



**Federal Victim Surcharge  
in New Brunswick:  
*An Operational Review***



# Federal Victim Surcharge in New Brunswick: An Operational Review

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*The views expressed in this reports are those of the authors and do not necessarily represent the views of the Department of Justice Canada or the Government of Canada.*



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## Highlights of Report

- There is a high level of awareness surrounding all aspects of the Federal Victim Surcharge (FVS).
- The majority of stakeholders and judges interviewed held a positive attitude towards the FVS, but expressed reservations with the current process.
- There are marked variations in documentation procedures of the federal victim surcharge between Provincial Court locations; however, consistent practices were documented within each of the 14 Provincial Court locations visited.
- When the Court waives the federal victim surcharge, it is required to provide reasons why it is not being imposed and to enter the reasons in the record of the proceedings. In 99% (ninety-nine percent) of the cases reviewed (n=861) where the federal victim surcharge was waived, there was no documentation of reasons for the waiver in the file.
- In 861 files that were manually reviewed from the 2005-2006 year, there was no documentation indicating that the offender had established “to the satisfaction of the court that undue hardship...would result” (s.737(5)) and hence, exempt the offender from the federal victim surcharge .
- All judges interviewed consistently cited the offender’s inability to pay as the reason for waiving the surcharge.
- Judges expressed a desire for increased feedback from Victim Services and Fine Options as they are often not made aware of the effectiveness of these programs.
- The average rates of waiver (66.2%), imposition (33.8%) and collection (82.7%) in New Brunswick were noted over a five-year period from 2000-2005 based on 61,714 eligible dispositions from data drawn from the New Brunswick Justice Information System.
- The sole enforcement strategy in place in New Brunswick is incarceration according to the current default formula whereby an amount equal to eight times the provincial minimum wage can be satisfied for each day spent in jail. If, for example, an offender failed to pay a \$50 surcharge, this would only result in a single day's incarceration. This means that the offender serves no sentence for default as the process for one day is to admit and release at the same time.
- All stakeholders interviewed agreed the current default formula in the *Criminal Code*, whereby an amount equal to eight times the provincial minimum wage can be satisfied for each day spent in jail, was not a meaningful consequence for offenders who do not satisfy their imposed federal victim surcharge.
- The anticipated revenue to be generated in New Brunswick from the 1999 amendments to the *Criminal Code* provisions relating to the automatic imposition of the federal victim surcharge has not been realized.
- There is a low federal victim surcharge waiver rate on fine dispositions (25.2%) compared with non-fine dispositions related to summary (84%) and indictable (91.3%) offences.
- The lowest federal victim surcharge waiver rate is for driving under influence (DUI) (26.0%), followed by drug convictions (61.6%) and non-violent property offences (72.8%).

## Executive Summary

In January 2005, the Attorney General of Manitoba proposed to Federal Provincial and Territorial (FPT) Ministers Responsible for Justice that the amount of the federal victim surcharge in the *Criminal Code* be increased from 15% on fines to 20%. Ministers agreed to refer this issue to the FPT Working Group on Victims of Crime for consideration and to report back to FPT Deputy Ministers. In response to this initiative, New Brunswick was designated to further study the implementation of the federal victim surcharge in their province. The purpose of the present study is to document the imposition and collection process of the federal victim surcharge in the Provincial Court in New Brunswick.

The seven primary research questions were:

1. Does New Brunswick assume automatic imposition unless waived by the judge and so are court forms developed in this way?
2. Are policies directives in place related to Court administration of automatic imposition and are those directives being followed?
3. What are the enforcement strategies in place in New Brunswick and what if any are the consequences of non-compliance?
4. Is the default formula in the *Criminal Code* meaningful for collection and is it a meaningful consequence?
5. What other options could be considered for collection and what are any impediments that would need to be overcome jurisdictionally to implement options other than default time as a penalty?
6. What are the rates of imposition and compliance in New Brunswick?
7. Why has the anticipated revenue to be generated in New Brunswick from the 1999 amendments to the *Criminal Code* provisions related to surcharge not been realized?

Unlike a fine, the purpose of the federal victim surcharge is to provide financial support to victim services, as well as, to provide a rational link between an offender's crime and his/her accountability to the victim. The maximum value of the federal victim surcharge to be levied is 15% of a fine when a fine is imposed, \$50 in the case of an offence punishable by summary conviction where a non-fine disposition is imposed (e.g., theft under \$5000), and \$100 in the case of an offence punishable by indictment (e.g., aggravated assault) where a non-fine disposition is imposed; or even an increased surcharge, at the discretion of the judge, in appropriate circumstances (*Criminal Code* 737.(3)).

The *Criminal Code* (737.(1) and 737.(5)) indicates that the federal victim surcharge should be imposed on all cases and that the only reason for waiving the federal victim surcharge is if the *offender can prove* that paying the federal victim surcharge would result in *undue hardship* to either him/herself or his/her dependents. If the court waives the federal victim surcharge, it is required to provide reasons why it is not being imposed and enter the reasons in the record of the proceedings (s.737(6)).

Since the introduction of the federal victim surcharge in 1989, and amendments in 1999 to automatically impose the surcharge, most jurisdictions have recovered only a portion of the anticipated revenue based on conviction, absolute and conditional discharge information available (Li, 2005). Despite this, little has been documented on the implementation of the federal victim surcharge.



## **Methodology**

The methodology used in this study was predominantly qualitative in nature and was complemented with a few broad statistics on the implementation and collection of the federal victim surcharge culled from the New Brunswick Justice Information System (JIS). Assessments of awareness and attitudes towards the federal victim surcharge regime, as well as evidence surrounding the documentation, imposition and collection process of the surcharge was collected through interviews and surveys. The quantitative analysis was based on five years of justice data that permitted the calculation of the average imposition and collection rates, e.g., only monetary satisfaction, of the federal victim surcharge in the New Brunswick Provincial Court. A manual file review of 861 random cases from the year 2005-2006, drawn from the New Brunswick Justice Information System examined documentation practices surrounding the surcharge in 14 permanent locations of the Provincial Court in New Brunswick.

### **Quantitative Analysis: New Brunswick Justice Information System (JIS)**

Data examined from the New Brunswick Justice Information System revealed the federal victim surcharge imposition rates across New Brunswick ranged from 22.9% in Moncton to 48.9% in the Fredericton region with a provincial average of 33.8% over a five-year period. Despite the variability in imposition rates, all regions exhibited high rates of collection, ranging from 79.9% to 85.2% of the imposed federal victim surcharge, with a provincial average of 82.7%. There is a low federal victim surcharge waiver rate on fine dispositions (25.2%) compared with non-fine dispositions in relation to summary (84%) and indictable (91.3%) offences. The lowest federal victim surcharge waiver rate is for driving under influence convictions (DUI) (26.0%) followed by drug convictions (61.6%) and non-violent property offences (72.8%).

### **Qualitative Analysis: Interviews/Surveys**

A total of 22 key informants in the New Brunswick Criminal Justice System participated in the study. All participated through interviews with the exception of four (4) judges who responded in writing.

The primary key informants (n=5) included:

- Director of Program Support Services, Court Services Division, Department of Justice and Consumer Affairs;
- Manager of Victim Program Support Services, Department of Public Safety;
- Assistant Deputy Minister Community and Correctional Services, Department of Public Safety;
- Director of Financial Services, Department of Public Safety, and,
- The Associate Chief Judge of the Provincial Court, who was not interviewed, but provided a written response to the questions via fax.

Additional interviews were conducted with:

- 8 court supervisors who were asked questions only regarding the documentation process of the federal victim surcharge in the Provincial Courts;
- 6 judges (3 responded in writing, 3 were interviewed). One of the primary key informants was also a judge (the Associate Chief Judge), so a total of 7 judges provided responses; and,
- 3 lawyers (1 duty counsel and 2 defence counsel).

All informants (n=22) were aware of the automatic nature of the federal victim surcharge process. Of the primary key informants and judges, the majority (9 of 11) had a positive attitude towards the federal victim surcharge. Concerns raised by primary key informants and judges included how generated revenues by the federal victim surcharge are spent and offenders not making the link between the federal victim surcharge and their victims. There were divergent views on whether there should be amendments to the *Criminal Code* to increase the imposed amount from 15% to 20%. Some primary key informants and judges (5 of 11) thought an increase in the surcharge might result in the federal victim surcharge being waived more frequently due to a perception that offenders cannot pay the federal victim surcharge. All judges (n=7) were opposed to a system where the federal victim surcharge would be mandatory and they would no longer have the discretionary power to enact the undue hardship exemption.

Results from the manual file review found judges are actively waiving the federal victim surcharge on a case-by-case basis rooted in the belief that the offender does not have the means to pay the surcharge. Despite this, the procedure for waiver of the federal victim surcharge found in s.737(5) of *Criminal Code* does not seem to be applied or documented consistently. The relevant sections state:

Exception

(5) When the offender establishes to the satisfaction of the court that undue hardship to the offender or the dependants of the offender would result from payment of the victim surcharge, the court may, on application of the offender, make an order exempting the offender from the application of subsection (1).

Reasons

(6) When the court makes an order under subsection (5), the court shall state its reasons in the record of the proceedings.

In 37% of the cases where the surcharge was waived, there was documentation noted in court records. The remaining 63% of the cases did not document the waiver in the file; however, this was not a reflection of the surcharge being forgotten, but rather a result of local practice/understandings at different court offices.

With respect to enforcing the collection of the federal victim surcharge many felt that jail time was not an effective consequence. Numerous suggestions were made to reduce the waiver rate and improve the collection rate of the federal victim surcharge; however, very few of these suggestions were deemed plausible, as extensive limitations were immediately identified or further feasibility assessments need to be conducted to assess their long-term value.

## Conclusions

1. There is a high level of awareness surrounding all aspects of the Federal Victim Surcharge (FVS).
2. The average rates of imposition (33.8%) and collection (82.7%) in New Brunswick were noted over a five-year period from 2000-2005 based on 61,714 eligible dispositions from the New Brunswick Justice Information System.
3. The anticipated revenue to be generated in New Brunswick from the 1999 amendments to the *Criminal Code* provisions related to surcharge have not been realized due primarily to high waiver rates. In fact, revenue has remained constant at pre-1999 *Criminal Code* amendment levels.



4. Interviews with key informants revealed that many suspected the losses were due to low federal victim surcharge collection rates. This study suggests the opposite - that change must come from reduced waiver rates (currently at an average of 66.2%), to result in increased imposition rates (currently at an average of 33.8%), rather than increased collection rates (currently at an average of 82.7%).
5. There is a low waiver rate on fine dispositions (25.2%) compared with non-fine dispositions related to summary (84%) and indictable (91.3%) offences. The lowest waiver rate is for driving under influence (DUI) (26.0%) followed by drug convictions (61.6%) and non-violent property offences (72.8%).
6. It appears that one of the primary reasons judges feel that an offender cannot pay the federal victim surcharge is if they will be serving time, as only 4% with a custody order and 84% with no custody order had the federal victim surcharge imposed. Nonetheless, when collection rates were examined for offenders who have received a custody order, the average collection rate across the province is 52.8%, with a maximum FVS collection rate of 75.2% in Bathurst. This indicates that using a custody order as an indicator of an offender's ability to pay the federal victim surcharge may not be the most sensitive measure.
7. Policy directives are in place related to court administration of automatic imposition and these directives are being followed. All court locations had a system to ensure the federal victim surcharge was being automatically applied unless actively waived by the judge. There were consistent documentation practices within court locations; there was considerable variation, however, in the documentation practices between different Provincial Court locations. This conclusion is supported from the interview and the manual file review data.
8. Interviews with key informants indicated that the primary criterion judges used for waiving the federal victim surcharge was the *perception* of the offender's ability to pay. During the manual file review of 861 court files there was no documentation to indicate that evidence had been produced to prove "undue hardship" to the courts' satisfaction, nor were reasons documented (in 99% of cases).
9. The sole enforcement strategy of the federal victim surcharge regime in New Brunswick is incarceration according to the current default formula whereby an amount equal to eight times the provincial minimum wage can be satisfied for each day spent in jail. If, for example, an offender failed to pay a \$50 surcharge, this would only result in a single day's incarceration, which in fact the offender does not serve. These levels are adjusted as the level of minimum wage changes.
10. All stakeholders interviewed agreed the default formula in the *Criminal Code* was *not* a meaningful consequence in the collection process, as it does not generate income for victim services and costs the government money to incarcerate offenders.
11. A difference in documentation practice did not impact collection rates either way. When the summons portion of the fine/surcharge order was filled out on the offender's fine/surcharge order, there was not a consistent trend relating to the success of federal victim surcharge collection. That is, when the summons portion of the order was completed, sometimes greater collection rates were noted and in other regions, they were not. These findings are based on the manual file review.
12. At present, the findings from this study indicate that the rationale underlying the federal victim surcharge is not being realized in New Brunswick – that is to make offenders accountable in some way to victims and to generate revenues for victim services. Offenders of serious crimes (Table 6), offenders who receive a custodial sentence (Table 7), and offenders who have been convicted of crimes involving victims (Table 8) are all having the federal victim surcharge waived.



