offered directly by the Department of Justice Canada.

4.6 Manitoba

4.6.1 Federal Surcharge Program

Imposition of the Surcharge: Attitudes and Practices

Manitoba is one of the few Canadian jurisdictions in which the surcharge is imposed quite frequently. It is estimated that judges impose the surcharge approximately 75 percent of the time. In 1991, for example, 75 to 80 percent of the fines and 48 percent of the non-fine dispositions had surcharges attached. There was, however, some initial resistance to the federal scheme, relating to the $35 maximum for non-fine dispositions. Of particular concern were corporate offenders who are not fined or given custodial sentences, but normally receive probation. Under these circumstances, the judge is limited by the regulation from imposing a large surcharge which, in many instances, would be the preferred option. As in other jurisdictions, there has been a desire to see the $35 maximum amended to reflect the legislative maximum of $10,000.[79] When judges do not impose the surcharge, they normally give reasons.

Use of the Undue Hardship Provision

It is estimated that the undue hardship provision is used about 40 to 50 percent of the time.

[79] The actual number of corporate offenders in Manitoba is not large; nevertheless, the view in Manitoba is that the legislation should be amended to reflect the seriousness of some offences.

Amounts Imposed

The average amount of surcharge imposed on both fines and non-fine dispositions tends to be the regulated maximum. Surcharges are mainly imposed on the count.

Default and Enforcement

Enforcement procedures for the surcharge are the same as those for fines: warrants of committal leading to incarceration. The fact that the provincial surcharge legislation permits participation in the fine-option program has created confusion and an imbalance between the two surcharge enforcement procedures.

Administration and Costs

It is felt that administrative costs for both the federal and provincial surcharges have been minimal.

Revenue and Disbursement of Funds

In 1990-91, revenue from the federal surcharge was about $400,000. Revenue from the federal surcharge is deposited in an interest-bearing designated trust fund created by the enactment of *The Justice for Victims of Crime Act* in January 1987, which authorized Manitoba's provincial surcharge.

The disbursement of provincial and federal surcharge revenue is managed by a Victims' Assistance Committee, which was also created by the *Act*. The Committee (which may have seven to 15 members) is composed of representatives from victims of crime (minimum of two representatives), law enforcement, prosecutors, the judiciary, and members of the Law Society of Manitoba (who are not employed by the government and who have experience as defence counsel). It was noted that inclusion of a judge was a critical aspect of the Committee's composition because it facilitated communication between the judiciary and the Committee regarding how surcharge revenue is to be used.

Although the provincial legislation specifies that provincial surcharge revenue must be directed to community projects, particularly those that expand existing programs or provide new services, this requirement does not apply to federal surcharge revenue.[80] Since no federal funds have been disbursed to date, there is an accumulated surplus, which will probably be used to fund programs such as the

[80] As in other provinces, the provincial revenue may not be directed towards criminal injuries compensation.

expansion of the province's Victim/Witness Assistance Program. The long-term strategy in Manitoba is to pool all fine surcharge revenue along with private-sector funding to create a Crime Prevention Foundation, which will integrate all victim services.

Respondents to this survey noted a number of points about revenue disbursement. First, they emphasized the importance of undertaking a needs assessment to provide guidance about what is required for funding purposes. Secondly, it was suggested that it is very important to create legislation to provide a designated fund for surcharge revenue and to specify how it may be used.

4.6.2 Manitoba Provincial Surcharge Program

Manitoba instituted a provincial surcharge in 1987, before the federal legislation came into force. It is thought that this is one reason the federal surcharge is imposed so much more frequently in Manitoba than in other jurisdictions. Although Manitoba judges initially were opposed to a provincial surcharge, the province proceeded, and in the end it was felt that when the federal surcharge was proposed, Manitoba judges were, in a sense, waiting for it as a balance to the provincial scheme. One of the lessons learned from the Manitoba experience is the importance of consulting with judges and other key participants (e.g., court clerks, administrative personnel, crown attorneys) before proceeding with legislation.[81]

The provincial legislation covers all provincial offences except parking violations, and includes a hardship provision. The amounts that can be imposed are a regulated maximum of 12 percent on all non-by-law fines (the legislation itself allows for a maximum of 20 percent) and a flat fee of $25 for non-fine dispositions. The annual revenue from the provincial surcharge is about $750,000. Both the provincial and federal surcharge revenues are deposited in the designated fund described above.

Enforcement of the provincial surcharge largely follows that of fines, since these are the most numerous dispositions for provincial offences. This means that defaulters are liable to spend time in jail for nonpayment or work it off through the fine-option program. By treating the surcharge and fine as a total amount owing, problems have been avoided in terms of nonpayment and enforcement requirements. The offender is required to pay the total value, which is then separated by the

[81] It is recognized, of course, that in view of the separation of the legislative and judicial branches, some judges do not think it is appropriate for them to be consulted on these matters; certainly, this was a finding in the present study when judges were asked their views about the federal surcharge legislation.

Finance Department once revenue has been collected. Manitoba permits the refusal of a driver's licence until outstanding fines have been paid.

4.7 Quebec

4.7.1 Federal Surcharge Program

Imposition of the Surcharge: Attitudes and Practices

It is claimed that not all judges in Quebec are imposing the surcharge. It was observed, however, that their cooperation might have been even less had they not been invited to a conference about the changes required by Bill C-89 when the legislation was about to come into force. There has been judicial resistance to the regulated maximum of $35 for non-fine dispositions, and most judges do not impose the surcharge when sentences of probation or custody are given. Accordingly, Quebec has recommended two approaches:

- to reserve a certain amount of discretion to the judge in establishing the amount of the surcharge without amending the legislation, we suggest that [the Department of Justice Canada] repeal the regulation that sets the maximum surcharge at $35 for non-fines. The only limit prescribed would then be the $10,000 prescribed in the *Criminal Code*.

OR

- our second suggestion is that there be a fixed 15 percent, $35 formula so as to maximize income from the surcharge. This procedure would at least enable us to cover the costs incurred in enforcing the surcharge.

It is noted that in Quebec, as in some courts in Ontario, some judges require offenders to contribute to nonprofit organizations as a condition of their probation orders. The amounts ordered in Quebec varied from $25 to $50,000, with an average of between $200 to $300 per offender, resulting in about $70,000 to $75,000 annually. One of the potential beneficiaries of this practice in Quebec was the Victims of Crime Fund. It has been pointed out that the practice is an indication that Quebec judges would be prepared to impose much higher amounts for the federal surcharge.

One further comment regarding judicial imposition of the surcharge concerned the lack of information judges gave offenders about the purpose of the surcharge. It was noted that for the legislation to fully realize its objectives, it is essential that judges make the reparative aspect of the surcharge clear to offenders.[82]

Use of the Undue Hardship Provision

It is estimated that the undue hardship provision is rarely used in Quebec, although there appears to be some regional variation. For example, in a survey done during the initial year of the surcharge, it was found that in some regions the undue hardship provision was used in 5 to 10 percent of the cases, while other regions reported no usage. It is claimed that in only some regions do judges normally provide written reasons for their use of this provision. Situations in which the undue hardship provision is used are similar to those in Ontario.

Amounts Imposed

According to the early study done on judicial surcharge practices, the average amount of surcharge imposed on non-fines was $18.50 per count, with an average of two counts per case. Judges are more likely to use a ten percent basis for fine surcharges simply because the math is easier. The province's Bureau d'aide aux victimes d'actes criminels has developed a surcharge schedule indicating the amount of surcharge to impose (on a 15 percent basis) for different amounts of fines; this schedule will be distributed in the near future.

Default and Enforcement

Surcharge payment is collected in the same way as fines. Judicial Services is responsible for carrying out the judgments of the courts. Nonpayment results in the issue of a warrant. Not all judges attach time in default, with the result that for those surcharges without alternate time, there is little that can be done to enforce the

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[82] This, of course, only makes sense if, in fact, the surcharge revenue is used to assist victims of crime. It is interesting to note in this regard, however, how little attention has been given to the reparative aspect of the legislation in terms of the offender's understanding. While compensation and restitution are two other reparative dispositions authorized by the *Criminal Code*, they have limited application and do not, therefore, affect the majority of offenders. This might reflect, in part, a limited understanding of the potential role of reparation in the judicial system, particularly with respect to its significance in human psychology (both in terms of the offender and the victim; e.g., for the offender, akin to notions of "healing" recognized in aboriginal culture and AA Twelve Steps). The reader is referred to references on reparative sanctions in the Bibliography (Canada, Department of Justice 1983 and 1984) for further discussion of this issue.

surcharge. As in other jurisdictions, civil enforcement is not considered cost-effective.

Administration and Costs

It is claimed that revenue from the surcharge fund is not sufficient to cover the entire cost of the Victim Assistance Program. While some of the surcharge revenue is used to offset administrative expenses, which include six salaried positions, the bulk of the revenue is directed towards victim services.

Revenue and Disbursement of Funds

In 1990-91, the amount of revenue generated by the surcharge was about $569,000. In 1991-92, the surcharge generated more than $1 million. One reason for this increase is that the Bureau undertook a number of actions to promote the surcharge: collecting information from all the courts about the surcharge and distributing this information to crown attorneys, and sending a letter to the judiciary.

In June 1988, Quebec proclaimed in force the *Act Respecting Assistance for Victims of Crime*, which created the designated Victims of Crime Fund and which provides that the Minister of Justice may grant financial assistance to persons and organizations to develop services and to establish information, training, awareness and research programs with respect to assistance for victims. The Bureau d'aide aux victimes d'actes criminels was established by the Minister to coordinate assistance programs, administer the fund and make recommendations to the Minister as to the fund's use.

To date, the surcharge revenue has been used to partly fund the province's community-based victim assistance programs. Although there has been an increase in the amount of revenue generated by the surcharge, the total cost for the Victim Assistance Program would be about $2 million. The two major programs funded by the surcharge are an in-Watt SOS family violence telephone line, and ten community-based centres for assistance to crime victims, which have contracts that are renewed annually. The plan is to develop 11 more centres, in order to cover the entire province. These centres provide, for the most part, short-term, court-oriented service.

For the future, Quebec is planning to change its legislation to combine the Victim Assistance Program and Criminal Injuries Compensation Program into one agency, which will be funded by both the surcharge revenue and government contributions. At the present time, criminal injuries compensation alone costs the government $30 million annually.

4.7.2 Quebec Provincial Surcharge Program

At the present time, Quebec does not have a provincial surcharge program.

4.8 New Brunswick

4.8.1 Federal Surcharge Program

Imposition of the Surcharge: Attitudes and Practices

New Brunswick is another Canadian jurisdiction that has had a high rate of imposition of the surcharge. Provincial Court judges in New Brunswick, as in other jurisdictions, object to the regulated maximum of $35 for non-fine dispositions. The preferred amount would be that stipulated in the legislation itself: up to $10,000. Judges also think that the federal surcharge should apply to all federal statutes, not simply the *Criminal Code* and *NCA* and *FDA* offences (e.g., smugglers and environmental offenders should pay a surcharge).

Use of the Undue Hardship Provision

It is claimed that the undue hardship provision is not commonly used in New Brunswick, which is particularly interesting in view of the high compliance rate (see below). Generally, judges take the view that if the offender can pay the fine, she or he can pay the surcharge. Undue hardship is more commonly reserved for consideration in non-fine dispositions.

Amounts Imposed

For the most part, judges impose the regulated maximums for fines and non-fine dispositions, although it is noted that in some cases the fine surcharge has been reduced to ten percent when the fine is over $1,000, so as not to constitute an undue hardship. Surcharges are imposed on the count.[83]

Default and Enforcement

Figures suggest that about 75 percent of the surcharges are collected, normally as part of the fine payment and usually on a voluntary basis. Non-fine

[83] In 1992, New Brunswick had a record-breaking federal surcharge imposed when, after issuing a sentence to an offender convicted under the *NCA*, the judge ordered the offender to pay a surcharge of more than $28,000.

surcharges are either paid to the court following the period of incarceration, or frequently paid at provincial correctional institutions and remitted to court. New Brunswick judges often impose time in default for the surcharge, particularly if the original charge resulted in a sentence of custody. Some offenders have been known to spend an average of an additional three to five days in custody to discharge the $35 surcharge. Otherwise, without a default alternative, defaulters are not vigorously pursued.