Although the *Criminal Code* was amended in 1999 to provide provinces with more surcharge revenue to devote to services for victims of crime, in fact, in New Brunswick, the federal surcharge revenue has remained the same as pre amendments.

## Recommendations

The data were analyzed with a view to providing recommendations for improving revenues from the federal victim surcharge in the province of New Brunswick. Within the constraints for this review, the recommendations present no obvious limitations and/or have been purported to have been implemented with success in other jurisdictions.

1. In an attempt to address the high waiver rate and ensure the federal surcharge provisions of the *Criminal Code* are fully addressed, it is recommended that:

(i) The Department of Public Safety in partnership with the Department of Justice initiate the opportunity to meet once with the Chief Provincial Court Judge to provide information on the Victim Services Program and to determine the most effective mode to communicate program successes to the full judiciary. This should happen as soon as possible.

(ii) A feasibility study and possible pilot project based on its results be undertaken to further explore the offender's ability to pay in situations where offenders receive custody dispositions. The goal of such a study would be to produce concrete resources to aid judges in their decision making (e.g. alternative payment schedules, easy to use guidelines/tables), recognizing that surcharge amounts on non-fine dispositions are small (\$50 for summary convictions, \$100 for indictable offences).

2. To maximize surcharge collection rates, the Department of Public Safety examine the feasibility of utilizing motor vehicle registration and/or driver's license renewal as a mechanism for satisfying the surcharge. As part of this feasibility assessment, the use of this option in other jurisdictions should be examined, as well as the success of using this as a remedy for non-payment.

3. In order to better understand the positive and challenging aspects of federal victim surcharge regimes in other jurisdictions, it is recommended that similar research be conducted in other provinces and territories and results shared with relevant stakeholders and decision makers (e.g. Federal Provincial Territorial Working Group on Victims of Crime, FPT Deputies and Ministers Responsible for Justice).

4. Given the disconnect between the intention of the 1999 amendments to the *Criminal Code* federal victim surcharge provisions and what is occurring, it is recommended that once research has been completed in other jurisdictions, a summary and discussion paper that focuses on this disconnect be provided to relevant stakeholders and decision makers (e.g. Federal Provincial Territorial Working Group on Victims of Crime, FPT Deputies and Ministers Responsible for Justice).



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# 1. Introduction

A surcharge is a monetary penalty imposed on offenders at the time of sentencing. The monies collected by the provincial and territorial governments are used to provide various support services for victims of crime within their jurisdictions. To date there has been a gross shortfall in the anticipated federal victim surcharge revenue for New Brunswick as is the case in most provinces (Li, 2005). This trend of not maximizing the projected revenues has remained stable even after an amendment in 1999 that rendered the imposition of the federal victim surcharge automatic unless waived by the court. This report will attempt to unearth contributing factors and possible solutions to this situation.

## 1.1. Background

### 1.1.1. Victims in Canada

A victim of crime in Canada is defined for the purposes of the Victim Impact Statement provisions in the *Criminal Code* in section 722:

- (4) For the purposes of this section and section 722.2, “victim”, in relation to an offence,
  - (a) means a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence; and
  - (b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection (1), includes the spouse or common-law partner or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependant of that person.

Additionally, section 2 of the *Criminal Code* contains a general definition specifying that the term “victim” includes the victim of an alleged offence. Most provinces and territories also have their own victims’ legislation. In New Brunswick, *Regulation 91-67* under the *Victims Services Act*, Chapter V-2.1, 1987, defines a victim in section 2.2(b) as:

- (i) a person against whom an offence is committed in New Brunswick;
- (ii) with respect to a person who is ill or incapacitated and against whom an offence is committed in New Brunswick, anyone who acts on behalf of the person and who has in law or fact custody or is responsible for the care or support of the person;
- (iii) the parent or guardian acting on behalf of a minor against whom an offence is committed in New Brunswick; or
- (iv) the spouse, common-law partner, child, parent or guardian of a person against whom an offence is committed in New Brunswick.

The history of victim services in Canada has been relatively short. Alberta was the first province to set up a Criminal Injuries Compensation Program in 1969. New Brunswick followed suit by instituting their Crime Compensation Program in 1971 offering innocent victims of crime direct compensation for harm inflicted. In 1983, Justice Canada funded two pilot projects in two sites, Saint John and Campbellton (English and bilingual), New Brunswick, where the current staff-based system government service

delivery model was implemented to provide a range of victim services to victims of crime coming to the attention of the criminal justice system. In 1988, the decision was then made by the Government of New Brunswick to implement victim services throughout the province, hiring staff with the same classification as probation officers with respect to salaries, union classification and qualifications required. While victims' advocacy groups have been garnering increased attention in the media and political circles, and the profile of victims of crime continues to rise, New Brunswick has consistently recognized the need for equity in the delivery of victim and offender services in the province. Today, there is a victim services component within the criminal justice system in each province and territory within Canada and the Policy Centre for Victim Issues has been established in Justice Canada (established in 2000). In many provinces, such as New Brunswick, the funding for victim services comes from a single source – the revenue generated by federal and provincial victim surcharges. There are many different service delivery models throughout Canada for the delivery of victim services. All Atlantic Provinces have a staff system-based victim services delivery model as part of an overall government program. New Brunswick is one of the few provinces in Canada where probation officers, child protection workers, social workers and victim services coordinators have equivalent position classifications in government.

### 1.1.2. Federal Victim Surcharge

The federal victim surcharge provisions of the *Criminal Code* were first enacted in 1988, proclaimed in July 1989, with amendments in 1999. It is an imposed payment on an offender who is convicted of any *Criminal Code* offence, or a *Controlled Drugs and Substances Act* offence involving controlled or restricted drugs, as well as individuals who received an absolute or conditional discharge. The original *Criminal Code* provision set an upper limit on the amount of the surcharge, but the real limits were set in regulations. This approach was intended to permit the maximum amount to be raised over time. Note that the original intent of the surcharge was its inclusion as a part of the sentence and was not to be characterized as a “tax” or levy to simply raise revenue.

The original legislation required an offender to pay a surcharge of an amount not exceeding:

- 15 % of any fine imposed or where no fine is imposed, ten thousand dollars, or
- such lesser amount as prescribed in regulations made by the Governor in Council.

The regulations prescribed \$35 as the “lesser amount” for non-fine offences. As a result of the combined effect of the regulations and the *Code* provisions, the surcharge was an amount up to 15% for fines and up to \$35 for other dispositions, with judges maintaining discretion on whether or not to impose any surcharge. These regulations, which were not set out in the *Code*, lead to a great deal of confusion and inconsistent practices surrounding the applicable amounts. In addition, the prescription of a maximum amount permitted judges to impose a lower surcharge and still comply with the legislation – but defeat the goals of the surcharge, i.e., to make offenders in a small way accountable to victims in general and to generate revenue for victim services.

At the same time that the federal victim surcharge was implemented in 1989, federal/provincial cost sharing programs for provincial victim crime compensation programs were eliminated. This was because the federal government anticipated that the federal victim surcharge would provide additional funding per capita not only for crime compensation but for other criminal justice victim services. Because these revenues were not realized as anticipated, a number of provinces eliminated or significantly revised crime compensation programs.

The provinces' experience with the 1989 surcharge provisions quickly led to calls for reform. Within a few years after enactment, provinces and territories noted the need to revise the *Criminal Code* victim fine surcharge provision to address concerns regarding its implementation and revenue raising capacity.



Research conducted by Justice Canada consultants in the early 1990's<sup>1</sup> revealed that in many cases the imposition of the surcharge was ignored or forgotten, particularly where the disposition was other than a fine. In situations where a jail term was imposed, judges often relied on the undue hardship provision to waive imposition. In addition, the imposition of the \$35 surcharge where a term of imprisonment (or other non-fine disposition) was imposed was criticized as disproportionate to the gravity of the offence. Other reasons cited explaining the lack of acceptance of the surcharge included the perception that surcharge revenue would be deposited into general revenues with no guarantee that existing services for victims would be expanded or new services developed. At that time the low revenue from the federal surcharge was attributed to several factors including lack of awareness, concerns regarding the use of surcharge revenue and the restrictions on the maximum limits.

Despite the lower than anticipated revenues, provinces did not initially recommend increased amounts due to the fact that awareness and acceptance of the surcharge was improving and changes to the amounts could have impeded progress. No consensus on this issue was reached until December 1997, when Provincial and Territorial Ministers of Justice urged the federal Minister of Justice to proceed with revisions to the surcharge scheme.

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1 Two studies were undertaken to review the impact of the new provisions, one in British Columbia and one in Ontario. The first was entitled, *An Assessment of Victim Fine Surcharge in British Columbia*, by Tim Roberts (1992). There were two types of analysis conducted in this study: i) an implementation analysis, which examined the degree to which and the geographical consistency with which the victim surcharge provisions were implemented in BC and the procedures involved in the process; and ii), an analysis of issues which have arisen in regard to particular types of cases and in regard to the implementation of victim surcharges.

Two primary methods were used: a survey of key justice system informants in 4 major locations, and to a lesser degree in 21 other sites; and, a file review of the use of victim surcharges in 1,195 completed cases with convictions.

Three themes emerged from the study findings:

- 1) There is considerable variability in the frequency of the imposition of the surcharge in BC.
- 2) There is resistance by judges to the imposition of the victim surcharge.
- 3) There is a lack of implementation of surcharges on non-fine dispositions.

The second study was entitled, *Helping Victims through Fine Surcharges*, by Lee Axon and Bob Hann (1994). This study examined Ontario's experience with the surcharge and also reviewed practices in other jurisdictions. Findings from the study included:

- 1) In Ontario, the revenue generated by the surcharge declined dramatically since the initial introduction in 1989 because it was being applied with less frequency.
- 2) Only about 15% of the potential (allowing for undue hardship at 33% and default at 45%) was imposed in 1992 and only 2.7% actually collected.
- 3) More than 80% of all surcharges were imposed on "victimless" crimes (impaired driving, morals offences, wilful damage).
- 4) The major reason for the low rates of imposition of the surcharge in Ontario is judicial concern that the revenue is not being used to provide services for crime victims. Revenue was being deposited in the province's Consolidated Revenue Fund. Three quarters of the judges responded that if the revenue were directed towards victim services, they would be more likely to impose the surcharge. Crown expressed similar views. Defence were almost unanimously opposed to the surcharge.
- 5) In other jurisdictions, the study found that: there is widespread dissatisfaction with the regulated \$35 maximum for non-fine dispositions; little attention has been given to informing offenders about the purpose of the surcharge; judges are 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 revenue is being used; and most jurisdictions have developed a designated fund for the revenue.

There was no research conducted following the 1999 amendments.

The Federal Provincial Territorial Working Group (FPTWG) on Victims of Crime proposed that s. 737 of the *Code* be amended to provide that:

- A mandatory minimum amount shall be imposed; a minimum surcharge of 15% of a fine and for non-fine dispositions, a minimum of \$50 for summary conviction offences and a minimum of \$100 for indictable offences (or other amounts)
- These minimum amounts shall be automatically (presumed to be or deemed to be) imposed in addition to any other sentence with some exceptions, including:
  - The judge determines that a greater amount of surcharge should be imposed, or
  - The judge determines that undue hardship would result from the imposition of the surcharge.