Administration and Costs

Administration of the federal surcharge is managed by staff of the Department of the Solicitor General Canada. Since the provincial surcharge scheme came into force, surcharge revenue has been used to offset administrative costs.

The Director of Victims' Services has a number of responsibilities, including provision of linkage between the Citizens Committee (see below) and the Department. He also receives monthly reports from all courts in New Brunswick indicating all surcharges and dispositions given, and amounts collected. This permits him to monitor the program, predict revenue and identify where collection could be improved.

Revenue and Disbursement of Funds

In 1990-91, revenue generated by the federal surcharge was about $380,000; in 1992-93 the revenue was $460,000. As in Ontario, most of the revenue has been generated by impaired driving offences. New Brunswick does not pool revenue from the federal and provincial surcharges; federal surcharge revenue is directed towards the province's Crime Compensation Program. Like other Canadian and American jurisdictions, New Brunswick is re-examining its compensation awards policy. There is some evidence that when awards are given for counselling for pain and suffering, rather than as straight lump-sum awards, the amount of award per case decreases but satisfaction increases.

4.8.2 New Brunswick Provincial Surcharge Program

The province proclaimed its *Victims Services Act* in force in April 1991. This *Act* authorized a surcharge of 15 percent on ticketed fines or on court-ordered sentences for all provincial statutes that receive fines. As in Nova Scotia, it was decided not to impose the provincial surcharge on non-fine dispositions because there are so few — it was considered not to be cost-effective to do so. There is no undue hardship provision, but it is estimated that about 95 percent of the surcharges

are paid voluntarily when the tickets are paid.[84] This high rate of compliance is largely attributed to the fact that the surcharge and fine are totalled on the ticket; drivers can lose their driver's licences if they fail to pay their tickets. In addition, the 1991 *Provincial Offences Procedures Act* authorizes a number of civil enforcement methods. The province would prefer not to incarcerate offenders for default on fines and surcharges.[85]

Judges are particularly in favour of the legislatively created Victims' Services Fund,[86] because they want to be assured the surcharge revenue will be directed towards victim services. It was noted, in this regard, that it is essential to keep judges informed about how surcharge revenue has been disbursed in order to retain their cooperation. Revenue from the provincial surcharge is divided between government victim services programs and community-based services, with about $150,000 allocated to community programs.

Funding of community programs has been in operation for about a year; the province delayed funding for a year to see how much revenue would be generated. The Victims' Services Fund community disbursements are administered by a citizen's committee, which meets regularly four times a year. Unlike the situation in Nova Scotia, where the administrative committee comprises government officials, the New Brunswick committee is composed entirely of community volunteers (who receive reimbursement for expenses only). Members sit on the committee for two-year terms except for the chair and vice-chair, who have three-year terms in order to provide some experience overlap.[87]

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[84] Since the provincial legislation came into force, the province has received only one complaint about the surcharge. It is speculated that one reason for such widespread acceptance is that no exceptions are allowed to the surcharge: that once exceptions are allowed, there is a greater likelihood of complaints. A large portion of the provincial surcharge revenue comes from speeding tickets, although some have been received from fines on truckers whose vehicles have been overweight. It was observed that, particularly in these economically depressed times, one of the appeals of the surcharge is that it is generally easier to get money from criminals than it is from politicians, especially since victims of crime are a specialized population without a broad constituency. Generally,. the public appears to be in favour of the surcharge because it is seen as a more desirable option than tax increases.

[85] The New Brunswick respondent referred to other collection strategies such as the one tried in Washington, D.C., whereby a telemarketing firm was hired to remind offenders that their fines were outstanding. Apparently, this strategy more than paid off financially.

[86] The provincial *Act* also allows private donations from outside groups such as corporations into the Victims' Services Fund. This option is considered good for businesses who want to build their public relations image, and increases the fund.

[87] It was thought that for a committee of this nature, a one-year term would not be appropriate.

The committee's policy is to fund short-term projects such as training, educational or developmental projects — projects that produce a concrete output. As in other jurisdictions, the intent is not to create long-term dependency of projects on the Victims' Services Fund.

A number of observations, suggestions and "lessons learned" were provided by the New Brunswick Victims' Services Director:

- Large administrative costs (as are often found in some charitable organizations) should be avoided;[88] care should be taken not to spend substantial amounts on collection of the surcharge; collection costs can be minimized by including the surcharge on ticketed fines.

- The advantage of creating a designated trust fund is that a year-end surplus may be rolled over into the next year; in addition, it encourages a "business" mentality — unlike perhaps what normally occurs in relation to the management of government money.

- Consideration should be given to consolidating all victim services into one agency, such as the independent commission that has been created in Connecticut. This not only reduces administrative costs; it permits easier access and less stress. Such an agency could be far more efficient and cost-effective than current arrangements.

- Related to the foregoing point, consideration should be given to removing victim/witness assistance programs from government-run services, which are too close to prosecutions. Instead, as in Quebec, it would be better to have community-based organizations provide these services.

4.9 Nova Scotia

4.9.1 Federal Surcharge Program

Imposition of the Surcharge: Attitudes and Practices

Nova Scotia is one of the provinces in which the surcharge has been fairly trouble-free. It is claimed that almost all judges in Nova Scotia impose the

[88] Note that, in the present study, this was a concern of some of the representatives of organizations that serve victims of crime with respect to the administration of the federal surcharge.

surcharge on a regular basis. The surcharge appears to be imposed on the disposition rather than the count.[89]

Use of the Undue Hardship Provision

Very little information is available about the use of the undue hardship provision, but it is assumed that it is used comparatively infrequently given the rate of revenue generated by the surcharge.

Amounts Imposed

Judges appear to impose an average amount of ten percent for fines; the average surcharge on non-fine dispositions is unknown. Apparently some judges do impose a nominal amount simply to comply with the legislation, but this practice does not seem to be widespread.

Default and Enforcement

The surcharge is enforced as part of the fine; however, as a result of a policy decision, time in default is not used for the surcharge. It appears that most offenders pay the surcharge as part of their fines payments and surcharge default is not pursued in any manner.

Administration and Costs

One contract person has been hired to administer the Victims Assistance Fund, but the surcharge revenue has not been used to pay for surcharge administrative costs; instead, these piggyback on regular court administration costs.

Revenue and Disbursement of Funds

In 1989, Nova Scotia brought its *Victims Rights and Services Act* into force. This *Act* authorizes a number of things, including a victims' bill of rights, a provincial surcharge scheme, the creation of a Director of Victim Services, a Victims Assistance Fund, and provision for the creation of a Victims Advisory Committee.

Revenue from both the federal and provincial surcharges is deposited in the Victims Assistance Fund. The combined annual revenue from both sources is

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[89] In October, 1992, the Supreme Court of Nova Scotia, Appeals Division, responded to a constitutional challenge regarding the validity of the federal surcharge provisions. It was held that the provisions were valid and that the surcharge is "neither a true tax nor a true fine, but rather a unique penalty in the nature of the general kind of restitution." This is the *Crowell* decision mentioned in Chapter 1.0.

approximately $800,000. Of this, $400,000 is allocated annually to community-based programs and the remainder is allocated to regionally based government victim services. In the original *Act*, the Fund could not be used to provide direct compensation to individual victims. In 1992 the *Act* was amended to amalgamate the Criminal Injuries Compensation Program with the Victims' Services Division to offer "one-stop" comprehensive services to victims of crime, resulting in the development of three programs by the Department of the Attorney General: Victims' Services Funding Program, Regional Victims' Services Program and Criminal Injuries Compensation Program.[90]

The Victims' Services Funding Program (in operation since January 1991) provides project funding to community-based organizations to enable them to develop programs and services for crime victims. To date, 23 projects — including training of volunteers and professionals (e.g., training in Multiple Personality Disorder and Post-traumatic Stress Syndrome), needs assessments and pilot projects such as an outward-bound type of program for adult female victims of abuse — have been funded for approximately $980,000.[91] The Program gives priority to community-sponsored, voluntary, nonprofit, nongovernment organizations and groups. Para-public organizations such as health and social service agencies, educational institutions and professional associations are also eligible.

For the funding period 1990-95, the Program will give priority to projects addressing the needs of victims of child abuse, sexual assault and family violence. Project funding is normally for one year or less; however, demonstration projects may be funded for up to 24 months. Proposals are assessed once per year; criteria for funding include subject area, proposed activity, amount of funding required and geographic location. A project's funding also includes evaluation. Long-term projects must demonstrate an ability to be sustained by alternative funding sources (e.g., the YMCA) because the Ministry does not want to become involved in long-term projects.

The Regional Victims' Services Program is a new service initiative of the Victims' Services Division, which has established five regional offices to offer criminal justice-based services to victims of crime (similar to the Victim/Witness Assistance Program in Ontario). In addition, the regional victims' services officers provide assistance with criminal injuries compensation applications.

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[90] The *Act* still does not permit surcharge revenue to be used in CICB awards.

[91] In 1992, the federal Department of Justice funded a needs assessment for the Nova Scotia program: *Assessment of Victims' Needs and Services in Nova Scotia*, by Chris Murphy (Ottawa: Department of Justice Canada).

The Criminal Injuries Compensation Program has been simplified by eliminating the Compensation Board and replacing it with an administrative process. A Manager of Criminal Injuries Compensation has been hired to administer the Program. It is alleged that the new program will result in reduced stress for the victim by deleting the hearing process and potential confrontation with the accused. In addition, criminal injuries compensation will be available at the regional level to inform victims of their rights and to assist them with the application process (mentioned above).

Victims of crime who have suffered personal injury will continue to be compensated for direct costs, such as medical expenses, clothing replacement, and lost wages. Financial awards for pain and suffering will be replaced, however, with awards to pay for counselling services from qualified practitioners of the victims' choice within the community.[92] The provision of counselling awards from the CICB counselling program will expand access to counselling services for crime victims who choose to seek counselling. In this way, compensation will be specifically directed towards mitigating the trauma that victims suffer as a result of the crime. In addition, the 1992 amendment expands eligibility for criminal injuries compensation for victims of sexual assault and child victims. Special provisions have been added to extend the application period in relation to sexual assault and, in particular, to childhood sexual assault. Funding for this program comes from the province's Consolidated Revenue Fund.

4.9.2 Nova Scotia Provincial Surcharge Program

The *Rights and Services to Victims of Crime Act* stipulates that the amount of surcharge to be imposed on provincial offences is to be prescribed by regulation. It includes all provincial offences except parking infractions, but exempts young offenders. It also includes an undue hardship provision. For fines, the regulated surcharge amount is 15 percent. Although the legislation allows for surcharges on non-fine dispositions, the government decided (like New Brunswick) not to create regulations for the provincial surcharge on non-fine dispositions because the numbers are so small.

[92] Where counselling is not available in a community, criminal injuries compensation will pay for travel.

4.10 Prince Edward Island

4.10.1 Federal Surcharge Program

Imposition of the Surcharge: Attitudes and Practices

Like New Brunswick and Nova Scotia, Prince Edward Island has been fairly successful in implementing the federal surcharge legislation. All Provincial Court judges impose the surcharge on a regular basis. The major explanation for the success of the federal surcharge legislation in Prince Edward Island is that judges know the funds are being used to assist victims.

Use of the Undue Hardship Provision

Little is known about the use of the undue hardship provision, although it is likely that it is being used relatively infrequently given the high rate of surcharge imposition.

Amounts Imposed

The amount of surcharge on fines is between 10 and 15 percent; for non-fine dispositions it is $25 to $35.

Default and Enforcement

Although there has been regional variation in relation to collection and enforcement techniques, outstanding surcharges are normally pursued in the same manner as fines. At the present time, the intention is not to use incarceration for surcharges. The Provincial Court used to handle the collection of the federal surcharge but it has since handed collection to the Prothonotary (civil) Office. The province is currently developing a new collection system aimed at obtaining payment before default occurs (e.g., use of payment schedules).

Administration and Costs

Administrative costs are covered by the Victim Assistance Fund, which includes revenue from the provincial and federal surcharges.