In 1998, the Standing Committee on Justice and Human Rights tabled its report following its review of the victim's role in the criminal justice system; *Victims' Rights - a Voice Not a Veto*. The Committee noted the problems with the original surcharge provisions, including judges' inadvertent failure to impose the surcharge and non-aggressive enforcement and collection initiatives by pertinent departments.

The report affirmed that additional resources were needed to provide adequate victim services across the country and that increasing the victim surcharge would be a reasonable way to generate more revenue, particularly given that the maximum surcharge amounts had not increased since 1989.

The Government's Response (December 1998) noted that the recommendations of the FPTWG and those of the FPT Attorneys General were consistent with those of the Committee. The Response included a commitment by the Minister of Justice to pursue *Criminal Code* amendments to revise the amount of the minimum surcharge and to provide for automatic imposition while preserving the undue hardship exemption and providing adequate notice to the accused. The Government's Response also encouraged that a federal victim's office be established that could work in collaboration with the provinces and territories, to among other things, explore effective enforcement mechanisms to ensure that funding would be available to the provinces and territories for their victims' services. The Policy Centre for Victim Issues (PCVI) was established in 2000 as a response to this recommendation. *Criminal Code* amendments to address the needs of victims of crime were proclaimed into force in 1999, including new surcharge provisions designed to address the concerns noted. These concerns and subsequent amendments focused on the amount of the minimum surcharge and the possibility to provide for automatic imposition while preserving the undue hardship exemption.

The only exception to the mandatory imposition of this surcharge is when the offender can prove undue hardship (*Criminal Code* s.737(5)). The surcharge may be waived if the offender establishes undue hardship to either her/himself or his/her dependants as a result of the imposition of the federal victim surcharge. When the court waives a federal victim surcharge, it is required to provide reasons and state them in the record of proceedings (s.737(6)). While there is a Fine Option Program, which is an opportunity for the offender to satisfy fines by means of community work through a formula calculating the number of hours the offender works, the Fines Option Program *cannot* specifically be used to satisfy a surcharge (s.736 and s.737(10)). Furthermore, section 734.8(5) of the *Criminal Code* clarifies that where a part payment is made for a fine, the money is applied first to the costs (s.734(5)(a)(i)) second to the surcharge and then to the fine (Section 737).



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Similar to the federal victim surcharge, there is a provincial victim surcharge in New Brunswick as set out in section 3 of *Regulation 91-67 of the New Brunswick Victims Services Act*:

A surcharge for the purpose of subsection 18(2) of the Act is as follows:

- (a) an amount equal to twenty per cent of any fine or money penalty imposed where a person is convicted of an offence under any Act of the Legislature or any regulation under such Act;
- (b) an amount equal to twenty per cent of any payment made under any Act of the Legislature or any regulation under such Act, on which payment the person is deemed to have been convicted of an offence; or
- (c) an amount equal to twenty per cent of any fine or money penalty described in paragraphs 14(5)(a) and (b) of the Provincial Offences Procedure Act where a person makes a payment in accordance with subsection 14(1) or (2) of that Act in respect of an offence charged in a ticket served on the person under that Act.

The primary difference between the provincial victim surcharge and the federal victim surcharge is that the provincial surcharge is mandatory and always applied, while judges can per s.737(5) waive the federal surcharge. It should be noted that the provincial victim surcharge is the primary source of funding for Victim Services in New Brunswick. The federal victim surcharge is the other source of funds. Approximately \$1.1 million is realized annually from the provincial victim surcharge where the federal surcharge has remained constant at \$250,000. This is similar in other jurisdictions and was one of the issues raised by Manitoba at the Federal/Provincial/Territorial Ministers meeting in 2005 that resulted in this study. Non-criminal surcharge revenue (PVS) is being used to fund crime victim services.

### **1.1.3. The New Brunswick Federal Victim Surcharge Experience**

The underlying philosophy of the federal victim surcharge rests in s.737(7) of the *Criminal Code* which states that the surcharge is imposed for the purpose of providing a concrete means of assisting victims of crime with a broad range of services. To this end, New Brunswick, like all provinces, has established a special purpose account under the New Brunswick *Victims Services Act* for the sole purpose of Victim Services to distribute the federal and provincial victim surcharges revenue thereby providing services to victims of crime in the province where the federal victim surcharge is collected.

The benefit of this designation is that the fund is a protected entity not subject to the typical budgetary fluctuations that occur with differing governing priorities. Thus, the money cannot be funnelled towards competing government priorities and can only be used to fund victim services. The drawback of this special designation is that the account cannot run a deficit from year-to-year. This potentially jeopardizes victim services, which is heavily dependent on victim surcharge revenue from the previous fiscal year. In short, less monies generated by the victim surcharge regime translates into fewer services for victims of crime in the province.

Currently, Victim Services NB has an annual operating budget of \$1.4 million for victim service programs. These programs provide victims of crime with: information on the criminal justice system and court processes, referrals for counselling to assist in dealing with the trauma of being victimized, court preparation, court support for vulnerable persons, assistance in preparing victim impact statements, victim notification of offender release from provincial institutions, victim notification of reviews and outcomes in cases where the accused has been found not criminally responsible and compensation programs for victims of crime. Additional services will be implemented in 2005/06 as the province is implementing a

Domestic Violence Criminal Court and a dedicated victim services coordinator will be assigned to work in this specialized court.

The surcharge collection in New Brunswick has remained at approximately \$250,000 annually since the early 1990's even though amendments to increase the surcharge were passed in 1999, leading to the study question as to why revenue has not increased. These services are directly and adversely affected when a systematic shortfall in federal victim surcharge revenue continues to occur. At present the federal victim surcharge only contributes 17% to total expenditures by NB Victim Services. Table A below presents actual and potential federal victim fine surcharge revenues for 2001/2002.

**Table A**

<b>Actual Versus Potential Victim Fine Surcharge Revenues, 2001/2002*</b>			
	<b>Actual Revenues*</b>	<b>Potential Revenues<sup>o</sup></b>	<b>Difference between Actual and Potential Revenue</b>
Prince Edward Island	\$48,313	\$84,628	\$36,315
New Brunswick	\$266,000	\$415,927	\$149,927
Newfoundland and Labrador	\$141,394	\$214,697	\$73,303
Quebec	\$2,234,606	\$1,396,300	-\$838,306
Ontario	\$1,237,323	\$6,647,395	\$5,410,072
Alberta	\$1,137,000	\$1,836,991	\$699,991
British Columbia	\$612,000	\$1,964,039	\$1,352,039
Northwest Territories	\$35,741	\$43,403	\$7,562
Notes			
*Figures represent actual federal surcharge revenue received from 8 jurisdictions for 2001/2002. Some jurisdictions cannot separate out provincial and federal surcharge revenue and so figures for these jurisdictions are not included.			
<sup>o</sup> Figures are based on a table "Potential Surcharge Revenues" developed by the Research and Statistics Division where the surcharge is 15% of the fine amount (as in the current provisions). Please see the table in the appendix for an explanation of how potential surcharge revenues were generated.			

Prepared by the Research and Statistics Division and the Policy Centre for Victim Issues

## 1.2. Purpose

The objective of this research project is to develop a better understanding of the challenges and possible solutions to those challenges of the federal victim surcharge regime. The New Brunswick Provincial Court System was selected as the site for this review. Some of the challenges that have been documented in the past include: waivers by judges on a mere assertion of inability to pay; disposition records that do not refer to the surcharge, even though it is required to be paid; default and ineffective enforcement. Since the introduction of the federal victim surcharge in 1989, and moreover since the automatic imposition (subject to waiver) of the surcharge regime in 1999, the process has consistently recovered only a portion of its anticipated revenue. This estimated shortfall has been noted in jurisdictions across the country and is based on conviction rates provided by the Research and Statistics Division of Justice Canada (Li, 2005). The question is whether or not this lack of revenue is due to the federal victim



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surcharge being waived or whether the problem is primarily due to the collection process. If the problem of low revenue is embedded in the imposition and/or the waiver process of the federal victim surcharge, there is also the question of whether this is due to courts waiving the federal victim surcharge on a per individual case basis or whether this is due to local court-based practices of systematically not imposing the federal victim surcharge, i.e., blanket non-imposition.

The impetus of this study began with the Attorney General of Manitoba proposing to Federal Provincial and Territorial (FPT) Ministers Responsible for Justice that, as a symbolic measure where most victim surcharge revenue is raised through provincial surcharges on victimless violations not federal, the amount of the victim surcharge in the *Criminal Code* be increased from 15% on fines to 20% (January 2005). Ministers agreed to refer this issue to the FPT Working Group on Victims of Crime for consideration. The Working Group was tasked with undertaking additional research and exploring options for increasing federal surcharge revenues and asked to report to FPT Deputy Ministers. In response to this, the Deputy Minister of Justice for New Brunswick offered New Brunswick as a pilot site for any research on the surcharge. The results of the study will provide the foundation for discussions on the effectiveness of the surcharge provisions.

The present review focuses on a three-fold mandate: What is the documentation, imposition and collection process of the federal victim surcharge in New Brunswick? The seven primary research questions are:

1. Does New Brunswick assume automatic imposition unless waived by the judge and so are court forms developed in this way?
2. Are policy directives in place related to court administration of automatic imposition and are those directives being followed?
3. What are the enforcement strategies in place in New Brunswick and what if any are the consequences of non-compliance?
4. Is the default formula in the *Criminal Code* meaningful for collection and is it a meaningful consequence?
5. What other options could be considered for collection and what are any impediments that would need to be overcome jurisdictionally to implement options other than default time as a penalty?
6. What are the rates of imposition and compliance in New Brunswick?
7. Why has the anticipated revenue to be generated in New Brunswick from the 1999 amendments to the *Criminal Code* provisions related to surcharge not been realized?



## 2. Methodology

The methodology used to study the imposition and collection process of the federal victim surcharge in New Brunswick primarily consisted of a qualitative approach. The methodology consisted of 1) interviews with 22 informants to ascertain awareness/attitudes towards the surcharge as well as gather anecdotal evidence on issues surrounding imposition of the surcharge, and 2) on-site file reviews to document imposition/waiving of the federal victim surcharge.

The court offices of one permanent Provincial Court were visited and informal discussions with court officials were conducted to obtain preliminary logistical information on the federal victim surcharge process. Court proceedings were also observed on several occasions at various Provincial Court locations. All pertinent information to be gathered was identified to ensure a comprehensive analysis of the “paper trail” generated during the imposition and collection of the federal victim surcharge could be identified. Coding manuals for the file review were then developed after these site visits. A random sample of 861 cases, from the year 2005-2006, was then drawn from the New Brunswick Justice Information System. All 14 permanent locations of the Provincial Court in New Brunswick within the six administrative regions were sampled.

The information collected during the interviews and file reviews was to be supplemented with a quantitative analysis based on five years of automated data from the New Brunswick Justice Information System. This databank permitted the calculation of the average imposition and collection rates of the federal victim surcharge in New Brunswick Provincial Court locations from 2000 to 2005.

### 2.1. Quantitative Data (New Brunswick Justice Information System)

The Department of Justice New Brunswick provided data from 2000-2001 to 2004-2005 fiscal years. Fiscal information pertaining to payment of fines and federal victim surcharge was available for all five fiscal years. Average rates of imposition and collection were generated for each of the six administrative regions.

### 2.2. Case File Review

A systematic manual file review was conducted with court files from all 14 Provincial Court permanent locations across the six administrative regions of New Brunswick, in order to collect information on court federal victim surcharge imposition rates. The 14 locations were: Bathurst, Campbellton, Tracadie-Shediac, Miramichi, Moncton, Richibucto, Saint John, St. Stephen, Hampton, Fredericton, Burton, Woodstock, Edmundston, and Grand Falls. Marked differences in the frequency of waiver of the federal victim surcharge based on study site were anticipated; therefore, in order to achieve the objectives of this study, all 14 locations were sampled. Using data from the New Brunswick Justice Information System, a random sample of 100 convicted cases from each of the 14 Provincial Court locations was selected to be manually reviewed. This provided a total of 1400 potential files for review. Variables collected during the manual file review included: the nature of the active imposition/non-imposition of the Federal victim surcharge and relevant documentation, reasons for non-imposition, evidence cited for undue hardship, and whether the summons portion of the standard fine order was completed.



### **2.3. Qualitative Data: Interviews with Key Informants**

A key informant strategy was used to solicit information from the court’s multidisciplinary team. Prior to interviews, an information letter was sent inviting primary key informants to participate in the review and outlining the topics to be covered. The five primary key informants were:

- Director of Program Support Services, Court Services Division, Department of Justice and Consumer Affairs;
- Manager of Victim Program Support Services, Department of Public Safety;
- Assistant Deputy Minister Community and Correctional Services, Department of Public Safety;
- Director of Financial Services, Department of Public Safety; and,
- The Associate Chief Judge of the Provincial Court.

Each interview was conducted in private using a single Key Informant Interview Protocol developed for this project (Appendix A) except for the Associate Chief Judge who provided written responses to the protocol questions via fax. A single interview protocol was used to bolster convergent validity of the qualitative data collected. In cases where informants did not feel they had an opinion or information regarding the question asked, they were instructed to indicate that lack of insight and the interviewer moved on to the next question. Interviews took approximately 45 minutes to complete.

A second pool of key informants that included judges (n=6) and lawyers (1 duty counsel and 2 defence counsel), were contacted during an additional wave of telephone interviews. In cases where telephone interviews could not be arranged, shortened protocols were emailed/faxed to the informants and written responses were returned. Three of the six judges responded this way. The surveys were composed of the same questions asked during the interviews, but focused on the individual’s area of direct expertise. For instance, judges were asked specific questions regarding imposition practices.

A third pool of key informants, comprised of court supervisors (n=8), were surveyed specifically on issues surrounding documentation and administration of the federal victim surcharge.

Data collected from the total 22 interviews and surveys with all key informants were pooled and subjected to a thematic content analysis.

### **2.4. A Note on Terminology – Waiver and Imposition**

The provision in the *Criminal Code* stipulates that “. . . an offender. . . shall pay a victim surcharge . . . “ (s.737(1)). This mandatory imposition is subject to the exception in s.737(5), whereby the court may waive the surcharge where the offender establishes “undue hardship.” Both the imposition rates and the waiver rates are presented in this study, to provide the complete picture, or “both sides of the coin”. The “imposition rate” in this study reflects cases where the surcharge was actively imposed by the court. That is to say, it reflects those cases where the court neither actively waived the surcharge, nor failed to impose it for other reasons, such as inadvertence.

## 3. Results

The results are presented in the following order: 1) data generated from the New Brunswick Justice Information System, 2) information extracted from the manual file review from the courthouses, followed by 3) interviews and surveys with key informants.

### 3.1. Quantitative Data: New Brunswick Justice Information Service

The Department of Justice New Brunswick provided data from 2000-2001 to 2004-2005 fiscal years. Fiscal information pertaining to payment of fines and federal victim surcharge was available for all five fiscal years. The database consisted of 40,427 cases encapsulating 61,714 eligible dispositions. The majority of these cases had only a single surcharge imposed. A total of 19,794 surcharges were imposed over the five-year period generating a total of \$1,299,478 for Victim Services New Brunswick. More surcharges were imposed on fine dispositions (13,667 of 16,419) compared to non-fine dispositions (6127 of 45,295).

A sample of 861 cases, from 2005-2006, was manually reviewed from all 14 Provincial Court permanent locations covering all six administrative regions in New Brunswick: Moncton, Saint John, Fredericton, Edmundston, Bathurst and Miramichi. In the 540 cases where the federal victim surcharge was waived, there was *no documentation* of the waiver in the file in 202 cases (37.4%) and of those 338 cases where the waiver was documented, five cases documented reasons. In other words, 99% of the time the federal victim surcharge was waived, no reason was documented in the file substantiating the waiver.

This practice is inconsistent with the legislation which states in s.737(6), “When the court makes an order under subsection (5), the court shall state its reasons in the record of the proceedings.” Nonetheless, there is evidence that consistent practices exist that have evolved locally and which follow a systematic method of waiving the federal victim surcharge. It should be noted, however, that oral communications among court personnel often play an important role in this process and may be substituting for written documentation in the court proceedings.

The next two sections explore the findings related to the imposition and/or waiver rates (section 3.1.1) and the collection rates (section 3.1.2) for the federal victim surcharge.

#### 3.1.1. Imposition Rates of Federal Victim Surcharge

The data were initially surveyed to document the overall rates of imposition and collection of the federal victim surcharge. Table 1 provides the imposition rates, after decisions regarding waivers, of the federal victim surcharge and these ranged from 22.9% in Moncton to 48.9% in the Fredericton region. Table 1 shows that all regions exhibit high rates of collection, ranging from 79.9% to 85.2% of imposed federal victim surcharge. It is clear that it is the high waiver rate of the federal victim surcharge that is primarily responsible for the reduction in possible revenue. For instance, examining the bottom row in Table 1 the difference between the possible maximum surcharge for the entire province and the surcharge imposed after waivers, i.e., the revenue not realized due to waivers, was \$3,069,844.



**Table 1: Imposition and Collection of Federal Victim Surcharge Across Six New Brunswick Regions: 2000-2005**

NB Region	Federal Victim Surcharge Imposition (after waiver decision)			Federal Victim Surcharge Collection		
	Maximum Possible	Imposed	Percent Imposed of Maximum	Collected	Percent Collected of Imposed	Percent Collected of Maximum
Moncton <sup>1</sup>	\$1,319,231	\$302,039	22.9%	\$247,080	81.8%	18.7%
Saint John <sup>2</sup>	\$886,144	\$304,763	34.4%	\$259,664	85.2%	29.3%
Fredericton <sup>3</sup>	\$747,214	\$365,440	48.9%	\$292,148	79.9%	39.1%
Edmundston <sup>4</sup>	\$387,500	\$151,155	39.0%	\$127,504	84.4%	32.9%
Bathurst <sup>5</sup>	\$947,372	\$298,736	31.5%	\$247,905	83.0%	26.2%
Miramichi <sup>6</sup>	\$353,642	\$149,126	42.2%	\$125,177	83.9%	35.4%
<b>ALL REGIONS</b>	<b>\$4,641,103</b>	<b>\$1,571,259</b>	<b>33.8%</b>	<b>\$1,299,478</b>	<b>82.7%</b>	<b>28.0%</b>

1 Moncton (Moncton, Richibucto)

2 Saint John (Saint John, St. Stephen, Hampton)

3 Fredericton (Fredericton, Burton, Woodstock)

4 Edmundston (Edmundston, Grand Falls)

5 Bathurst ( Bathurst, Campbellton , Tracadie-Sheila)

6 Miramichi (Miramichi)

Federal victim surcharge collection rates were examined according to whether or not the summons portion of the fine/surcharge order was completed as part of the fine/surcharge order. The summons portion of the fine/surcharge order compels the offender to return to court on a stated date if the fine and/or surcharge has not been satisfied by the due date. Correlations were generated on a regional basis. There was no significant relationship between having the summons portion completed and payment of the federal victim surcharge in three of the regions, while Saint John ( $r=.38$ ,  $t=5.44$ ,  $df=173$ ,  $p<.005$ ) and Bathurst ( $r=.17$ ,  $t=2.30$   $df=175$ ,  $p<.01$ ) regions indicated that there was a significantly higher rate of payment when the summons portion was attached to the fine/surcharge orders. Conversely, Moncton displayed an inverse relationship ( $r=-.21$ ,  $t=-2.82$ ,  $df=173$ ,  $p<.01$ ), indicating that when default orders were attached the offender was actually less likely to pay.

**Table 2: Imposition and Collection of FVS, Presented Per Number of Convictions in the Six New Brunswick Regions**

NB Region	Total Number of Convictions	FVS Imposition (after waiver decision)		FVS Collection	
		FVS Imposed	Average FVS Imposed Per Conviction	FVS Collected	Average FVS Collected Per Conviction
Moncton <sup>1</sup>	16,153	\$302,039	\$18.70	\$247,080	\$15.30
Saint John <sup>2</sup>	13,541	\$304,763	\$22.51	\$259,664	\$19.18
Fredericton <sup>3</sup>	10,368	\$365,440	\$35.25	\$292,148	\$28.18
Edmundston <sup>4</sup>	5441	\$151,155	\$27.78	\$127,504	\$23.43
Bathurst <sup>5</sup>	11,495	\$298,736	\$25.99	\$247,905	\$21.57
Miramichi <sup>6</sup>	4716	\$149,126	\$31.62	\$125,177	\$26.54
<b>TOTAL</b>	<b>61,714</b>	<b>\$1,571,259</b>	<b>\$25.46</b>	<b>\$1,299,478</b>	<b>\$21.06</b>

1 Moncton (Moncton, Richibucto)

2 Saint John (Saint John, St. Stephen, Hampton)

3 Fredericton (Fredericton, Burton, Woodstock)

4 Edmundston (Edmundston, Grand Falls)

5 Bathurst ( Bathurst, Campbellton , Tracadie-Sheila)

6 Miramichi

### ***3.1.1.1. Imposition of the FVS***

The next three tables report on the various imposition rates related to fine and non-fine dispositions.

Table 3 reports on the surcharge imposed compared to the maximum that could possibly be imposed on fine dispositions. There were 16,419 fine dispositions during the five year period, presenting the possibility of generating \$1,591,703 dollars if the maximum FVS were imposed on all convictions. In actuality, there was \$1,197,399 imposed, a 75% imposition rate and a 25% waiver rate. This represents a significantly higher rate of imposition/lower rate of waiver on the fine dispositions compared to non-fine dispositions reported on next (Tables 4 and 5).

**Table 3: Fine Dispositions: Surcharge Imposed (after waiver decision)<sup>2</sup> Compared to Maximum**

Region	Number of Fine Dispositions	Total Value of Fines	Maximum Surcharge Possible on Fines	Surcharge Imposed on Fines	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Fine
Moncton <sup>1</sup>	2647	\$2,308,873	\$346,331	\$203,949	58.9%	8.8%
Saint John <sup>2</sup>	3391	\$1,989,628	\$298,444	\$254,828	85.4%	12.8%
Fredericton <sup>3</sup>	3015	\$1,635,425	\$245,314	\$231,220	94.3%	14.1%
Edmundston <sup>4</sup>	2537	\$1,275,665	\$191,350	\$127,650	66.7%	10.0%
Bathurst <sup>5</sup>	3626	\$2,599,144	\$389,872	\$253,931	65.1%	9.8%
Miramichi <sup>6</sup>	1203	\$802,615	\$120,392	\$125,821	104.5%	15.7%
<b>TOTAL</b>	<b>16,419</b>	<b>\$10,611,350</b>	<b>\$1,591,703</b>	<b>\$1,197,399</b>	<b>74.8%</b>	<b>11.3%</b>

1 Moncton (Moncton, Richibucto)

2 Saint John (Saint John, St. Stephen, Hampton)

3 Fredericton (Fredericton, Burton, Woodstock)

4 Edmundston (Edmundston, Grand Falls)

5 Bathurst ( Bathurst, Campbellton , Tracadie-Sheila)

6 Miramichi

Summary convictions are less serious offences under the *Criminal Code* having lower maximum sentences and simplified court procedures. There were a total of 29,602 summary convictions in New Brunswick during the 5 year study period, presenting the possibility of generating \$1,480,100 in revenue. A total of \$236,995 was actually imposed on summary convictions, an imposition rate of 16% and a waiver rate of 84%. This is a substantial drop from the 75% imposition rate for fine dispositions. The average surcharge amount imposed per summary conviction is \$8.00.

<sup>2</sup> The phrase "after waiver decision" is included in the titles of the tables to emphasize that the decision to waive the federal victim surcharge is an active one, rather than the default result.