Revenue and Disbursement of Funds

In 1990-91, the revenue generated by the federal surcharge was $47,712. All revenue is directed towards the Victim Services Program and is largely used to offset criminal injuries compensation expenditures.

4.10.2 P.E.I. Provincial Surcharge Program

The *Victims of Crime Act* (1989) was part of an initiative regarding victims of crime begun in 1984. The *Act* provides the legislative framework for an integrated approach to victim assistance and incorporates provisions regarding victim services, the Victim Assistance Fund, a Victim Services Advisory Committee and the provincial surcharge, as well as criminal injuries compensation. Essentially, the integrated Victim Services Program is intended as a follow-up service from the initial police response to assist victims as their cases proceed through the criminal justice system. The program is criminal-justice-system-based rather than police-based or court-based. Staffing includes one coordinator and two victim services workers, and the program operates province-wide.

The provincial surcharge is a flat fee of $10 on all provincial offences. Although the province considered using a percentage basis as in other jurisdictional programs, it was decided that a flat fee would be easier to administer by court services. Revenue from both the federal and provincial surcharges is deposited in the Victim Assistance Fund to be used for salaries, expenses and other costs associated with the Victim Services Program and criminal injuries compensation awards. Revenue generated by the provincial surcharge program is about four times that of the federal program: about $160,000 annually.

The Advisory Committee is not a funding committee because all revenue goes towards victim services and criminal injuries compensation. Instead, the Committee investigates victims' issues and makes recommendations to the Minister of Justice and Attorney General.

4.11 Newfoundland

4.11.1 Federal Surcharge Program

Imposition of the Surcharge: Attitudes and Practices

Recently, judges have increasingly been imposing the surcharge, possibly because they have been shown that the funds are being used for victim services. It was noted in this regard that it is very important that victim services have a public profile and that judges be kept informed. Like those in other provinces, however, judges in Newfoundland are less likely to impose the surcharge on non-fine dispositions. They have been supported in this view by the Director of Public Prosecutions.

Use of the Undue Hardship Provision

As implied by the foregoing explanation, judges probably were making fairly frequent use of the undue hardship provision, although not many were providing reasons — written or otherwise.

Amounts Imposed

The average amount of surcharge imposed on non-fine dispositions is $25, and on fines, ten percent (or an average of $50 per fine).

Default and Enforcement

Defaulters are pursued by means of reminder letters (sent out immediately after the sentence and again after 30 days) and warrants. Time in default normally amounts to one day in jail for $25 to $50. Some incarceration has resulted from nonpayment. It is estimated that the default rate is about 50 percent. If no time in default was imposed, the surcharge default is pursued through collection letters.

Administration and Costs

Partial payments for monetary penalties are directed towards the surcharge first, the fine second. Administration of the surcharge is carried out by existing court administration staff. No separate costs have been distinguished.

Revenue and Disbursement of Funds

In 1990-91, the revenue generated by the federal surcharge was $85,650. In 1991-92 the total revenue collected was approximately $87,093, representing about 52 percent of the amount imposed. Revenue is deposited into general government revenue and then directed towards the Victim Services Branch. Current services involve four regional offices and one provincial office. In addition to government victim services staff, volunteers occasionally provide assistance to victims of crime (primarily victims of violent crimes). The Criminal Injuries Compensation Board was phased out as of March 1993, and previously committed compensation will be handled administratively.

4.11.2 Newfoundland Provincial Surcharge Program

At the present time there is no provincial surcharge program.

4.12 Summary

A number of common themes emerge from the foregoing review of the federal surcharge in the provinces and territories.

- There is widespread judicial dissatisfaction with the regulated $35 maximum for non-fine dispositions because it is felt that this amount does not represent the seriousness of crimes receiving long custodial sentences.
- Apparently, little attention has been given to informing offenders of the purposes of the surcharge.
- Judges are much more likely to impose the surcharge on fines than on non-fine dispositions.
- The surcharge has been most successful in those jurisdictions that have kept judges informed about how the surcharge revenue is being used.
- Many judges impose time in default for nonpayment of the surcharge, although some jurisdictions are reluctant to use incarceration for default. Without a default order, very little is done to pursue defaulters.
- Most jurisdictions require that partial payment of monetary penalties first be directed towards the surcharge, either because it is felt that this is consistent with the purpose of the legislation (i.e., to generate revenue for victims) or

because it is fairer to the offender since default orders are more commonly attached to fines.

- Most jurisdictions have established a designated fund for the surcharge revenue, although disbursement policies vary from jurisdiction to jurisdiction.

With respect to those jurisdictions that have created provincial surcharge programs, the following observations apply.

- In those jurisdictions where the surcharge (in part or totally) is allocated to community-based organizations, funding criteria include the requirement that the projects offer short-term, concrete services that will not be dependent on the surcharge revenue for long-term funding.

- Many jurisdictions are reconsidering their policies and procedures regarding criminal injuries compensation, with the result that some jurisdictions are opting for a new strategy that involves making this compensation an administrative procedure and consolidating all victim services into one agency.

- Cash awards for pain and suffering are being replaced by payments for counselling for pain and suffering — the idea being that greater satisfaction will result when the victim is returned, as far as possible, to his or her situation prior to the victimization.

- Most provincial surcharge provisions exclude parking infractions (largely because these are considered to be victimless), and some apply the surcharge only to offences for which the penalty is a fine.

- Jurisdictions have adopted a variety of strategies for administering surcharge disbursements depending on the government infrastructures already established, with the result that some administrative committees are government-run and others are composed solely of community members.

The following table summarizes some of the main characteristics of the provincial and territorial practices with respect to the imposition of both the federal and (where applicable) provincial surcharge.

Table 14 Major Characteristics of Jurisdictions' Surcharge Schemes

	Federal Surcharge						Provincial/Territorial Surcharge		
	Amounts Imposed	Annual Revenue	Use of Undue Hardship	Compliance Rate	Enforcement	Disbursement	Terms	Annual Revenue	Disbursement
Yukon	Fines: 15% N/Fines: $35	$20,000[1]	Rarely used	40%	Default orders (no civil methods)	None to date; will be community programs	1992 Fines: 15% N/Fines: $20	$60,000 (projected)	None to date; will be CICB & community programs
N.W.T.	Fines: 10 or 15% N/Fines: $35	$71,000[2]	25%	"majority"	Default orders	Community programs	1989 Fines: 15% N/Fines: $25 (no y.o.'s & municipal by-laws)	$62,000[3]	Community programs
B.C.	Fines: 10% N/Fines: < $10 or $35	$264,000[4]	No figures	69%	Default orders & civil methods	Gov't & community programs	NA		
Alberta	Fines: 10% N/Fines: $35	$650,000[5]	30 - 40%	50 - 60%	Default orders	Community programs	NA		

(continued)

[1] 1991-92 figures

[2] 1991-92 figures

[3] 1991-92 figures

[4] 1991-92 figures

[5] 1991-92 figures

Table 14 (cont'd)

	Federal Surcharge						Provincial Surcharge		
	Amounts Imposed	Annual Revenue	Use of Undue Hardship	Compliance Rate	Enforcement	Disbursement	Terms	Annual Revenue	Disbursement
Saskatchewan	Fines & N/Fines average: $32.45	$80,000 collected by March 1990	No figures	68%	Default orders & notice letters	Same as provincial surcharge	1989 Fines: ≤$100 = $10 $101 - ≤$200 = $20 $201 - ≤$500 = $30 >$500 = 10% N/Fines: $20 (parking & municipal by-laws exempt; no undue hardship)	No figures	Gov't & community programs
Manitoba	Fines: 15% N/Fines: $35	$400,000[1]	40 - 50%	No figures	Default orders & civil Methods	None to date	1987 Fines: 12% N/Fines: $25 (parking exempt; has undue hardship)	$750,000 annually	Community programs
Ontario	Fines: 10 or 15% N/Fines: $25 or $35	$108,000[2]	No figures: roughly 33%	51%	Default orders	None to date	NA		
Quebec	Fines: 10% N/Fines: average of $18.50/count	$1 M[3]	Rarely used	No figures	Default orders	Community programs	NA		

(continued)

[1] 1990-91 figures

[2] 1991-92 figures

[3] 1991-92 figures

Table 14 (cont'd)

	Federal Surcharge						Provincial Surcharge		
	Amounts Imposed	Annual Revenue	Use of Undue Hardship	Compliance Rate	Enforcement	Disbursement	Terms	Annual Revenue	Disbursement
New Brunswick	Fines: 10 or 15% N/Fines: $35	$380,000[1]	Rarely used	75%	Default orders	CICB	1991 Fines: 15% N/Fines: nil (no undue hardship)	No figures	Gov't & $300,000 to community programs
Nova Scotia	Fines: 10% N/Fines: unknown	$176,000[2]	Rarely used	No figures	None	Same as provincial surcharge	1990 Fines: 15% N/Fines: nil (parking & y.o.'s exempt; has undue hardship)	No figures	$400,000 annually to gov't programs; $400,000 annually to community programs
Prince Edward Island	Fines: 10 - 15% N/Fines: $25 - $35	$47,712[3]	No figures	No figures	collection letters & civil methods	Same as provincial surcharge	1989 Fines & N/Fines: $10 (y.o.'s exempt)	$160,000 annually	Gov't programs & CICB
Newfound-land	Fines: 10% N/Fines: $25	$87,093[4]	No figures	50%	Default orders & collection letters	Gov't programs			

[1] 1990-91 figures

[2] 1990-91 figures

[3] 1990-91 figures

[4] 1991-92 figures

5.0 CONCLUSIONS AND RECOMMENDATIONS

This chapter reviews some of the major findings and implications of this study and, on the basis of these observations, makes recommendations and suggestions regarding the future of the surcharge legislation in Ontario (and to some extent in other jurisdictions). Overall, despite the negative response the surcharge has received in Ontario, the steps required to remedy this situation are not very difficult.

5.1 Summary of Major Observations

- In Ontario, the revenue generated by the federal surcharge has declined dramatically since the initial period after the *Criminal Code* provisions and regulation came into force on July 31, 1989. From August 1, 1989, to the end of March 1990 (eight months), the revenue generated by the surcharge was $193,100; in fiscal year 1990-91 the revenue was $521,900; in 1991-92 it was $108,000; and from April 1992 to February 1993 (11 months) it was $7,000. The reason for this decline is a corresponding reduction in the frequency with which the surcharge has been imposed.

- In contrast to the low amounts of revenue actually generated, it is estimated that in Ontario, allowing for undue hardship (at a rate of about 33 percent) and default (at a rate of about 45 percent), the total amount of annual revenue that *could* have been generated if judges imposed the regulated maximum amounts of 15 percent on fines and $35 on non-fine dispositions, is approximately $4 million (based on 1992 conviction statistics). In reality, only about 15 percent of this potential was imposed in 1992 and only 2.7 percent actually collected.

- In 1992, about ten percent of the counts had one or more surcharges attached. Surcharges are imposed much more frequently on fines than on non-fine dispositions. Approximately one fifth of the fines and less than one percent of non-fine dispositions received a surcharge. There was considerable regional variation, with the North West and North East regions having the lowest proportion of surcharges (less than three percent) and the South West and Central South regions having the highest proportion (almost 40 percent) of surcharges attached to fines.

- With respect to the types of charges receiving a surcharge, more than 80 percent of all surcharges were imposed on what might be called "victimless" crimes: impaired driving, morals offences, wilful damage and offences against the administration of justice. More than 60 percent of surcharges attached to

fines were imposed on these types of offences. An explanation for this finding is that these offences are more likely to receive fines than non-fine dispositions and, as noted above, judges are far more likely to impose a surcharge on a fine than on a non-fine disposition. With respect to surcharges imposed on non-fine dispositions, about one out of every five surcharges was imposed on "theft/possession over $1,000", and nearly one third were imposed on the so-called "victimless" offences.

- Almost 45 percent of the surcharges were imposed on suspended sentences (which normally entail a condition of probation); almost ten percent were imposed on restitution orders; and less than one percent were imposed on probation and custodial sentences.