**Table 4: Summary Convictions: Surcharge Imposed (after waiver decision) Compared to Maximum**

Region	Number of Summary Convictions	Maximum Surcharge Possible on Summary Convictions	Surcharge Imposed on Summary Convictions	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Summary Conviction
Moncton <sup>1</sup>	7554	\$377,700	\$53,005	14.0%	\$7.02
Saint John <sup>2</sup>	8546	\$427,300	\$43,665	10.2%	\$5.11
Fredericton <sup>3</sup>	4668	\$233,400	\$81,595	35.0%	\$17.48
Edmundston <sup>4</sup>	1885	\$94,250	\$13,420	14.2%	\$7.12
Bathurst <sup>5</sup>	4588	\$229,400	\$27,645	12.1%	\$6.03
Miramichi <sup>6</sup>	2361	\$118,050	\$17,665	15.0%	\$7.48
<b>TOTAL</b>	<b>29,602</b>	<b>\$1,480,100</b>	<b>\$236,995</b>	<b>16.0%</b>	<b>\$8.00</b>

1 Moncton (Moncton, Richibucto)

2 Saint John (Saint John, St. Stephen, Hampton)

3 Fredericton (Fredericton, Burton, Woodstock)

4 Edmundston (Edmundston, Grand Falls)

5 Bathurst ( Bathurst, Campbellton , Tracadie-Sheila)

6 Miramichi

Finally, the proportion of maximum surcharge imposed on indictable offences was examined (Table 5). Again, there was another significant drop in maximum imposition rates to 8.7% or waiver rates of 91.3% with an average surcharge imposed \$8.72 per conviction; a similar rate to summary convictions at \$8.00 average surcharge imposed per conviction.



**Table 5: Indictable Convictions: Surcharge Imposed Compared to Maximum**

NB Region	Total Number of Indictable Convictions	Maximum Surcharge Possible on Indictable Convictions	Surcharge Imposed on Indictable Convictions	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Indictable Conviction
Moncton <sup>1</sup>	5952	\$595,200	\$45,085	7.6%	\$7.57
Saint John <sup>2</sup>	1604	\$160,400	\$6,270	3.9%	\$3.91
Fredericton <sup>3</sup>	2685	\$268,500	\$52,625	19.6%	\$19.60
Edmundston <sup>4</sup>	1019	\$101,900	\$10,085	9.9%	\$9.90
Bathurst <sup>5</sup>	3281	\$328,100	\$17,160	5.2%	\$5.23
Miramichi <sup>6</sup>	1152	\$115,200	\$5640	4.9%	\$4.90
<b>TOTAL</b>	<b>15,693</b>	<b>\$1,569,300</b>	<b>\$136,865</b>	<b>8.7%</b>	<b>\$8.72</b>

1 Moncton (Moncton, Richibucto)

2 Saint John (Saint John, St. Stephen, Hampton)

3 Fredericton (Fredericton, Burton, Woodstock)

4 Edmundston (Edmundston, Grand Falls)

5 Bathurst ( Bathurst, Campbellton , Tracadie-Sheila)

6 Miramichi

The imposition rate was then examined according to the nature of the offence (Table 6). This information is an indication of the discretionary nature of sentencing and imposition practices of judges. Judges take into account factors such as the nature of the offence, among many others, when deciding on the appropriate sentence and waiver of the FVS. The discretionary nature of the FVS is clearly reflected in waiver practices by provincial court judges; Driving Under the Influence (DUI) consistently had the lowest rate of waiver for each region and the highest average surcharge per convicted case (\$74.28 to \$143.45) (Table 6). Similarly, drug offences had the next lowest waiver rate for each region. The database coding did not permit a clear break down of violent vs. non-violent crimes. Therefore, it is recognized that the grouping of offences is less than ideal. Violent offences include sexual assault, and offences against persons, and non-violent offences include motor vehicle violations and property offences, for example. Interestingly, those crimes that involved an offence against a person consistently had the FVS waived at the highest rates across all regions. Recalling information from the interviews with court personnel, this appears to be a function of a “blanket” waiver strategy for custody orders, which are the typical sentence for crimes against a person. This highlights the disjoint between one of the primary purposes of the FVS - having the offender directly compensate their victim - and the court practices of imposing the FVS.



**Table 6: Nature of Offences: Surcharge Imposed (after waiver decision) Compared to Maximum**

Region/ Offence	Number of Convictions	Maximum Surcharge Possible	Total Surcharge Imposed	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Conviction
Moncton <sup>1</sup>					
DUI <sup>7</sup>	1551	\$186,678	\$154,431	82.7%	\$99.57
Drugs	1588	\$114,510	\$28,517	24.9%	\$17.96
Violent <sup>8</sup>	2810	\$190,033	\$31,026	16.3%	\$11.04
Non-violent <sup>9</sup>	5550	\$505,113	\$44,377	8.8%	\$8.00
Other	4654	\$322,898	\$43,689	13.5%	\$9.39
<i>Total</i>	<i>16,153</i>	<i>\$1,319,231</i>	<i>\$302,039</i>	<i>22.9%</i>	<i>\$18.70</i>
Saint John <sup>2</sup>					
DUI <sup>7</sup>	1936	\$208,602	\$169,687	81.3%	\$87.65
Drugs	1045	\$69,822	\$21,429	30.7%	\$20.51
Violent <sup>8</sup>	2363	\$131,213	\$34,795	26.5%	\$14.72
Non-violent <sup>9</sup>	7046	\$409,188	\$69,120	16.9%	\$9.81
Other	1151	\$67,319	\$9733	14.5%	\$8.46
<i>Total</i>	<i>13,541</i>	<i>\$886,144</i>	<i>\$304,763</i>	<i>34.4%</i>	<i>\$22.51</i>
Fredericton <sup>3</sup>					
DUI <sup>7</sup>	1577	\$176,151	\$162,073	92.0%	\$102.77
Drugs	802	\$51,101	\$27,470	53.8%	\$34.25
Violent <sup>8</sup>	2516	\$153,078	\$64,471	42.1%	\$25.62
Non-violent <sup>9</sup>	4544	\$310,241	\$90,473	29.2%	\$19.91
Other	929	\$56,643	\$20,954	37.0%	\$22.55
<i>Total</i>	<i>10,368</i>	<i>\$747,214</i>	<i>\$365,440</i>	<i>48.9%</i>	<i>\$35.25</i>
Edmundston <sup>4</sup>					
DUI <sup>7</sup>	792	\$94,218	\$58,833	62.4%	\$74.28
Drugs	524	\$42,383	\$16,827	39.7%	\$32.11
Violent <sup>8</sup>	1300	\$74,633	\$27,643	37.0%	\$21.26
Non-violent <sup>9</sup>	2258	\$141,436	\$34,755	24.6%	\$15.39
Other	567	\$34,831	\$13,099	37.6%	\$23.10
<i>Total</i>	<i>5441</i>	<i>\$387,500</i>	<i>\$151,155</i>	<i>39.0%</i>	<i>\$27.78</i>



Region/ Offence	Number of Convictions	Maximum Surcharge Possible	Total Surcharge Imposed	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Conviction
<b>Bathurst</b> <sup>5</sup>					
DUI <sup>7</sup>	1595	\$189,368	\$161,948	85.5%	\$101.53
Drugs	844	\$54,616	\$28,188	51.6%	\$33.40
Violent <sup>8</sup>	2107	\$135,902	\$33,657	24.8%	\$15.97
Non-violent <sup>9</sup>	3170	\$214,446	\$37,590	17.5%	\$11.86
Other	3779	\$353,039	\$37,355	10.6%	\$9.88
<b>Total</b>	<b>11,495</b>	<b>\$947,372</b>	<b>\$298,736</b>	<b>31.5%</b>	<b>\$25.99</b>
<b>Miramichi</b> <sup>6</sup>					
DUI <sup>7</sup>	600	\$88,768	\$86,069	97.0%	\$143.45
Drugs	207	\$15,865	\$11,350	71.5%	\$54.83
Violent <sup>8</sup>	1135	\$80,253	\$16,437	20.5%	\$14.48
Non-violent <sup>9</sup>	1839	\$121,751	\$26,534	21.8%	\$14.43
Other	935	\$47,006	\$8737	18.6%	\$9.34
<b>Total</b>	<b>4716</b>	<b>\$353,642</b>	<b>\$149,126</b>	<b>42.2%</b>	<b>\$31.62</b>
<b>All Regions</b>					
DUI <sup>7</sup>	8051	\$943,785	\$793,041	84.0%	\$98.50
Drugs	5010	\$348,297	\$133,781	38.4%	\$26.70
Violent <sup>8</sup>	12,231	\$765,112	\$208,029	27.2%	\$17.01
Non-violent <sup>9</sup>	24,407	\$1,702,175	\$302,849	17.8%	\$12.41
Other	12,015	\$881,736	\$133,567	15.1%	\$11.12
<b>Total</b>	<b>61,714</b>	<b>\$4,641,105</b>	<b>\$1,571,267</b>	<b>33.9%</b>	<b>\$25.46</b>

- 1 Moncton (Moncton, Richibucto)
- 2 Saint John (Saint John, St. Stephen, Hampton)
- 3 Fredericton (Fredericton, Burton, Woodstock)
- 4 Edmundston (Edmundston, Grand Falls)
- 5 Bathurst ( Bathurst, Campbellton , Tracadie-Sheila)
- 6 Miramichi
- 7 DUI = Driving under the influence
- 8 Violent – eg, assault
- 9 Non-violent – eg, fraud

The next table, Table 7, may well present the most striking results of this study. It is readily apparent from this data that when an offender is sentenced to serve time the imposition rate of the FVS drastically drops, or in other words, the waiver rate drastically rises for custodial sentences. For instance, looking at Moncton, there is an imposition rate of 83.1% when the offender is fined, which drops to less than 4% when she/he is assigned to custody. Again, this is due to the perception by judges, as noted from interviews, that there are no resources available to the offender to satisfy any monies imposed if they are

going to serve a sentence. The imposition rates of the FVS vary from 2.5% to 20.2% for custody orders across the six regions. It is notable that in the Miramichi region, the actual imposed surcharge surpassed the maximum anticipated revenue (106.4%), as the judges were exercising their right to impose beyond the 15% FVS, thereby generating more than the anticipated revenue.

In a large portion of the cases, the automated database provided information on whether or not a victim was identified in the case. This information is relayed in Table 8. Once again the lack of congruence between the underlying philosophy of the victim surcharge and the imposition of the FVS was apparent. In every region, those convictions involving a victim, e.g., child, wife, stranger, had a lower FVS imposition rate, or higher waiver rate, than those cases where no victim was identified. The mitigating factor mentioned before is the waiver by judges based on an offender's perceived inability to pay when a custody order is applied.

**Table 7: Sentencing Differences: Surcharge Imposed (after waiver decision) Compared to Maximum**

Region/ Sentence	Number of Convictions	Maximum Surcharge Possible	Total Surcharge Imposed	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Conviction
Moncton <sup>1</sup>					
Custody	7641	\$693,952	\$27,007	3.9%	\$3.53
Fine	2499	\$236,079	\$196,112	83.1%	\$78.48
Other	6013	\$389,200	\$78,920	20.3%	\$13.12
Saint John <sup>2</sup>					
Custody	5378	\$322,645	\$14,755	4.6%	\$2.74
Fine	3379	\$294,499	\$254,003	86.2%	\$75.17
Other	4784	\$269,000	\$36,005	13.4%	\$7.53
Fredericton <sup>3</sup>					
Custody	3647	\$267,778	\$54,205	20.2%	\$14.86
Fine	2935	\$240,086	\$226,275	94.2%	\$77.10
Other	3786	\$239,350	\$84,960	35.5%	\$22.44
Edmundston <sup>4</sup>					
Custody	1710	\$128,085	\$10,210	8.0%	\$5.97
Fine	2498	\$185,215	\$126,060	68.1%	\$50.46
Other	1233	\$74,200	\$14,885	20.1%	\$12.07
Bathurst <sup>5</sup>					
Custody	3385	\$365,186	\$8980	2.5%	\$2.65
Fine	3597	\$282,485	\$251,816	89.1%	\$70.01



Region/ Sentence	Number of Convictions	Maximum Surcharge Possible	Total Surcharge Imposed	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Conviction
Other	4513	\$299,700	\$37,940	12.7%	\$8.41
Miramichi <sup>6</sup>					
Custody	1565	\$118,740	\$12,105	10.2%	\$7.73
Fine	1135	\$108,602	\$115,551	106.4%	\$101.81
Other	2016	\$126,300	\$21,470	17.0%	\$10.65
All Regions					
Custody	23,326	\$1,896,386	\$127,262	6.7%	\$5.46
Fine	16,043	\$1,346,966	\$1,169,817	86.8%	\$72.92
Other	22,345	\$1,397,750	\$274,180	19.6%	\$12.27

- 1 Moncton (Moncton, Richibucto)  
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 3 Fredericton (Fredericton, Burton, Woodstock)  
 4 Edmundston (Edmundston, Grand Falls)  
 5 Bathurst ( Bathurst, Campbellton , Tracadie-Sheila)  
 6 Miramichi

**Table 8: Identification of Victim: Surcharge Imposed (after waiver decision) Compared to Maximum**

Region/ Victim Identified	Number of Convictions	Maximum Surcharge Possible	Total Surcharge Imposed	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Conviction
Moncton <sup>1</sup>					
Victim	3824	\$276,873	\$42,872	15.5%	\$11.21
No Victim	12,329	\$1,042,358	\$259,167	24.9%	\$21.02
Saint John <sup>2</sup>					
Victim	3485	\$215,705	\$40,338	18.7%	\$11.57
No Victim	10,056	\$670,439	\$264,425	39.4%	\$26.30
Fredericton <sup>3</sup>					
Victim	4067	\$263,217	\$92,471	35.1%	\$22.74
No Victim	6301	\$483,997	\$272,969	56.4%	\$43.32
Edmundston <sup>4</sup>					
Victim	2099	\$130,518	\$40,455	31.0%	\$19.27

Region/ Victim Identified	Number of Convictions	Maximum Surcharge Possible	Total Surcharge Imposed	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Conviction
No Victim	3342	\$256,982	\$110,700	43.1%	\$33.12
Bathurst <sup>5</sup>					
Victim	3984	\$277,562	\$42,354	15.3%	\$10.63
No Victim	7511	\$669,809	\$256,383	38.3%	\$34.13
Miramichi <sup>6</sup>					
Victim	1495	\$103,538	\$19,455	18.8%	\$13.01
No Victim	3221	\$250,105	\$129,671	51.8%	\$40.26
All Regions					
Victim	18,954	\$1,267,413	\$277,945	21.9%	\$14.66
No Victim	42,760	\$3,373,690	\$1,293,315	38.3%	\$30.25

1 Moncton (Moncton, Richibucto)

2 Saint John (Saint John, St. Stephen, Hampton)

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6 Miramichi

Turning to possible gender differences in the imposition/waiver process (Table 9), lower rates of imposition, or higher waiver rates, of FVS were consistently noted for female offenders than their male counter-parts in all regions; however, differences were determined to not be statistically significant.

**Table 9: Gender Differences: Surcharge Imposed (after waiver decision) Compared to Maximum**

Region/ Gender	Number of Convictions	Maximum Surcharge Possible	Total Surcharge Imposed	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Conviction
Moncton <sup>1</sup>					
Male	13,881	\$1,154,507	\$275,076	23.8%	\$19.82
Female	2272	\$164,724	\$26,963	16.4%	\$11.87
Saint John <sup>2</sup>					
Male	11,673	\$775,086	\$275,924	35.6%	\$23.64
Female	1868	\$111,059	\$28,839	26.0%	\$15.44
Fredericton <sup>3</sup>					
Male	8944	\$648,094	\$327,148	50.5%	\$36.58
Female	1424	\$99,120	\$38,292	38.6%	\$26.89
Edmundston <sup>4</sup>					
Male	4750	\$345,041	\$137,250	39.8%	\$28.89
Female	691	\$42,459	\$13,905	32.8%	\$20.12
Bathurst <sup>5</sup>					
Male	10,251	\$863,308	\$275,145	31.9%	\$26.84
Female	1244	\$84,064	\$23,591	28.1%	\$18.96
Miramichi <sup>6</sup>					
Male	3990	\$305,137	\$134,394	44.0%	\$33.68
Female	726	\$48,505	\$14,732	30.4%	\$20.29
All Regions					
Male	53,489	\$4,091,173	\$1,424,937	34.8%	\$26.64
Female	8225	\$549,931	\$146,322	26.6%	\$17.79

1 Moncton (Moncton, Richibucto)

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6 Miramichi

New Brunswick is the only official bilingual province in Canada. All courts service all clients in the language of their choice. The northern region of the province is predominantly French, while the lower mid-region is English speaking. Possible disparities in the imposition/waiver rate based on the language of the client and their locale were examined. There were no statistically significant differences between French and English speaking offenders and the average amount of surcharge imposed per conviction. The percentage of FVS imposed of the possible maximum was almost identical for French speaking (33.9%) and English speaking (33.1%) offenders (Table 10).

**Table 10: Language Differences: Surcharge Imposed (after waiver decision) Compared to Maximum**

Region/ Language	Number of Convictions	Maximum Surcharge Possible	Total Surcharge Imposed	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Conviction
Moncton <sup>1</sup>					
English	8743	\$748,958	\$141,010	18.8%	\$16.13
French	2379	\$181,890	\$67,511	37.1%	\$28.38
Not Specified*	5031	\$388,383	\$93,518	24.1%	\$18.59
Saint John <sup>2</sup>					
English	11,524	\$742,747	\$236,728	31.9%	\$20.54
French	53	\$3678	\$1708	46.4%	\$32.22
Not Specified*	1964	\$139,720	\$66,327	47.5%	\$33.77
Fredericton <sup>3</sup>					
English	9639	\$693,495	\$335,826	48.4%	\$34.84
French	71	\$5731	\$3206	55.9%	\$45.16
Not Specified*	658	\$47,988	\$26,408	55.0%	\$40.13
Edmundston <sup>4</sup>					
English	2119	\$134,341	\$70,786	52.7%	\$33.41
French	3079	\$234,353	\$74,595	31.8%	\$24.23
Not Specified*	243	\$18,806	\$5775	30.7%	\$23.76
Bathurst <sup>5</sup>					
English	2854	\$208,650	\$52,883	25.3%	\$18.53
French	7179	\$632,643	\$199,712	31.6%	\$27.82
Not Specified*	1462	\$106,079	\$46,142	43.5%	\$31.56
Miramichi <sup>6</sup>					
English	4241	\$316,856	\$126,512	39.9%	\$29.83
French	136	\$10,054	\$6994	69.6%	\$51.43
Not Specified*	339	\$26,733	\$15,620	58.4%	\$46.08
All Regions					
English	39,120	\$2,845,047	\$963,745	33.9%	\$24.64
French	12,897	\$1,068,349	\$353,726	33.1%	\$27.43
Not Specified*	9697	\$727,709	\$253,790	34.9%	\$26.17



\* Not Specified = language preference not recorded in database

1 Moncton (Moncton, Richibucto)

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6 Miramichi

Finally, the last aspect of the imposition process that was examined is the absolute amount of FVS being imposed (Table 11).

**Table 11: FVS Amount: Surcharge Imposed (after waiver decision) Compared to Maximum**

Region/ Amount	Number of Convictions	Maximum Surcharge Possible	Total Surcharge Imposed	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Conviction
Moncton <sup>1</sup>					
\$1 to \$25	176	\$2735	\$2630	96.2%	\$14.94
\$26 to \$50	1267	\$62,078	\$58,709	94.6%	\$46.34
\$51 to \$75	127	\$8798	\$8798	100.0%	\$69.27
Over \$75	1823	\$226,784	\$231,902	102.3%	\$127.21
Saint John <sup>2</sup>					
\$1 to \$25	260	\$4875	\$4128	84.7%	\$15.88
\$26 to \$50	1460	\$68,737	\$64,315	93.6%	\$44.05
\$51 to \$75	394	\$27,833	\$27,948	100.4%	\$70.94
Over \$75	1642	\$204,883	\$208,372	101.7%	\$126.90
Fredericton <sup>3</sup>					
\$1 to \$25	553	\$9547	\$9288	97.3%	\$16.80
\$26 to \$50	2385	\$126,713	\$110,020	86.8%	\$46.13
\$51 to \$75	304	\$21,479	\$21,700	101.0%	\$71.38
Over \$75	1831	\$222,652	\$224,432	100.8%	\$122.57
Edmundston <sup>4</sup>					
\$1 to \$25	258	\$4170	\$4150	99.5%	\$16.08
\$26 to \$50	1027	\$41,483	\$40,525	97.7%	\$39.46
\$51 to \$75	188	\$12,934	\$12,893	99.7%	\$68.58
Over \$75	679	\$92,239	\$93,588	101.5%	\$137.83
Bathurst <sup>5</sup>					
\$1 to \$25	363	\$5809	\$5865	101.0%	\$16.16
\$26 to \$50	1706	\$75,336	\$69,684	92.5%	\$40.85
\$51 to \$75	342	\$23,494	\$23,573	100.3%	\$68.93



Region/ Amount	Number of Convictions	Maximum Surcharge Possible	Total Surcharge Imposed	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Conviction
Over \$75	1539	\$196,723	\$199,615	101.5%	\$129.70
Miramichi <sup>6</sup>					
\$1 to \$25	148	\$2021	\$2238	110.7%	\$15.12
\$26 to \$50	513	\$22,145	\$23,132	104.5%	\$45.09
\$51 to \$75	57	\$3840	\$3985	103.8%	\$69.91
Over \$75	752	\$107,708	\$119,772	111.2%	\$159.27
All Regions					
\$1 to \$25	1758	\$29,157	\$28,299	97.1%	\$16.10
\$26 to \$50	8358	\$321,231	\$366,385	114.1%	\$43.84
\$51 to \$75	1412	\$98,378	\$98,897	100.5%	\$70.04
Over \$75	8266	\$1,050,989	\$1,077,681	102.5%	\$130.38

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- 6 Miramichi

In Table 12, the question, “Are those offenders who are being convicted for more than one offence per case paying more surcharge, compared to offenders who are being sentenced for a single conviction?” was addressed. Cases reporting convictions for a single offence consistently have the highest rates of imposition (ranging from 42.6% to 64.5%) or the lowest rates of waiver (ranging from 47.4% to 34.5%). A clean, linear trend is noted where as more convictions per case are reported, the imposition rate decreases. An identical trend is noted in the last column of Table 12 as the number of convictions per case increases, the average surcharge amount imposed decreases. Again, this is a counter-intuitive trend that one would not anticipate based on the philosophy of the victim surcharge regime. Those offenders with several convictions per case are consistently having the victim surcharge waived.

**Table 12: Convictions Per Case: Surcharge Imposed (after waiver decision) Compared to Maximum**

Region/ Convictions per Case	Number of Cases	Maximum Surcharge Possible	Total Surcharge Imposed	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Conviction
Moncton <sup>1</sup>					
1 Conviction/Case	6617	\$521,183	\$221,766	42.6%	\$33.51
2 Convictions/Case	1946	\$276,065	\$45,825	16.6%	\$11.77
3 Convictions/Case	693	\$239,927	\$19,155	8.0%	\$9.21
4+ Convictions/Case	639	\$282,056	\$15,293	5.4%	\$4.29
Saint John <sup>2</sup>					



Region/ Convictions per Case	Number of Cases	Maximum Surcharge Possible	Total Surcharge Imposed	Percentage Surcharge Imposed of Maximum	Average Surcharge Imposed Per Conviction
1 Conviction/Case	6188	\$450,351	\$241,001	53.5%	\$38.95
2 Convictions/Case	1677	\$193,238	\$45,112	23.3%	\$13.45
3 Convictions/Case	550	\$96,007	\$11,713	12.2%	\$7.10
4+ Convictions/Case	402	\$146,549	\$6938	4.7%	\$2.95
Fredericton <sup>3</sup>					
1 Conviction/Case	5691	\$422,465	\$272,592	64.5%	\$47.90
2 Convictions/Case	1218	\$159,482	\$60,829	38.1%	\$24.97
3 Convictions/Case	273	\$56,312	\$14,646	26.0%	\$17.88
4+ Convictions/Case	256	\$108,956	\$17,373	15.9%	\$12.22
Edmundston <sup>4</sup>					
1 Conviction/Case	2603	\$200,049	\$100,289	50.1%	\$38.53
2 Convictions/Case	648	\$80,390	\$28,107	35.0%	\$21.69
3 Convictions/Case	181	\$34,544	\$9973	28.9%	\$18.37
4+ Convictions/Case	183	\$72,518	\$12,788	17.6%	\$12.80
Bathurst <sup>5</sup>					
1 Conviction/Case	5464	\$522,850	\$232,109	44.4%	\$42.48
2 Convictions/Case	1309	\$170,346	\$44,226	26.0%	\$16.89
3 Convictions/Case	393	\$80,423	\$12,944	16.1%	\$10.98
4+ Convictions/Case	329	\$173,754	\$9457	5.4%	\$4.23
Miramichi <sup>6</sup>					
1 Conviction/Case	2450	\$194,470	\$121,068	62.3%	\$49.42
2 Convictions/Case	466	\$63,462	\$18,689	29.4%	\$20.05
3 Convictions/Case	125	\$24,315	\$5450	22.4%	\$14.53
4+ Convictions/Case	126	\$71,395	\$3920	5.5%	\$4.09
All Regions					
1 Conviction/Case	29,013	\$2,311,368	\$1,188,825	51.4%	\$40.98
2 Convictions/Case	7,264	\$942,983	\$242,788	25.7%	\$33.42
3 Convictions/Case	2,215	\$531,528	\$73,881	13.9%	\$33.35
4+ Convictions/Case	1,935	\$855,228	\$65,769	7.7%	\$33.99*

1 Moncton (Moncton, Richibucto)

2 Saint John (Saint John, St. Stephen, Hampton)

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5 Bathurst ( Bathurst, Campbellton , Tracadie-Sheila)

6 Miramichi

\* The trend downwards that was noted on the previous page is not present in this final figure.