- The major reason for the very low rates of imposition of the federal surcharge in Ontario is judicial concern that the revenu is not being used to provide services and programs for crime victims. At the present time, revenue from the surcharge is not deposited in a designated fund for victims of crime, but in the province's Consolidated Revenue Fund. Although some judges stated that they objected to the surcharge because they considered it, for a variety of reasons, to be an inappropriate way of generating revenue for crime victims, nevertheless, three quarters of the judges responding to this study's survey reported that if the revenue were directed towards programs and services for crime victims, they would be more likely to impose the surcharge.

- Crown attorneys' views were similar to those expressed by judges. Defence counsel, on the other hand, were almost unanimously opposed to the surcharge. A fairly frequent comment made by both judicial and crown respondents reflected the view that a better way of raising revenue for victims of crime would be to administratively deduct a percentage of money from fines that are collected.

- While judges appear to impose the surcharge most often on the basis of the count, it is also claimed they have been imposing it on the basis of the case or the disposition as well.

- Judges do not often impose the surcharge on convictions resulting in non-fine dispositions. The reasons for this are varied: some judges tend to forget that the surcharge is applicable to non-fine dispositions; some think that it is unreasonable to impose a surcharge when the non-fine disposition involves custody — it constitutes undue hardship; and some think that the regulated maximum for non-fine dispositions of $35 fails to reflect the seriousness of offences for which there will be a lengthy custodial sentence.

- Use of the undue hardship provision varies considerably according to reports from judges and crown attorneys. About one out of every five judges estimated that he or she used the undue hardship provision in more than one-half to three quarters of cases. The rest of the judges indicated that their use of the provision ranged anywhere from less than ten percent to more than 75 percent of cases. Despite the fact that the legislation requires judges to give reasons for using the undue hardship provision, only about one-half of the responding judges in this survey indicated that they did. In every instance, these reasons are normally very brief and given orally, with judges explaining that their courts are far too busy to permit lengthy or written reasons.

- The average amount of surcharge imposed on fines is $50. There is, however, some regional variation in Ontario, probably as a result of different percentages being used: either ten percent or the maximum 15 percent. In all of Ontario, about 41 percent of the surcharges are based on the regulated maximum of 15 percent and about 46 percent are based on ten percent. Some judges explained that they preferred using ten percent as the basis because the math is easier.

- When asked if they ever reduced the amount of the fine because they were also imposing a surcharge, about one-half of the responding judges claimed that they did not; about a third stated that they did. About one-half of those who did estimated that they did so less than ten percent of the time; the remainder did so anywhere from more than 25 percent to almost 100 percent of the time. Very few judges claimed to have reduced the surcharge owing to the fact that they were also imposing a fine or other monetary penalty.

- With respect to non-fine dispositions, the average surcharge amount is about $36, although once again there is regional variation. The likely explanation for surcharge values greater than the regulated maximum of $35 is that some judges occasionally impose the surcharge on the basis of the disposition rather than the count. A little over one-half of the non-fine surcharges are $35 and about one third are $25.

- The compliance rate for surcharge payment in 1992 was a little over 50 percent. Compliance is slightly lower for surcharges imposed on fines, compared with surcharges imposed on non-fine dispositions. The calculated default rate is not the obverse of the compliance rate, owing to the fact that some surcharges were not yet due at the time of the study. Overall, the default rate appears to be almost 45 percent.

- Almost one third of the surcharges were given time in default in the event of nonpayment, although once again there is a fair amount of regional variation. In Metro Toronto, for example, time in default is imposed for almost one-half of the surcharges.

- In March 1990, an Interministerial Advisory Committee was formed to consider, in consultation with community-based groups, current victim services and programs, and to make recommendations regarding the disbursement of surcharge revenue. To date, there has been no disbursement of the approximately $830,000 collected through the surcharge. Currently, a submission is before the Ontario Cabinet regarding the future management and disbursement of surcharge revenue.

- Respondents to this study strongly urged the government to begin disbursing the surcharge revenue. Suggestions for the use of surcharge revenue include the provision of local victim services, as well as services for victims of child abuse, domestic violence and sexual assault. Consistent with the Regulatory Impact Analysis Statement, it was also suggested that the revenue be used to fund additional services rather than simply to offset existing government services and programs. A number of Canadian jurisdictions have reconsidered integrating their criminal injuries compensation programs into one coordinated service for victims of crime that would include other victim programs and services. A provincial needs assessment should be undertaken before disbursing surcharge revenue.

- About one-half of the study's respondents were opposed to the idea of a provincial surcharge program.

- With respect to other provinces' and territories' experience with the surcharge, it has been found that there is a widespread dissatisfaction with the regulated $35 maximum for non-fine dispositions; that little attention has been given to informing offenders about the purpose of the surcharge; that judges are more likely to impose the surcharge on fines than on non-fine dispositions; that the surcharge has been most successful in those jurisdictions that have kept judges informed about how the revenue is being used; and that most jurisdictions have developed a designated fund for the surcharge revenue, although disbursement practices vary.

5.2 Recommendations

5.2.1 Legislation and Regulation

There are primarily two areas of concern with respect to the legislation and the regulation: various questions regarding legal interpretations of the legislation, and dissatisfaction with the regulated $35 maximum for non-fine dispositions.

First, there is confusion regarding certain aspects of the legislation: questions about the use of time in default (whether a judge is permitted to impose time in default and whether it must be concurrent or consecutive), questions about the application of the decision in *R.* v. *Blacquiere* in relation to the surcharge (which limits the power of the judges to impose three dispositions), and questions about the burden of proof with respect to the undue hardship provision.

Although some judges and crown attorneys are opposed to the use of time in default, it was also recognized that few other enforcement options exist at this time. Moreover, findings from the British Columbia study suggest that there is a positive association between imposing time in default and compliance with the surcharge order. On the other hand, there may be alternative approaches that have not yet been developed that may prove to be as effective (see below).

It is likely that the decision in *R.* v. *Blacquiere* does not apply to the surcharge; however, it appears that some judges and crown attorneys would appreciate clarification of this point.

The question of onus in relation to the undue hardship provision raises other issues that were mentioned frequently in the survey. Although a fairly strong case could be made for eliminating the undue hardship provision entirely in view of the small amounts involved in the average surcharge, it is unlikely that this approach would be feasible: judicial desire for discretion cannot be overlooked. In the view of some respondents, the undue hardship provision could entail a separate means inquiry where the issue is often not simply a question of whether the offender has the ability to pay but whether she or he has the "budgeting skills" to pay. A separate means inquiry would, however, create substantial time demands on the court. Depending on how the burden of proof is interpreted, different outcomes in relation to the demand on the court could result.[93]

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[93] The further suggestion that the requirement for written reasons be eliminated deserves serious consideration, but it is unlikely that the legislation would be amended on this point alone.

Recommendation 1

> That the Ministry of the Attorney General, in conjunction with the Chief Judge's Office, provide legal interpretation and guidance with respect to the legal questions arising from the surcharge legislation and distribute this information to the provincial crown attorneys and judiciary.

The second issue concerns the widespread objection to the regulated $35 maximum for non-fine dispositions. It is claimed that this amount fails to reflect the seriousness of crimes that receive long custody sentences. Consequently, many respondents have suggested that the regulation be repealed and the courts use the legislated maximum of $10,000. We do not agree with this suggestion because in our view the arguments in favour of the regulation outweigh these objections; notably, the goals of avoiding inconsistency (including a probable savings in court time if deliberations are limited) and avoiding bringing the justice system into disrepute, which might result if larger surcharges were imposed and defaulted.

Moreover, it is our understanding that the point of the surcharge is not that it should reflect the seriousness of the offence but that it represents a reparative gesture on the part of the offender, which when aggregated for all offenders, would provide considerable revenue for victim services. It seems true, however, that relatively little explanation is given to offenders regarding the purpose of the surcharge. Under these circumstances, the reparative function of the surcharge cannot be expected to have much impact.

Recommendation 2

> That instead of repealing the regulation, judges be encouraged to explain the reparative purpose of the surcharge to offenders at the time of sentencing.

There has been a frequent suggestion that the legislation itself be repealed and a percentage of the fines revenue be administratively allocated to victim services and programs. Although this suggestion has appeal in terms of its simplicity and insofar as it avoids the present objections to the surcharge, we do not recommend that this suggestion be considered for a number of reasons. First, the result would

be to diminish existing revenue rather than create new revenue.[94] Secondly, it is unlikely that increasing fines to accommodate this method of creating revenue for victim services will be met with much more enthusiasm than the surcharge. Thirdly, there has been a fairly strong argument made for decreasing the use of fines for the simple reason that *Criminal Code* fines sometimes do not end up being simply fines but frequently result in custody or other types of dispositions (e.g., in a fine-option program). Lastly, this approach ignores the reparative aspect of the surcharge, which we feel deserves validation.

One final point concerns the idea of extending the federal surcharge to include all federal statutes. Without exploring the legal implications of this idea, it might be said it appears to have a certain merit. Nevertheless, given the current negativity to the federal surcharge in some jurisdictions, it does not seem that the timing is appropriate at present.[95] Perhaps in the future this idea might be considered again.

5.2.2 Imposition of the Surcharge: Practices and Attitudes

The two major issues with respect to judicial practices in imposing the surcharge relate to the lack of use of the regulated maximum of 15 percent on fines, and reduced judicial cooperation owing to a lack of assurance that the surcharge revenue is being used to assist crime victims. In addition, as noted in Chapter 3.0, there are a variety of other requests and needs for further information about the surcharge legislation.

With respect to the fact that many judges do not use the regulated maximum of 15 percent for fines because the math is less easy to calculate than simply imposing a ten percent surcharge: this could be easily remedied by providing judges

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[94] Although it must be noted that, ironically, at the present time this is precisely what is happening insofar as judges are decreasing the amount of fines they impose in order to accommodate the surcharge. If, using 1992 figures, 15 percent were administratively deducted from fine revenue, the resulting maximum amount of money that could be diverted to victim services (assuming all fines were paid) would be about $3.3 million — an amount, interestingly, that was originally projected for the annual surcharge revenue. However, this amount is less than the $4 million that could have been generated, and it also reduced the general revenue by this much money, which could be used for any number of needed services including "building roads" and even criminal injuries compensation. In fact, default on fine payments represents a significant problem. A 1993 Ministry of the Attorney General report notes that the amount of unpaid fines, arrears over 120 days is $320 million and the number of outstanding fines is in excess of three million. The amount outstanding is growing by approximately $900,000 per month.

[95] If the legislation is amended in future, that would be a good time to delete the requirement that judges give written reasons for using the undue hardship provision.

with a schedule (as has already been done in some regions) indicating the amount of surcharge (based on 15 percent) for different fine amounts.

Secondly, judges and crown attorneys need to be assured that the surcharge revenue is being used for the purposes legislated. If, in the future, the provincial government establishes a designated fund and creates a committee to oversee the disbursement of funds, one of the committee's responsibilities ought to be to provide the judiciary with either biannual or annual reports indicating the distribution of surcharge revenue.

Recommendation 3

That the Ministry of the Attorney General, with the cooperation of the Chief Judge's Office, distribute an information package both to crown attorneys and to judges containing the following:

- surcharge schedules based on the 15 percent regulated maximum;
- the aforementioned legal interpretation of the problematic provisions in the legislation;
- information on how the surcharge is being handled in other courts; and
- information about the order of payment for partial payment of monetary penalties (which relates to the time allowed for payment).

Recommendation 4

That when the Ministry of the Attorney General creates a designated fund and a committee to oversee the disbursement of surcharge funds, regular reports should be sent to judges and crown attorneys regarding how the surcharge revenue has been used.

It has been suggested that appeals could be used as a mechanism for promoting greater use of the surcharge provisions. According to the respondents to this study, appeals are not considered appropriate at this time because the surcharge revenue has not been distributed in accordance with its legislative purpose. If at some time in the future — following the establishment of a dedicated fund for the

surcharge revenue — the surcharge is administered according to its legislative purpose, then this issue might be considered again.