### 3.1.2. Collection Rates of the FVS

We now turn our attention to the collection process of the FVS in New Brunswick. There are two questions that will be addressed in this section: 1) What is the rate of collection compared to the possible maximum surcharge amounts that could have been imposed? and, 2) What is the rate of collection of the imposed FVS?

Data displayed in Table 1 showed the collection of the total possible surcharge that could have been imposed hovered at 28%; when only those cases that had a FVS imposed were examined, however, the collection rate jumped to an average of 82.7%, ranging from 79.9% to 85.2% in the various regions. Specifics surrounding the collection process are now examined.

The collection process was first examined based on offence type. There were three noteworthy findings. First, linear trends noted in the imposition rate were not noted in the collection rate of those FVS that were imposed. That is, DUIs receive the highest rate of imposition, but their collection rate is similar to that of other offences. This addresses the possibility that although the surcharge is being imposed on certain crimes at high rates perhaps their actual collection rate is low; such was not found to be the case. The second finding in Table 13 is that highest FVS revenue is coming directly from DUI and drug convictions as noted in the Total Surcharge Collected Column and these two offences are also generating the highest average collection rates per conviction. This is noteworthy as neither of these crimes is typically associated with identification of a victim. The general consistency of collection rates across all 6 regions is striking. For instance, there is no particular offence category that has a substantially different collection rate of imposed surcharge across different regions. Finally, it is noteworthy the violent offence category consistently generated one of the lowest amounts of FVS revenue, ranging from \$15,407 to \$53,667 over the five year period. The collection rate, however, remained high on the imposed FVS on violent offences at 84.7%. This finding may challenge the assumption held by many judges that offenders receiving custodial sentences would be unable to pay. This assumption, without further evidence, may be resulting in a waiver of the surcharge in the majority of these cases.

**Table 13: Nature of Offence: Surcharge Collected Compared to Maximum**

Region/ Offence	Number of Convictions	Total Surcharge Collected	Percentage Surcharge Collected of Maximum	Percentage Surcharge Collected of Imposed	Average Surcharge Collected Per Conviction
Moncton					
DUI	1551	\$132,950	71.2%	86.1%	\$85.72
Drugs	1588	\$24,660	21.5%	86.5%	\$15.53
Group 1	2810	\$24,974	13.1%	80.5%	\$8.89
Group 2	5550	\$31,507	6.2%	71.0%	\$5.68
Other	4654	\$32,991	10.2%	75.5%	\$7.09
<i>Total</i>	<i>16,153</i>	<i>\$247,080</i>	<i>18.7%</i>	<i>81.8%</i>	<i>\$15.30</i>
Saint John					
DUI	1936	\$153,141	73.4%	90.2%	\$79.10
Drugs	1045	\$16,515	23.7%	23.7%	\$15.80



Region/ Offence	Number of Convictions	Total Surcharge Collected	Percentage Surcharge Collected of Maximum	Percentage Surcharge Collected of Imposed	Average Surcharge Collected Per Conviction
Group 1	2363	\$29,449	22.4%	84.6%	\$12.46
Group 2	7046	\$53,532	13.1%	77.4%	\$7.60
Other	1151	\$7027	10.4%	72.2%	\$6.11
<i>Total</i>	<i>13,541</i>	<i>\$259,664</i>	<i>29.3%</i>	<i>85.2%</i>	<i>\$19.18</i>
Fredericton					
DUI	1577	\$142,307	80.8%	87.8%	\$90.24
Drugs	802	\$21,397	41.9%	77.9%	\$26.68
Group 1	2516	\$53,667	35.1%	83.2%	\$21.33
Group 2	4544	\$60,667	19.6%	67.1%	\$13.35
Other	929	\$14,111	24.9%	67.3%	\$15.19
<i>Total</i>	<i>10,368</i>	<i>\$292,148</i>	<i>39.1%</i>	<i>79.9%</i>	<i>\$28.18</i>
Edmunston					
DUI	792	\$50,937	54.1%	86.6%	\$64.31
Drugs	524	\$15,235	35.9%	90.5%	\$29.07
Group 1	1300	\$23,023	30.8%	83.3%	\$17.71
Group 2	2258	\$27,311	19.3%	78.6%	\$12.10
Other	567	\$10,999	31.6%	84.0%	\$19.40
<i>Total</i>	<i>5441</i>	<i>\$127,504</i>	<i>32.9%</i>	<i>84.4%</i>	<i>\$23.43</i>
Bathurst					
DUI	1595	\$137,223	72.5%	84.7%	\$86.03
Drugs	844	\$21,885	40.1%	77.6%	\$25.93
Group 1	2107	\$29,618	21.8%	88.0%	\$14.06
Group 2	3170	\$30,320	14.1%	80.7%	\$9.56
Other	3779	\$28,860	8.2%	77.3%	\$7.64
<i>Total</i>	<i>11,495</i>	<i>\$247,905</i>	<i>26.2%</i>	<i>83.0%</i>	<i>\$21.57</i>
Miramichi					
DUI	600	\$75,059	84.6%	87.2%	\$125.10
Drugs	207	\$7498	47.3%	66.1%	\$36.22

Region/ Offence	Number of Convictions	Total Surcharge Collected	Percentage Surcharge Collected of Maximum	Percentage Surcharge Collected of Imposed	Average Surcharge Collected Per Conviction
Group 1	1135	\$15,407	19.2%	93.7%	\$13.57
Group 2	1839	\$21,231	17.4%	80.0%	\$11.54
Other	935	\$5983	12.7%	68.5%	\$6.40
<i>Total</i>	<i>4716</i>	<i>\$125,177</i>	<i>35.4%</i>	<i>83.9%</i>	<i>\$26.54</i>
All Regions					
DUI	8051	\$691,617	73.28%	87.2%	\$85.90
Drugs	5010	\$107,190	30.78%	80.1%	\$21.40
Group 1	12,231	\$176,138	23.02%	84.7%	\$14.40
Group 2	24,407	\$224,568	13.19%	74.2%	\$9.20
Other	12,015	\$99,971	11.34%	74.8%	\$8.32
<i>Total</i>	<i>61,714</i>	<i>\$1,299,484</i>	<i>28.00%</i>	<i>82.7%</i>	<i>\$21.06</i>

- 1 Moncton (Moncton, Richibucto)
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- 5 Bathurst ( Bathurst, Campbellton , Tracadie-Sheila)
- 6 Miramichi

Examination of the rates of collection based on gender and language confirmed there were no significant trends to report (Tables 14 and 15).

**Table 14: Gender Differences: Surcharge Collected Compared to Maximum**

Region/ Gender	Number of Convictions	Total Surcharge Collected	Percentage Surcharge Collected of Maximum	Percentage Surcharge Collected of Imposed	Average Surcharge Collected Per Conviction
Moncton <sup>1</sup>					
Male	13,881	\$223,157	19.3%	81.1%	\$16.08
Female	2272	\$23,923	14.5%	88.7%	\$10.53
Saint John <sup>2</sup>					
Male	11,673	\$233,702	30.2%	84.7%	\$20.02
Female	1868	\$25,962	23.4%	90.0%	\$13.90
Fredericton <sup>3</sup>					
Male	8944	\$260,937	40.3%	79.8%	\$29.17
Female	1424	\$31,211	31.5%	81.5%	\$21.92
Edmundston <sup>4</sup>					
Male	4750	\$114,562	33.2%	83.5%	\$24.12
Female	691	\$12,943	30.5%	93.1%	\$18.73
Bathurst <sup>5</sup>					
Male	10,251	\$227,496	26.4%	82.7%	\$22.19
Female	1244	\$20,409	24.3%	86.5%	\$16.41
Miramichi <sup>6</sup>					
Male	3990	\$112,537	36.9%	83.7%	\$28.20
Female	726	\$12,640	26.1%	85.8%	\$17.41
All Regions					
Male	53,489	\$1,172,391	28.7%	82.3%	\$21.92
Female	8225	\$127,088	23.1%	86.9%	\$15.45

1 Moncton (Moncton, Richibucto)

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6 Miramichi

In Table 15, the data reveals no marked differences in surcharge revenues being collected from Francophones (84.7%) versus Anglophones (81.2%) in New Brunswick.

**Table 15: Language Differences: Surcharge Collected Compared to Maximum**

Region/Language	Number of Convictions	Total Surcharge Collected	Percentage Surcharge Collected of Maximum	Percentage Surcharge Collected of Imposed	Average Surcharge Collected Per Conviction
Moncton <sup>1</sup>					
English	8743	\$108,197	14.4%	76.7%	\$12.38
French	2379	\$57,690	31.7%	85.5%	\$24.25
Not Specified*	5031	\$81,194	20.9%	86.8%	\$16.14
Saint John <sup>2</sup>					
English	11,524	\$199,836	26.9%	84.4%	\$17.34
French	53	\$1398	38.0%	81.8%	\$26.37
Not Specified*	1964	\$58,430	41.8%	88.1%	\$29.75
Fredericton <sup>3</sup>					
English	9639	\$266,018	38.4%	79.2%	\$27.60
French	71	\$2785	48.6%	86.9%	\$39.23
Not Specified*	658	\$23,345	48.6%	88.4%	\$35.48
Edmundston <sup>4</sup>					
English	2119	\$59,665	44.4%	84.3%	\$28.16
French	3079	\$62,933	26.9%	84.4%	\$20.44
Not Specified*	243	\$4907	26.1%	85.0%	\$20.19
Bathurst <sup>5</sup>					
English	2854	\$41,961	20.1%	79.3%	\$14.70
French	7179	\$169,389	26.8%	84.8%	\$23.60
Not Specified*	1462	\$36,555	34.5%	79.2%	\$25.00
Miramichi <sup>6</sup>					
English	4241	\$106,553	33.6%	84.2%	\$25.12
French	136	\$5399	53.7%	77.2%	\$39.70
Not Specified*	339	\$13,225	49.5%	84.7%	\$39.01
All Regions					



Region/Language	Number of Convictions	Total Surcharge Collected	Percentage Surcharge Collected of Maximum	Percentage Surcharge Collected of Imposed	Average Surcharge Collected Per Conviction
English	39,120	\$782,230	27.5%	81.2%	\$20.00
French	12,897	\$299,594	28.0%	84.7%	\$23.23
Not Specified*	9,697	\$217,656	29.9%	85.8%	\$22.45

\* Not specified = language preference not recorded in database

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In Table 16, FVS collection was compared between cases where a victim was identified and those where no victim was identified in the court records. As with the imposition process, those cases where *no victim* was identified generated *more* collected surcharge per convicted case, ranging from \$21.02 to \$34.84 with an average of \$26.95. This is compared to those convictions where victims were involved, generating revenues from \$8.90 to \$17.85 with an average of \$14.06. These collection totals are a natural result of the low imposition/high waiver rate for those convicted cases where a victim was identified. There was no substantial difference noted in the collection rates of those cases that had the FVS imposed if there was a victim identified (81.1%) or not (83.1%).