5.2.3 Default and Enforcement

At the present time, the Ontario Ministry of the Attorney General is reviewing its procedures with respect to fines collection and enforcement. Without knowing the future plans for fine collection, it would be premature to make recommendations in this area. It is possible, however, that future remedies to fine collection and enforcement procedures will incorporate some of the options that have been considered in other jurisdictions in Canada and the United States (e.g., incentives for payment such as facilitating ease of payment, penalties other than incarceration). In the meantime, some evidence suggests that the risk of serving time in default of payment is an effective means of ensuring compliance with the surcharge.

5.2.4 Disbursement of Funds

The Ontario Ministry of the Attorney General and the Interministerial Advisory Committee established to consider disbursement issues have already taken steps towards developing policies and strategies for the disbursement of the surcharge revenue. However, one observation that has been repeated in a number of jurisdictions is the importance of conducting a needs assessment. By documenting existing services and indicating gaps in services,[96] a needs assessment would be of great assistance in terms of guiding policy, creating priorities and establishing application criteria.

Recommendation 5

> That once a designated fund has been created and the government is in a position to start disbursing surcharge revenue, the Interministerial Advisory Committee — or any funding committee that may be created to oversee the designated fund — conduct a needs assessment of existing services and programs for victims of crime, and that the federal Department of Justice Canada provide assistance in this area.

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[96] This is especially significant for communities outside Toronto. The reader is reminded of judges' concerns that some of the revenue be used to promote local services for victims.

A second observation made in other jurisdictions concerns the advisability of waiting a year or so before allocating funds in order to see what amount of revenue is being generated. As a general rule this approach appears to make sense, although in Ontario the situation is complicated by the fact that the surcharge has already been generating revenue for the past three years — albeit at diminishing rates. Once the designated fund is established, a compromise might be to advise judges about recent developments and encourage them to start reimposing the surcharge. After a year or so, the revenue generated could then be reassessed to estimate probable yearly amounts. Because of the variables involved in this issue, we do not think a recommendation is warranted on this matter.

Other jurisdictions have considered a number of funding strategies and policies: some have chosen to distribute funds only to short-term projects and others have established criteria directed towards forestalling the possibility that community organizations become dependent on the surcharge revenue for their existence. The representatives of organizations that serve victims of crime who were interviewed in this study are divided in their opinion about whether only short-term or more long-term services are in need of funding. Overall, it appears that for many types of victims, limiting assistance to their immediate short-term needs (related to the immediate crisis and police and court experiences) would not be adequate. This issue deserves further attention in Ontario.[97]

Lastly, it is interesting to recall that a number of respondents pointed to the fact that one of the most effective ways to assist victims is simply to prevent them from becoming victims in the first place; that is, crime prevention or the minimization of recidivism. Ontario has already instituted a number of adult diversion programs aimed at first-time offenders: the drinking-driving diversion program and the petty property offenders (e.g., shoplifters) program. There is, however, room for further exploration in this area, particularly with respect to young offenders. On the other hand, the fact remains that there are and will continue to be victims of crime requiring assistance. Accordingly, it does not seem appropriate to compromise the funding of needed victim services by too much attention to crime prevention — at least in relation to the revenue available from the surcharge.

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[97] The issue raises further questions about the future of criminal injuries compensation in Ontario. As this report indicates, many jurisdictions are reconsidering criminal injuries compensation. Again, without going as far as making a recommendation, it is strongly suggested that the Ontario government investigate innovative approaches that have been used in other jurisdictions, with a view to assessing the present situation in this province – particularly in light of the withdrawal of cost-sharing by the federal government.

Nevertheless, as a second priority, some consideration could be given to imaginative and innovative programs that might be developed in this area.[98]

Recommendation 6

> That the Ministry of the Attorney General, in conjunction with other relevant ministries, include among its priorities the development of crime prevention and recidivism-reduction programs (e.g., diversion programs) — especially for young offenders — that will help forestall future criminal activities and hence future criminal victimization.

5.2.5 Administration

Assuming changes are made to encourage the use of the surcharge provisions in Ontario, one could anticipate a greater need for tighter administration of the program. For example, in New Brunswick, the Director of Victims' Services receives monthly reports on rates of imposition, amounts imposed and revenue collected from all the courts. This information permits the Director to monitor regional inconsistencies, to track any unusual problems or practices as they occur, and to project annual revenue. While the size of Ontario makes this suggestion a more ambitious undertaking,[99] some modifications to this approach might make it feasible. For example, reports could be quarterly or semi-annual rather than monthly.

Recommendation 7

> That the Ontario Surcharge Coordinator assume greater administrative oversight of the program by means of regular reports (on a quarterly or semi-annual basis) from the regional courts regarding the imposition of the surcharge, including frequencies and amounts imposed, and whether default orders were attached.

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[98] For example, some of the adult diversion programs for first-time impaired drivers appear to be very powerful deterrents to future offences of this sort.

[99] There are more than 200 courts in Ontario.

A second issue relates to the order of partial payment of monetary penalties. As Chapter 4.0 indicated, most jurisdictions direct partial payments towards the surcharge first. It will be recalled that arguments in favour of ordering fines to be paid first point out that the fact that fines resulting from *NCA* and *FDA* convictions belong to the federal government may pose a problem; however, it must be observed that other provinces have somehow overcome this problem. Secondly, and more importantly, the argument in favour of "fines first" notes that because many fines receive time in default, it is fairer and more efficient to credit payment towards fines before the surcharge. However, if — as studies on fines suggest — many fines are going to be in default in any case, there may not be much need for this approach.

On the other hand, there are arguments in favour of directing payments towards the surcharge first: it is consistent with the purpose of the victim fine surcharge legislation; there is greater assurance that the potential surcharge revenue will be realized, since surcharge penalties are generally smaller than fines and therefore more easily paid; and it is less costly and more convenient for the courts to implement and administer. One might add to these arguments the point that if one wants to stress the reparative aspect of the surcharge, then it would make sense to place the surcharge before the fine.

Since the Ministry is currently reviewing its policies and procedures regarding fine collection and enforcement, recommendations regarding any changes may not be advisable at this stage. However, it is suggested that the Ministry reconsider its arguments for the present order of payment in light of any new policies that may arise from its fines review.

5.2.6 Provincial Surcharge

Despite respondents' concerns that a provincial surcharge could involve extra problems on top of those that already exist with respect to the federal surcharge, experience in other jurisdictions suggests that this is not necessarily the case, depending on how the provincial surcharge is structured. Many of these concerns are related to the role of the court, but if the surcharge were limited to offences for which the penalty is a fine, the court and justices of the peace would have a very limited role. Recent proposals for changes in Ontario concerning child victims/witnesses, criminal injuries compensation, special prosecutions involving multi-victim/multi-perpetrator prosecutions, and the expansion of the Victim/Witness Assistance Program, will place an additional financial burden on the province, which a provincial surcharge could help to offset. The strongest case against a provincial surcharge, however, is that it would be highly inadvisable to introduce a provincial scheme until attitudes towards the federal surcharge are changed.

Recommendation 8

That the province should not consider instituting a provincial surcharge at this time, but should explore this option at a later date once the federal surcharge is in full operation.

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APPENDIX A

JUDICIAL QUESTIONNAIRE

VICTIM FINE SURCHARGE STUDY

Introduction

On July 31, 1989 the federal victim fine surcharge legislation came into force. The regulations stipulate that the maximum amount of a victim fine surcharge to be imposed on an offender under subsection 727.9(1) of the *Criminal Code* is 15 percent of any fine imposed and, in the case of a non-fine disposition, a maximum amount of $35.

The following questions address many of the issues that have arisen with respect to the federal surcharge legislation and regulations. The questions have been grouped under broad categories relating to such things as the nature of the legislation, frequency of use of the legislation, amounts involved, etc. We are soliciting your views about these issues in order to clarify our understanding of judicial attitudes and practices within the province. We also invite you to comment on any issues which may not have been addressed in the list provided below.

NOTE: We realize that the use of the surcharge has varied over time during the past three years. When considering these questions, would you please include all of your experience since the legislation came into force in July 1989.

1. *The Legislation and Regulations - Attitudes Towards*

How were you informed about the federal surcharge provisions?

Would you be interested in further information about the surcharge provisions? YES. NO. (Please circle your answer)

If YES, what type of information would you like (e.g., the provisions themselves; the administration of the surcharge; services that receive funding)? (Please circle relevant area of interest or add additional one.)

Apart from the actual ***amounts*** *of the surcharge stipulated by the regulations,* do you have any philosophical concerns about the idea of a surcharge? YES. NO. (Please circle your answer)

Do you think the present legislation is appropriate, needed, sufficiently clear, etc.? For example, what are your views concerning:

- the mandatory nature of the legislation;
- the fact that some crimes are considered to be "victimless";
- the fact that it excludes young offenders;
- the fact that defaulters are excluded from the fine option program;
- the fact that there are *regulations* stipulating the maximum amounts for the surcharge as opposed having the amounts stipulated within the *legislation itself*?

Do you have any other comments regarding the **idea** of a surcharge?

2. Frequency of Use

Within the past three years, have you ever imposed the surcharge? YES. NO. (Please circle your answer)

If YES, have you imposed the surcharge more than 15 times? YES. NO. (Please circle your answer)

Within the past three years, in what proportion of cases have you imposed the surcharge: less than 10 percent? 11-25 percent? 26-50 percent? 51-75 percent? over 75 percent? 100 percent? (Please circle your answer)

Apart from the undue hardship provision, have you waived the surcharge requirement as a result of your philosophical objections to the provisions or for other reasons? YES. NO. (Please circle your answer)

If YES, in what proportion of cases have you waived the surcharge: less than 10 percent? 11-25 percent? 26-50 percent? 51-75 percent? over 75 percent? 100 percent? (Please circle percentages that apply)

Apart from the undue hardship provision, if you do not impose the surcharge, do you give reasons for not doing so? YES. NO. (Please circle your answer)

If YES, are these reasons written? Given orally? (Please circle answer).

If NO, in what percentage of cases do you <u>not</u> give reasons: less than 10 percent? 11-25 percent? 26-50 percent? 51-75 percent? over 75 percent? 100 percent?

What role have Crown Attorneys had concerning the surcharge? That is, do Crown Attorneys make submissions regarding the surcharge **on their own initiative**? YES. NO. (Please circle answer)

If YES, how often/in what percentage of cases has this occurred?

Have you requested submissions from the Crown regarding the appropriateness or amount of the surcharge? YES. NO.

If YES, how often/in what percentage of cases?

Have any other court personnel (e.g., probation officers, court clerk) mentioned the surcharge? YES. NO. (Please circle which person along with your answer)

If YES, how often has this occurred?

Do you impose the surcharge on the basis of an information or indictment (meaning there would be one surcharge per case), or on the basis of counts (meaning there could be more than one surcharge per information), or on the basis of the sentences imposed (e.g., for any conviction the sentence could be custody plus probation — meaning there could be more than one surcharge per conviction)? (Please circle your answer)

Are you more likely to impose a surcharge in the case of FINE dispositions than in the case of NON-FINE dispositions? YES. NO. Could you explain why?

Are there some types of convictions for which you might be more prone to impose a surcharge? (For example, impaired, blood alcohol over .08 related motor vehicle; theft/B & E; assault; robbery; mischief; *Narcotic Control Act* and *Food and Drugs Act*; (Please circle those convictions which apply); Other (please specify):

3. Undue Hardship Provision

The legislation states that:

> 727.9 (2) Where the offender establishes to the satisfaction of the court that undue hardship to the offender or the dependants of the offender would result from the making of an order under subsection (1), the court is not required to make the order.

(3) Where the court does not make an order under subsection (1), the court shall

(a) provide the reasons why the order is not being made; and

(b) enter the reasons in the record of the proceedings or, where the proceedings are not recorded, provide written reasons.

What are your views concerning the undue hardship provision? Is it sufficiently clear? Appropriate? Any other comments?

What criteria do you use to determine "undue hardship"? Could you provide examples of situations in which you have used (or would use) the undue hardship provision? For example: lack of financial means, social assistance recipients, unemployment insurance recipients, students, injured workers, large fines imposed, convictions on numerous counts, long prison terms imposed, sentence of imprisonment imposed (Please circle those situations that apply.) Other (please specify):

How is the court informed about the offender's situation? For example, do you consider the offender's ability to pay the surcharge when deciding on a fine disposition? YES. NO. Or, in the case of non-fine dispositions, do you ask for a Pre-Sentence Report? YES. NO. Other means (please specify)?

In what percentage of cases (in which you are considering imposing the surcharge) do you use the undue hardship provision? less than 10 percent? 11-25 percent? 26-50 percent? 51-75 percent? over 75 percent? (Please circle answer)

Do you sometimes impose a nominal surcharge in cases where there is evidence of some undue hardship but subsection (3) is not satisfied? YES. NO. How often/in what percentage of cases?

Has your use of undue hardship changed in recent years owing to economic conditions? YES. NO.

Do you normally provide reasons for using the undue hardship provisions? YES. NO.

If YES, where are these reasons normally stated?

4. Amount of Surcharge

What are your views concerning the maximum amounts of the surcharge stipulated by the regulations? For example, are you in favour of a percentage for FINE dispositions and a flat fee for NON-FINE dispositions? YES. NO.

Are the amounts stipulated appropriate and adequate? YES. NO. Comments:

Would you like greater discretion in determining the amounts? YES. NO. Comments:

Do you ever deliberate about the amount of the surcharge? YES. NO.

What is the average percentage you impose for FINE dispositions?

What is the average amount of surcharge you impose for NON-FINE dispositions?

Do you ever alter (i.e., lessen) the amount of a monetary penalty (e.g., fine or restitution/compensation) in light of the fact that the offender is required to pay a surcharge? YES. NO.

If YES, how often/in what percentage of cases?

Do you ever lessen the amount of the surcharge when an offender is also required to pay a monetary penalty? YES. NO.

If YES, how often/in what percentage of cases?

5. Default in the Payment of the Surcharge

Do you know in what order offenders are required to pay their monetary penalties, including the surcharge? YES. NO.

If YES, please indicate which order is used by your court.

Do you think that attaching a default order to the surcharge at the time of sentencing is appropriate? YES. NO.

Have you ever imposed a default order? YES. NO.

If YES, in what percentage of cases?

What other penalties do you think should be attached to default in payment of the surcharge?

Have you ever incarcerated an offender as a result of default in payment of the surcharge? YES. NO.

If YES, how often?

6. Other Issues

Can you estimate how much court time is spent on the imposition of the surcharge (including assessment, deliberation, terms of payments, etc.)? For example, negligible? Some other amount of time (please specify)?

There have been statements in the press that the surcharge has not been imposed due to a lack of distribution of the funds to victims. If the government were to distribute surcharge revenue to victim programs and services, would you be more likely to impose to the surcharge? YES. NO. Comments?

Do you have any views about how the surcharge funds should be disbursed? YES. NO. Comments?

Criminal injuries compensation is handled by a different mechanism than funds raised by the surcharge. The legislation, however, does not explicitly prevent provinces from directing the surcharge funds to criminal injuries compensation. What are your views concerning this? Would you be in favour of directing surcharge revenue towards criminal injuries compensation? YES. NO. Comments?

Any other comments regarding the federal surcharge legislation and regulations?

Would you be in favour of a provincial surcharge program? YES. NO.

Do you have any views about what a provincial surcharge program should be like? For example, New Brunswick has a provincial scheme involving a mandatory 15 percent on all provincial offence fines for both adult and young offenders. Nova Scotia's provincial scheme excludes young offenders and parking offences. What type of surcharge would you prefer in a provincial scheme? A flat fee? A percentage basis? Both? (Please circle answer) Comments?

If you are **not** in favour of a provincial surcharge program, could you state why?

APPENDIX B

CROWN ATTORNEY QUESTIONNAIRE

VICTIM FINE SURCHARGE STUDY

Introduction

On July 31, 1989 the federal victim fine surcharge legislation came into force. The regulations stipulate that the maximum amount of a victim fine surcharge to be imposed on an offender under subsection 727.9(1) of the *Criminal Code* is 15 percent of any fine imposed and, in the case of a non-fine disposition, a maximum amount of $35.

The following questions address many of the issues that have arisen with respect to the federal surcharge legislation and regulations. The questions have been grouped under broad categories relating to such things as the nature of the legislation, frequency of use of the legislation, amounts involved, etc. We are soliciting your views about these issues in order to clarify our understanding of judicial and prosecutors' attitudes and practices within the province. We also invite you to comment on any issues which may not have been addressed in the list provided below.

NOTE: We realize that the use of the surcharge has varied over time during the past three years. When considering these questions, would you please include all of your experience since the legislation came into force in July 1989.

1. *The Legislation and Regulations - Attitudes Towards*

How were you informed about the federal surcharge provisions?

Would you be interested in further information about the surcharge provisions? YES. NO. (Please circle your answer)

If YES, what type of information would you like (e.g., the provisions themselves; the administration of the surcharge; services that receive funding)? (Please circle relevant area of interest or add additional one.)

Apart from the actual ***amounts*** *of the surcharge stipulated by the regulations*, do you have any philosophical concerns about the idea of a surcharge? YES. NO. (Please circle your answer)

Do you think the present legislation is appropriate, needed, sufficiently clear, etc.? For example, what are your views concerning:

- the mandatory nature of the legislation;
- the fact that some crimes are considered to be "victimless";
- the fact that it excludes young offenders;
- the fact that defaulters are excluded from the fine option program;
- the fact that there are *regulations* stipulating the maximum amounts for the surcharge as opposed having the amounts stipulated within the *legislation itself*?

Do you have any other comments regarding the **idea** of a surcharge?

2. Frequency of Use

Have you seen the surcharge imposed more than 15 times? YES. NO. (Please circle your answer)

Within the past three years, in what proportion of cases have you seen the surcharge imposed: less than 10 percent? 11-25 percent? 26-50 percent? 51-75 percent? over 75 percent? 100 percent? (Please circle your answer)

Apart from the undue hardship provision, in what proportion of cases have you seen the surcharge requirement waived as a result of the presiding judge's philosophical objections to the provisions or for other reasons? less than 10 percent? 11-25 percent? 26-50 percent? 51-75 percent? over 75 percent? 100 percent? (Please circle your answer)

Apart from the undue hardship provision, if the surcharge was not imposed, has the judge given reasons for not doing so? YES. NO. (Please circle your answer)

If YES, were these reasons written? Given orally? (Please circle answer).

If NO, in what percentage of cases were reasons **not** given: less than 10 percent? 11-25 percent? 26-50 percent? 51-75 percent? over 75 percent? 100 percent?

What do you consider the role of Crown Attorneys to be concerning the surcharge? That is, have you every initiated a submission regarding the surcharge? YES. NO. (Please circle your answer)

If YES, how often?

Have you ever made a representation regarding the surcharge as a result of the judge's request? YES. NO. (Please circle your answer)

If YES, how often?

Has anyone other person (e.g., court clerk, probation officer) every made a representation regarding the surcharge? YES. NO. (Please circle which person along with your answer)

If YES, how often have you seen this happen?

In your experience, have judges imposed the surcharge on the basis of the information or indictment (meaning there would be one surcharge per information/case); OR on the basis of counts (meaning there could be more than one surcharge per information); OR on the basis of sentences given (e.g., custody plus probation — meaning there could be more than one surcharge per conviction)? (Please circle answer(s))

Are you more likely to make representations regarding the imposition of a surcharge in the case of FINE dispositions than in the case of NON-FINE dispositions? YES. NO. (Please circle your answer) Could you explain why?

In your experience, are judges more likely to impose a surcharge in the case of FINE dispositions than in the case of NON-FINE dispositions? YES. NO. (Please circle answer) Could you explain why?

Are there some types of convictions for which you might be more prone to make representations regarding the imposition of a surcharge? For example: impaired, blood alcohol over .08 related motor vehicle; theft/B & E; assault; robbery; *Narcotics Control Act* and *Food and Drugs Act*; mischief; (Please circle those which apply); Other (please specify):

In your experience, are there some types of convictions for which judges are more likely to impose a surcharge? For example: impaired, blood alcohol over .08 related motor vehicle; theft/B & E; assault; robbery; *Narcotics Control Act* and *Food and Drugs Act*; mischief; (Please circle those which apply). Other (please specify):

3. Undue Hardship Provision

The legislation states that:

727.9 (2) Where the offender establishes to the satisfaction of the court that undue hardship to the offender or the dependants of the offender would result from the making of an order under subsection (1), the court is not required to make the order.

(3) Where the court does not make an order under subsection (1), the court shall

(a) provide the reasons why the order is not being made; and

(b) enter the reasons in the record of the proceedings or, where the proceedings are not recorded, provide written reasons.

What are your views concerning the undue hardship provision? Is it sufficiently clear? YES. NO. Appropriate? YES. NO. Any other comments?

In your experience, what criteria has the court used to determine "undue hardship"? For example: lack of financial means, social assistance recipients, unemployment insurance recipients, students, injured workers, large fines imposed, convictions on numerous counts, long prison terms imposed, sentence of imprisonment imposed, or (Please circle those situations that apply.) Other (please specify):

How is the court informed about the offender's situation? For example, do the presiding judge consider the offender's ability to pay the surcharge when deciding on a fine disposition? YES. NO. Or, in the case of non-fine dispositions, does the judge ask for a Pre-Sentence Report? YES. NO. (Please circle answers) Other means? (Please specify)

In what percentage of cases is the undue hardship provision used? less than 10 percent? 11-25 percent? 26-50 percent? 51-75 percent? over 75 percent? (Please circle answer)

In your experience, do judges sometimes impose a nominal surcharge in cases where there is evidence of some undue hardship but subsection (3) is not satisfied? YES. NO.

If YES, how often/in what percentage of cases?

In your experience, has the use of undue hardship changed in recent years owing to economic conditions? YES. NO.

Does the judge normally provide reasons for using the undue hardship provisions? YES. NO. (Please circle answer)

If YES, where are these reasons normally stated?

4. Amount of Surcharge

What are your views concerning the maximum amounts of the surcharge stipulated by the regulations? For example, are you in favour of a percentage for FINE dispositions and a flat fee for NON-FINE dispositions? YES. NO. (Please circle your answer)

Are the amounts stipulated in the regulations appropriate and adequate?

If NO, why not?

Do you think judges should be given greater discretion in determining the amounts? YES. NO. (Please circle your answer)

Is the amount of surcharge ever deliberated in court? YES. NO. (Please circle answer)

What is the average percentage imposed for FINE dispositions?

What is the average amount of surcharge imposed for NON-FINE dispositions?

In your experience, has the presiding judge ever altered (i.e., lessened) the amount of a monetary penalty (e.g., fine or restitution/compensation) in light of the fact that the offender is required to pay a surcharge? YES. NO. (Please circle answer)

If YES, how often/in what percentage of cases?

In your experience, has the presiding judge ever lessened the amount of the surcharge when an offender is also required to pay a monetary penalty? YES. NO. (Please circle answer)

If YES, how often/in what percentage of cases?

5. Default in the Payment of the Surcharge

Do you know in what order offenders are required to pay their monetary penalties, including the surcharge? YES. NO. Please indicate which order:

Do you think that attaching a default order to the surcharge at the time of sentencing is appropriate? YES. NO. (Please circle your answer)

In your experience, has the presiding judge ever imposed a default order? YES. NO.

If YES, in what percentage of cases?

What other penalties do you think should be attached to default in payment of the surcharge?

In your experience, has the presiding judge ever incarcerated an offender as a result of default in payment of the surcharge? YES. NO.

If YES, how often?

6. Other Issues

Can you estimate how much court time is spent on the imposition of the surcharge (including assessment, terms of payments, etc.)? For example, negligible? Some other amount of time (please specify)?

Do you have any views about how the surcharge funds should be disbursed?

Any other comments regarding the federal surcharge legislation and regulations?

Would you be in favour of a provincial surcharge program? YES. NO.

Do you have any views about what a provincial surcharge program should be like? For example, New Brunswick has a provincial scheme involving a mandatory 15 percent on all provincial offence fines for both adult and young offenders. Nova Scotia's provincial scheme excludes young offenders and parking offences. What type of surcharge would you prefer in a provincial scheme? A flat fee? A percentage basis? Both? (Please circle answer) Any other comments?

If you are **not** in favour of a provincial surcharge program, could you state why?

APPENDIX C

DEFENCE COUNSEL QUESTIONNAIRE

VICTIM FINE SURCHARGE STUDY

Introduction

On July 31, 1989 the federal victim fine surcharge legislation came into force. The regulations stipulate that the maximum amount of a victim fine surcharge to be imposed on an offender under subsection 727.9(1) of the *Criminal Code* is 15 percent of any fine imposed and, in the case of a non-fine disposition, a maximum amount of $35.

The following questions address many of the issues that have arisen with respect to the federal surcharge legislation and regulations. The questions have been grouped under broad categories relating to such things as the nature of the legislation, frequency of use of the legislation, amounts involved, etc. We are soliciting your views about these issues in order to clarify our understanding of your attitudes and court practices within the province. We also invite you to comment on any issues which may not have been addressed in the list provided below.

NOTE: We realize that the use of the surcharge has varied over time during the past three years. When considering these questions, would you please include all of your experience since the legislation came into force in July 1989.

1. *The Legislation and Regulations - Attitudes Towards*

Apart from the actual ***amounts*** *of the surcharge stipulated by the regulations*, do you have any philosophical concerns about the idea of a surcharge? YES. NO. (Please circle your answer) If YES, what are your concerns or objections?

Do you think the present legislation is appropriate? YES. NO. Needed? YES. NO. Sufficiently clear? YES. NO. (Please circle your answers)

What are your views concerning:

- the mandatory nature of the legislation;
- the fact that some crimes are considered to be "victimless";
- the fact that it excludes young offenders;
- the fact that defaulters are excluded from the fine option program;

- the fact that there are *regulations* stipulating the maximum amounts for the surcharge as opposed having the amounts stipulated within the *legislation itself*?

Do you have any other comments regarding the *idea* of a surcharge?

2. Frequency of Use

Have you seen the surcharge imposed more than 15 times? YES. NO. (Please circle your answer)

Within the past three years, in what proportion of eligible cases have you seen the surcharge imposed: less than 10 percent? 11-25 percent? 26-50 percent? 51-75 percent? over 75 percent? 100 percent? (Please circle answer)

Apart from the undue hardship provision, in what proportion of cases have you seen the surcharge requirement waived or ignored as a result of the presiding judge's philosophical objections to the provisions or for other reasons? less than 10 percent? 11-25 percent? 26-50 percent? 51-75 percent? over 75 percent? 100 percent? (Please circle your answer)

Have you ever made a representation regarding the surcharge? YES. NO. (Please circle your answer)

If YES, how often?

In your experience, have judges imposed the surcharge on the basis of the information or indictment (meaning there would be one surcharge per information/case); OR on the basis of counts (meaning there could be more than one surcharge per information); OR on the basis of sentences given (e.g., custody plus probation — meaning there could be more than one surcharge per conviction)?

Are you more likely to make representations regarding the imposition of a surcharge in the case of FINE dispositions than in the case of NON-FINE dispositions? YES. NO. Could you explain why?

Or are you more likely to make representations regarding surcharges in the case of NON-FINE dispositions? YES. NO. Why?

In your experience, are judges more likely to impose a surcharge in the case of FINE dispositions than in the case of NON-FINE dispositions? YES. NO.

3. Undue Hardship Provision

The legislation states that:

727.9 (2) Where the offender establishes to the satisfaction of the court that undue hardship to the offender or the dependants of the offender would result from the making of an order under subsection (1), the court is not required to make the order.

(3) Where the court does not make an order under subsection (1), the court shall

(a) provide the reasons why the order is not being made; and

(b) enter the reasons in the record of the proceedings or, where the proceedings are not recorded, provide written reasons.

What are your views concerning the undue hardship provision? Is it sufficiently clear? YES. NO. Appropriate? YES. NO. Any other comments?

In your experience, what criteria has the court used to determine "undue hardship"? For example: lack of financial means, social assistance recipients, unemployment insurance recipients, students, injured workers, large fines imposed, convictions on numerous counts, long prison terms imposed, sentence of imprisonment imposed, or (Please circle those situations that apply.) Other (please specify):

In what percentage of cases is the undue hardship provision used? less than 10 percent? 11-25 percent? 26-50 percent? 51-75 percent? over 75 percent? (Please circle answer)

In your experience, has the use of undue hardship changed in recent years owing to economic conditions? YES. NO. Comments?

4. Amount of Surcharge

What are your views concerning the maximum amounts of the surcharge stipulated by the regulations? For example, are you in favour of a percentage for FINE dispositions and a flat fee for NON-FINE dispositions? YES. NO. Comments?

Are the amounts stipulated in the regulations appropriate and adequate? YES. NO.

If NO, why not?

Do you think judges should be given greater discretion in determining the amounts? YES. NO. Any comments?

Is the amount of surcharge ever deliberated in court? YES. NO. Normally, what is the subject of the deliberations?

What is the average percentage imposed for FINE dispositions?

What is the average amount of surcharge imposed for NON-FINE dispositions?

In your experience, has the presiding judge ever altered (i.e., lessened) the amount of a monetary penalty (e.g., fine or restitution/compensation) in light of the fact that the offender is required to pay a surcharge? YES. NO.

If YES, how often/in what percentage of cases?

5. Default in the Payment of the Surcharge

Do you know in what order offenders are required to pay their monetary penalties, including the surcharge? YES. NO. In what order?

Do you think that attaching a default order to the surcharge at the time of sentencing is appropriate? YES. NO. Any comments?

In your experience, has the presiding judge ever imposed a default order? YES. NO.

If YES, in what percentage of cases?

What other penalties, if any, do you think should be attached to default in payment of the surcharge? Any comments?

If you are not in favour of enforcement penalties, could you explain why?

In your experience, has the presiding judge ever incarcerated an offender as a result of default in payment of the surcharge?

If YES, how often?

6. Other Issues

Can you estimate how much court time is spent on the imposition of the surcharge (including assessment, terms of payments, etc.)? For example, negligible? Some other amount of time (please specify)?

Do you have any views about how the surcharge funds should be disbursed?

Any other comments regarding the federal surcharge legislation and regulations?

Would you be in favour of a provincial surcharge program? YES. NO.

Do you have any views about what a provincial surcharge program should be like? For example, New Brunswick has a provincial scheme involving a mandatory 15 percent on all provincial offence fines for both adult and young offenders. Nova Scotia's provincial scheme excludes young offenders and parking offences. What type of surcharge would you prefer in a provincial scheme? A flat fee? A percentage basis? Both? (Please circle answer) Any other comments?

If you are **not** in favour of a provincial surcharge program, could you state why?

APPENDIX D

VICTIM ORGANIZATIONS DISCUSSION AGENDA

VICTIM FINE SURCHARGE STUDY

AGENDA - MEETING MARCH 15th, 1993

1. The Legislation and Regulations - Attitudes Towards

*Apart from the actual **amounts** of the surcharge stipulated by the regulations*, do you have any philosophical or pragmatic concerns about the idea of a surcharge?

Do you think the present legislation is appropriate, needed, sufficiently clear, etc.? For example, what are your views concerning:

- the mandatory nature of the legislation;
- the fact that some crimes are considered to be "victimless";
- the fact that it excludes young offenders;
- the fact that defaulters are excluded from the fine option program;
- the fact that defaulters may be imprisoned

Do you have any other comments regarding the *idea* of a surcharge?

2. Amount of Surcharge

What are your views concerning the maximum amounts of the surcharge stipulated by the regulations? For example, are you in favour of a percentage for FINE dispositions and a flat fee for NON-FINE dispositions?

Are the amounts stipulated appropriate and adequate?

Do you think judges should have greater discretion in determining the amounts?

3. Disbursement of Funds

Do you have any views about how the surcharge funds should be disbursed? For example, what priorities?

What is your view of a dedicated fund for surcharge revenues?

Criminal injuries compensation is handled by a different mechanism than funds raised by the surcharge. The legislation, however, does not explicitly prevent

provinces from directing the surcharge funds to criminal injuries compensation. What are your views concerning this? Would you be in favour of directing surcharge revenue towards criminal injuries compensation?

4. Provincial Surcharge

Would you be in favour of a provincial surcharge program?

Do you have any views about what a provincial surcharge program should be like? For example, New Brunswick has a provincial scheme involving a mandatory 15 percent on all provincial offence fines for both adult and young offenders. Nova Scotia's provincial scheme excludes young offenders and parking offences. What type of surcharge would you prefer in a provincial scheme? A flat fee? A percentage basis? Both? Some other scheme?

If you are **not** in favour of a provincial surcharge program, could you state why?

Any other comments regarding either the federal program or a provincial surcharge program.

APPENDIX E

CROSS-CANADA SURVEY CONTACTS

Yukon

Ms Jodie Shimkus (403) 667-8292
Senior Policy Analyst
Policy Section
Department of Justice Canada

Ms Linda Adams (403) 667-5942
Courts Administration
Department of Justice Canada

Northwest Territories

Mr. Lawrence Norbert (403) 920-6911
Coordinator, Victims Assistance Committee
Department of Justice Canada

Mr. Pierre Rousseau (403) 920-7711
General Counsel and Director
Department of Justice Canada

British Columbia

Ms Carol Dohan (604) 356-9475
Senior Policy and Programs Analyst
Policy, Planning and Evaluation
Court Services Branch
Ministry of the Attorney General

Mr. Ron Rayner (604) 356-9445
Court Services Branch
Ministry of the Attorney General

Alberta

Ms Barbara Pratt (403) 427-3460
Manager, Victims' Programs and Services
Law Enforcement Division
Department of Justice Canada

Mr. Peter Teasdale (403) 427-5050
Regional Director, General Prosecutions Branch
Department of Justice Canada

Saskatchewan

Ms Jan Turner (306) 787-5112
Senior Policy Analyst
Policy, Planning and Evaluation
Public Law and Policy
Department of Justice Canada

Manitoba

Mr. Les Kee (204) 945-1854
Director of Special Prosecutions and Programs
Department of Justice Canada

Ms Candice Minch (204) 945-0170
Policy Analyst
Policy and Planning Division
Department of Justice Canada

Mr. Barney Ziemianski (204) 945-4504
Courts Administration
Department of Justice Canada

Quebec

Ms Christine Viens (514) 873-4070
Directrice, Bureau d'aide aux victimes d'actes criminels
Ministère de la Justice

New Brunswick

Mr. Doug Naish (506) 453-2888
Director, Victim Services
Correctional Services Division
Ministry of the Solicitor General

Nova Scotia

Ms Paula Simon (902) 424-4858
Director, Victims' Services Division
Department of the Attorney General

Prince Edward Island

Ms Ellie Reddin (902) 368-4584
Coordinator, Victim Services
Division of Community and Correctional Services
Department of Justice Canada

Ms Robbie Munn (902) 368-4584
Assistant Coordinator, Victim Services
Division of Community and Correctional Services
Department of Justice Canada

Mr. Art Gennis (902) 368-6000
Prothonotary Office
Department of Justice Canada

Newfoundland

Ms Jackie Lake (709) 729-0900
Provincial Coordinator, Victim Services Branch
Department of Justice Canada

Ms Pamela Ryder-Lahey (709) 726-7181
Director, Court Services
Department of Justice Canada

Mr. Mike Baker (709) 726-7181
Management Analyst
Court Services
Department of Justice Canada

APPENDIX F

REGIONAL COURT LOCATIONS

Central East

Alliston
Barrie
Bowmanville
Bracebridge
Bradford
Cobourg
Collingwood
Elmvale
Lindsay
Midland
Newmarket
Orillia
Oshawa
Peterborough

Central South

Brantford
Cambridge
Cayuga
Hamilton
Kitchener
Niagara Falls
Simcoe
St. Catharines
Welland

Central West

Brampton
Brampton Satellite
Burlington
Guelph
Milton
Mississauga
Oakville
Orangeville
Owen Sound
Walkerton

East

Alexandria
Belleville
Brockville
Cornwall
Kingston
L'Orignal
Morrisburg
Napanee
Ottawa
Pembroke
Picton
Prescott
Smith Falls

North East

Bruce Mines
Cochrane North
Elliott Lake
Espanola
Gore Bay
Haileybury
Kirkland Lake
North Bay
Parry Sound
Sault Sainte Marie
Sudbury
Timmins
Wawa
White River

North West

Atikokan
Big Trout
Cat Lake
Dryden
Fort Frances
Kenora
Pickle Lake
Rainy River
Red Lake
Round Lake
Sioux Lookout
Thunder Bay

South West

Chatham
Goderich
London
Sarnia
St. Thomas
Stratford
Strathroy
Windsor
Woodstock

Metropolitan Toronto

College Park
Etobicoke
Old City Hall
Scarborough
Willowdale

APPENDIX G

VICTIM SERVICES AND PROGRAMS IN ONTARIO

APPENDIX "C" - Listing of Private, Non-Profit and Government Sponsored Victim Services and Programs in Ontario

NOTE: There are too many private and non-profit victim services/ organizations to be included in the list below. For a more comprehensive listing, refer to "Directory -Service for Victims of Crime," Canadian Criminal Justice Association, 1989.

I. Ontario Joint Wife Assault Prevention Initiatives - Ontario Women's Directorate (OWD)

In 1983, the Family Violence Unit was established within the OWD with a mandate to take the lead role in developing government initiatives on domestic violence against women as well as a public education campaign on the issue. The initiatives which were developed are co-ordinated by the Interministerial Committee on Services Related to Wife Battering. The OWD chairs this Committee.

A. Enforcement Initiatives -

-designed to improve the capacity of the system, to investigate and successfully prosecute cases of wife assault, and to provide effective correctional programs for convicted offenders.

Initiatives	Ministry
1. Police Training Program	Solicitor General
2. The Victim Crisis Assistance & Referral Services	Solicitor General
3. Justice System Data Collection	Solicitor General
4. Designed Wife Assault Coordinator Program	Attorney General
5. Victim/Witness Assistance Program	Attorney General
6. Emergency legal advice Program for Wife Assault	Attorney General / (Legal Aid)
7. Male batterer Programs	Correctional Services

8. Staff Training Program	Correctional Services

B) Family-Focused Support Services

9. Counselling Programs	Ministry of Community and Social Services (M.C.S.S.)
10. Child Support Workers	M.C.S.S.
11. Shelter-Based Support Services	M.C.S.S.
12. Housing Programs	Ministry of Housing
13. Information provided to training institutions	Ministry of Skills Development

C) Prevention/Education Programs

Broadly-based prevention/education programs to disseminate the message that wife assault is a crime and for bringing about the changes in attitude needed for long-term change on this issue.

14. Mass Media Public Education	O.W.D. Campaign
15. Local Community Public Education Grants	O.W.D.
16. Grant Programs to assist social services agencies to develop resource materials and training programs	M.C.S.S.
17. Grant Program to promote the training of health professionals	Ministry of Health
18. Educational Programs in Schools	Ministry of Education
19. Development of a Protocol for school boards	Ministry of Education
20. Community-based cultural interpreter services and intercultural training	Ministry of Citizenship

21. Grants to Northern and Native communities	Ministry of Northern Development and Ministry of Citizenship
22. Grants provided through ongoing interministerial research committee	O.W.D.
23. Service Needs Assessment for women with disabilities	O.W.D. / M.C.S.S. / Office for Disabled Persons

II. Community Based Corrections Programs - Ministry of Corrections

A complete range of services are provided by means of fee for service contracts with appropriate non-profit community agencies such as the Salvation Army, Elizabeth Fry and John Howard Societies, etc.

A) Community Corrections

Community Residential Centres and Agreements
Young Offender Open Custody Residences
Community Service Orders
Restitution/Compensation
Fine Option Programs
Victim Offender Reconciliation Programs
Employment Literacy/Lifeskills Programs

B) Treatment Services

Substance Abuse/Driving While Impaired Programs
Family Violence Intervention Programs
Shoplifting Programs
Counselling Programs
Specialized Young Offender Programs
Anger Management Programs

C) Other Programs

Alternative Measures
Metro Toronto Victim Services
Bail Verification and Supervision Programs
Native Programs
Multicultural Programs
Volunteer Programs

III. Income and Family Support Unit - Ministry of Community and Social Services

The objectives of the Unit are,

- to assist in providing stability within families and the community
- to encourage the independence of individuals

A staff compliment of 7 Program Supervisors, 1 Program Coordinator and 1 Employment Liaison Officer provide services to 250 agencies across the Toronto area.

Major Program Areas include:

Family Benefits; Vocational Rehabilitation Services; Sole Support Mother's Program; Legal Aid Assessment; Family Court; Halfway Houses; Hostels and Shelters; Literacy; Community Neighbourhood Support Services; Purchase of Counselling (Municipal and Ministry); Credit Counselling; Multi-Service Centres; Community Youth Support; GWA - Cost of Administration; Employment Programs; Family Violence/Sexual Assault; Housing Initiative; and Drop-In.

IV. Other Programs:

Ministry of the Attorney General

1. Criminal Injuries Compensation

2. Designated Domestic Assault Coordinator - at least one prosecutor in each Crown Attorneys' Office has been designated to coordinate the prosecution of domestic assault cases.

3. Designated Child Abuse Coordinator - at least one Crown Attorney in each office has been designated as a Coordinator for child abuse prosecutions.

4. Designated Sexual Assault Coordinator - at least one Crown Attorney in each office will be designated as a Coordinator for sexual assault prosecutions.

5. Legal Aid Plan - victims of wife assault may apply to obtain a legal aid certificate for information on civil remedies and criminal justice system.

Ministry of the Solicitor General

1. Sexual Assault Centres - core funding to 21 Rape Crisis/SAC Centres and the Ontario Coalition of Rape Crisis Centres plus funding to establish 10 new centres to support crisis and long term counselling and for outreach to

immigrant and racial minority women, aboriginal women, women with disabilities and rural women.

2. Specialized police training and public forums on issues related to sexual assault.

3. Specialized police training, public education and community forums regarding wife assault and victim assistance.

Ministry of Health

1. Sexual Assault Centres in Hospitals - emergency care includes medical care, crisis counselling and collection of evidence if requested.

2. Community Counselling Programs - for victims of sexual assault and victims of child abuse.

(Source: The Advisory Board on Victims' Issues 1991: 50-54)

APPENDIX H

CRIMINAL CODE SURCHARGE PROVISIONS

(4) Subject to subsection (5), a payment under this section shall be applied first to the payment in full of the amount by way of restitution and thereafter to the payment in full of the costs and charges of committing and conveying the offender to prison.

(5) Where a term of imprisonment is imposed for failure or refusal to pay both a fine and an amount by way of restitution, a payment under this section shall be applied first to the payment in full of any part of the amount to be paid by way of restitution that remains unpaid, and thereafter to payment in full of any part of the fine that remains unpaid.

CROSS-REFERENCES

See references cited under ss. 722, 725 and 727.

SYNOPSIS

This section provides that a jail sentence imposed for breach of a restitution order shall be reduced on a daily pro rata basis upon any payments made either before or after the warrant of commutal has been executed. However, no partial payments shall be received until such payments would be sufficient to obtain at least one day's remission of sentence and until any fee associated with the issuance of the warrant and its execution has been paid (subsecs. (1), (2)).

Payments made under this section shall be applied first to the payment in full of any restitution, then to any fine that is outstanding and, lastly, to any costs and charges of committing and conveying the accused to prison (subsecs. (4), (5)).

VICTIM FINE SURCHARGE / Exception / Written reasons for not making order / Amounts applied to aid victims / Regulations / Enforcement.

727.9 (1) Subject to subsection (2), where an offender is convicted or discharged under section 736 of an offence under this Act, Part III or IV of the *Food and Drugs Act* or the *Narcotic Control Act*, the court imposing sentence on or discharging the offender shall, in addition to any other punishment imposed on the offender, order the offender to pay a victim fine surcharge in an amount not exceeding

(a) fifteen per cent of any fine that is imposed on the offender for that offence or, where no fine is imposed on the offender for that offence, ten thousand dollars, or

(b) such lesser amount as may be prescribed by, or calculated in the manner prescribed by, regulations made by the Governor in Council,

subject to such terms and conditions as may be prescribed by regulations made by the Governor in Council.

(2) Where the offender establishes to the satisfaction of the court that undue hardship to the offender or the dependants of the offender would result from the making of an order under subsection (1), the court is not required to make the order.

(3) Where the court does not make an order under subsection (1), the court shall

(a) provide the reasons why the order is not being made; and

(b) enter the reasons in the record of the proceedings or, where the proceedings are not recorded, provide written reasons.

(4) A victim fine surcharge imposed under subsection (1) shall be applied for the purposes of providing such assistance to victims of offences as the Lieutenant Governor in Council of the province in which the surcharge is imposed may direct from time to time.

(5) The Governor in Council may, for the purposes of subsection (1), make regulations prescribing the maximum amount or the manner of calculating the maximum amount of a victim fine surcharge to be imposed under that subsection, not exceeding the amount referred to in paragraph (1)(*a*), and any terms and conditions subject to which the victim fine surcharge is to be imposed.

(6) Subsections 718(3) to (11) apply and section 718.1 does not apply in respect of a victim fine surcharge imposed under subsection (1). R.S.C. 1985, c. 23 (4th Supp.), s. 6.

Transitional provision

Note: R.S.C. 1985, c. 23 (4th Supp.), s. 8 provides as follows:

8. Section 727.9 of the Criminal Code, as enacted by section 6 of this Act, does not apply to any proceedings in respect of an offence committed before the coming into force of that section.

CROSS-REFERENCES

The definition of "sentence" in s. 785 of Part XXVII does not include "victim fine surcharge". Under s. 673, a "victim fine surcharge" is a "sentence" for the purposes of indictable offence appeals. The court of appeal may order the suspension of a "victim fine surcharge" pending determination of the appeal relating thereto under s. 683(5). Such order may follow the filing of a notice of appeal or notice of application for leave to appeal. The stay provisions of s. 689 do not apply to a "victim fine surcharge". Provisions governing the imposition of imprisonment terms in default of payment, terms of payment and committal upon default are incorporated by the provisions of s. 718(3) to (11).

SYNOPSIS

This section authorizes the imposition of victim fine surcharges in addition to any other penalty.

An accused convicted of an offence under the Criminal Code or of certain offences under the Food and Drugs and Narcotic Control Acts shall be ordred to pay an additional fine not exceeding: (a) 15% of any fine imposed or, if no fine is imposed, $10,000; or (b) such lesser amount as may be prescribed by regulation (subsec. (1)).

If the accused establishes undue hardship the court can decline to impose the surcharge (subsec. (2)) but must give and record or write reasons in this regard (subsec. (3)).

Moneys collected are to be applied to assisting victims of crime (subsec. (4)).

The normal rules relating to fines apply with the exception that the fine option programme is not available (see ss. 718(3) to (11), 718.1) (subsec. (6)).

The Governor General in Council has the power to make regulations with respect to the amount or manner of calculating the surcharge (within the limits set out in subsec. (1)(*a*)) and the terms and conditions concerning its imposition (subsec. (5)).

COSTS TO SUCCESSFUL PARTY IN CASE OF LIBEL.

728. The person in whose favour judgment is given in proceedings by indictment for defamatory libel is entitled to recover from the opposite party costs in a reasonable amount to be fixed by order of the court. R.S., c. C-34, s. 656.

CROSS-REFERENCES

See ss. 297 to 317 respecting defamatory libel. In the absence of a general authority in proceedings upon indictment, costs may be awarded under s. 599(3) as a condition of a change of venue on application by the prosecutor or upon an adjournment under s. 601(5). Under s. 683(3), costs are not allowable on appeals of conviction for indictable offences. Sections 684 and 694.1 permit costs relating to legal assistance.

For award of costs provisions in summary conviction proceedings, see s. 809 for trials and ss. 826, 834(1) and 839(3) on appeal.

The definition of "sentence" in s. 673 does not include an award of costs under s. 728.

Section 729 governs recovery of costs under s. 728.