**Table 16: Victim Identification: Surcharge Collected Compared to Maximum**

Region/ Victim Identified	Number of Convictions	Total Surcharge Collected	Percentage Surcharge Collected of Maximum	Percentage Surcharge Collected of Imposed	Average Surcharge Collected Per Conviction
Moncton <sup>1</sup>					
Victim	3824	\$32,947	11.9%	76.8%	\$8.62
No Victim	12,329	\$214,133	20.5%	82.6%	\$17.37
Saint John <sup>2</sup>					
Victim	3485	\$33,482	15.5%	83.0%	\$9.61
No Victim	10,056	\$226,182	33.7%	85.5%	\$22.49
Fredericton <sup>3</sup>					
Victim	4067	\$72,603	27.6%	78.5%	\$17.85
No Victim	6301	\$219,546	45.4%	80.4%	\$34.84
Edmundston <sup>4</sup>					



Region/ Victim Identified	Number of Convictions	Total Surcharge Collected	Percentage Surcharge Collected of Maximum	Percentage Surcharge Collected of Imposed	Average Surcharge Collected Per Conviction
Victim	2099	\$33,870	26.0%	83.7%	\$16.14
No Victim	3342	\$93,634	36.4%	84.6%	\$28.02
Bathurst <sup>5</sup>					
Victim	3984	\$35,444	12.8%	83.7%	\$8.90
No Victim	7511	\$212,461	31.7%	82.9%	\$28.29
Miramichi <sup>6</sup>					
Victim	1495	\$16,945	16.4%	87.1%	\$11.33
No Victim	3221	\$108,232	43.3%	83.5%	\$33.60
All Regions					
Victim	18,954	\$225,291	17.8%	81.1%	\$11.89
No Victim	42,760	\$1,074,188	31.8%	83.1%	\$25.12

The data presented in Table 17 provides information on the collection rate depending on the offender's disposition, e.g., fine, custody. It was expected that those sentenced to serve time would have extremely low collection (payment) rates. The collection rate is substantially lower on average for custody orders (52.8%) compared to fine dispositions (85.3%); in some regions, however, the collection rate for custody orders was as high as 75.2%.

**Table 17: Sentencing Differences: Surcharge Collected Compared to Maximum**

Region/ Sentence	Number of Convictions	Total Surcharge Collected	Percentage Surcharge Collected of Maximum	Percentage Surcharge Collected of Imposed	Average Surcharge Collected Per Conviction
Moncton <sup>1</sup>					
Custody	7641	\$16,412	2.4%	60.8%	\$2.15
Fine	2499	\$168,888	71.5%	86.1%	\$67.58
Other	6013	\$61,780	15.9%	78.3%	\$10.27
Saint John <sup>2</sup>					
Custody	5378	\$6445	2.0%	43.7%	\$1.20
Fine	3379	\$221,869	75.3%	87.3%	\$65.66
Other	4784	\$31,350	11.7%	87.1%	\$6.55
Fredericton <sup>3</sup>					



Region/ Sentence	Number of Convictions	Total Surcharge Collected	Percentage Surcharge Collected of Maximum	Percentage Surcharge Collected of Imposed	Average Surcharge Collected Per Conviction
Custody	3647	\$23,025	8.6%	42.5%	\$6.31
Fine	2935	\$193,229	80.5%	85.4%	\$65.84
Other	3786	\$75,894	31.7%	89.3%	\$20.05
Edmundston <sup>4</sup>					
Custody	1710	\$7165	5.6%	70.2%	\$4.19
Fine	2498	\$107,529	58.1%	85.3%	\$43.05
Other	1233	\$12,810	17.3%	86.1%	\$10.39
Bathurst <sup>5</sup>					
Custody	3385	\$6750	1.8%	75.2%	\$1.99
Fine	3597	\$207,330	73.4%	82.3%	\$57.64
Other	4513	\$33,825	11.3%	89.2%	\$7.50
Miramichi <sup>6</sup>					
Custody	1565	\$7425	6.3%	61.3%	\$4.74
Fine	1135	\$98,882	91.0%	85.6%	\$87.12
Other	2016	\$18,870	14.9%	83.9%	\$9.36
All Regions					
Custody	23,326	\$67,222	3.5%	52.8%	\$2.88
Fine	16,043	\$997,727	74.1%	85.3%	\$62.19
Other	22,345	\$234,529	16.8%	85.5%	\$10.50

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6 Miramichi

**Table 18: FVS Amount: Surcharge Collected Compared to Maximum**

Region/ Amount	Number of Cases FVS Imposed	Total Surcharge Collected	Percentage Surcharge Collected of Maximum	Percentage Surcharge Collected of Imposed	Average Surcharge Collected Per Conviction
Moncton <sup>1</sup>					
\$1 to \$25	176	\$2093	76.5%	79.6%	\$11.89
\$26 to \$50	1267	\$45,125	72.7%	76.9%	\$35.62
\$51 to \$75	127	\$6383	72.5%	72.5%	\$50.26
Over \$75	1823	\$193,315	85.2%	83.4%	\$106.04
Saint John <sup>2</sup>					
\$1 to \$25	260	\$3068	62.9%	74.3%	\$11.80
\$26 to \$50	1460	\$47,288	68.8%	73.5%	\$32.39
\$51 to \$75	394	\$22,525	80.9%	80.6%	\$57.17
Over \$75	1642	\$186,768	91.2%	89.6%	\$113.74
Fredericton <sup>3</sup>					
\$1 to \$25	553	\$7311	76.6%	78.8%	\$13.22
\$26 to \$50	2385	\$84,519	66.7%	76.8%	\$35.44
\$51 to \$75	304	\$17,044	79.4%	78.5%	\$56.06
Over \$75	1831	\$183,225	82.3%	81.6%	\$100.07
Edmundston <sup>4</sup>					
\$1 to \$25	258	\$3217	77.2%	77.5%	\$12.47
\$26 to \$50	1027	\$32,483	78.3%	80.2%	\$31.63
\$51 to \$75	188	\$10,545	81.5%	81.8%	\$56.09
Over \$75	679	\$81,260	88.1%	86.8%	\$119.68
Bathurst <sup>5</sup>					
\$1 to \$25	363	\$4446	76.5%	75.8%	\$12.25
\$26 to \$50	1706	\$56,383	74.8%	80.9%	\$33.05
\$51 to \$75	342	\$19,093	81.3%	81.0%	\$55.83
Over \$75	1539	\$167,984	85.4%	84.2%	\$109.15
Miramichi <sup>6</sup>					
\$1 to \$25	148	\$1463	72.4%	65.4%	\$9.89
\$26 to \$50	513	\$17,527	79.1%	75.8%	\$34.17
\$51 to \$75	57	\$3475	90.5%	87.2%	\$60.96
Over \$75	752	\$102,712	95.4%	85.8%	\$136.58



Region/ Amount	Number of Cases FVS Imposed	Total Surcharge Collected	Percentage Surcharge Collected of Maximum	Percentage Surcharge Collected of Imposed	Average Surcharge Collected Per Conviction
All Regions					
\$1 to \$25	1758	\$21,598	74.1%	76.3%	\$12.29
\$26 to \$50	8358	\$283,325	88.2%	77.3%	\$33.90
\$51 to \$75	1412	\$79,065	80.4%	79.9%	\$56.00
Over \$75	8266	\$915,264	87.1%	84.9%	\$110.73

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Data in Table 19 outlines the excellent administrative process involving the details of applying payments to court costs first, FVS second and finally, fines, as dictated by the law. As noted in column 4, it is rare that the FVS only is paid and not the fine.

**Table 19: Payment of Fine and Surcharge When Both Fine and Surcharge Imposed (after waiver decision)**

Region	Both Fine Disposition and FVS imposed	Percentage No Payment	Percentage Surcharge Paid Only	Percentage Convictions With Fine Paid Only	Amount of Surcharge Not Paid When Fine Is Paid
Moncton <sup>1</sup>	1936	15.3%	6.1%	0.05%	\$150.00
Saint John <sup>2</sup>	2832	14.7%	10.8%	0.04%	\$30.00
Fredericton <sup>3</sup>	2806	17.9%	10.4%	0.04%	\$75.00
Edmundston <sup>4</sup>	1785	17.8%	11.5%	0.00%	\$0.00
Bathurst <sup>5</sup>	3184	19.9%	15.5%	0.13%	\$345.00
Miramichi <sup>6</sup>	1124	20.8%	16.0%	0.00%	\$0.00
<b>ALL REGIONS</b>	<b>13,667</b>	<b>17.6%</b>	<b>11.7%</b>	<b>0.05%</b>	<b>\$600.00</b>

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## 3.2. Qualitative Analysis: Interviews with Key Informants

There were a total of 22 participants in the study from the New Brunswick justice system. The 14 key informants, excluding the 8 court supervisors, had a wide range in years of experience in the criminal justice system varying from 2 to 31 years. Educational backgrounds and expertise included: economics, business administration, criminology, and law.

Information collected during the interviews was not verified for the accuracy of answers provided. Convergent validity emerged on issues at times in cases where more than one stakeholder stated similar answers; these instances are noted. It was not the intention of the researcher to validate or discredit the answers provided by the interviewees, rather to present, uncensored, the information that was collected during that process. Thus, one will note suggestions offered to reduce waiver rates or to improve collections rates that may not be factually correct or suggestions may present inordinate obstacles for implementation. Sometimes suggestions provided by the key informants are initiatives that have already been implemented by various departments. Interviewees were asked to reflect on answers given and offer any limitations they could anticipate during implementation of their suggestions. These limitations are always noted.

### 3.2.1. Awareness

In 1999, changes to the *Criminal Code* made the imposition of the federal victim surcharge automatic. The revenue generated since the amendments were enacted has remained stable. The question has been raised whether the federal victim surcharge is in fact being automatically imposed unless waived by the judge with evidence of undue hardship provided by the offender. To this end the initial line of questioning during the interviews was to probe for an awareness and knowledge of the federal victim surcharge regime. All stakeholders interviewed:

- stated they were completely aware of the federal victim surcharge,
- offered anecdotal evidence that all co-workers were also fully aware of the federal victim surcharge regime, and
- could not imagine someone they work with not knowing about the federal victim surcharge.

Interviewees were also asked what concrete measures to improve awareness of the federal victim surcharge were they aware of since its inception in 1989 and amendment in 1999. Several initiatives to increase awareness and improve implementation of the federal victim surcharge were mentioned. All measures were recorded uncensored and invalidated and the suggestions are offered in no particular order:

1. Quick reference grids were created to provide fine and corresponding surcharge amounts for easy application on the Bench; (already available on intranet site).
2. Various memos were sent out that directly dealt with the federal victim surcharge, i.e., in February 2003 a directive was forwarded to Court Services Division indicating that court services staff were to add surcharge if the court did not impose or waive the surcharge.
3. Posters in both official languages were posted in clerks' offices, hallways and courts; posted a minimum of three times.
4. The Law Society Review has an article reporting on the federal victim surcharge.
5. Letters sent by the Department of Justice to the Law Society were circulated
6. Letters to the Chief Judge of the Provincial Court and the Chief Justice of the Court of Queen's Bench judges under the Deputy Minister's signature.



7. Justice Canada provided information sheets/pamphlets relating to the federal victim surcharge and the Public Legal Education and Information Service of New Brunswick ([www.legal-info-legale.nb.ca](http://www.legal-info-legale.nb.ca)) distributed them.
8. Changing the conditional sentence, probation and warrants of committals forms to make reference to a victim surcharge that was imposed.

### 3.2.2. Attitudes

Attitudes towards the federal victim surcharge ranged from emphatic positive endorsements of the federal victim surcharge, such as:

- A high level of sympathy for victims that included wanting to see as much monies generated as possible to help them (n=4); and,
- This is all about getting resources to provide services to victims (n=4).

There were also more negative comments with a few interviewees (n=2), who stated that:

- They do not believe in the federal victim surcharge;
- They think the federal victim surcharge is insulting as the offender's financial ability to pay the fine has already been factored into disposition and to add even more is thoughtless;
- They believe victimless crimes are not deserving of a surcharge; and,
- They view it as a tax grab.

The majority of interviewees (n=8), however, held a positive, although qualified, viewpoint, stating that the federal victim surcharge was a good thing, but offered suggestions to improve it, such as:

- Amendments to the wording of the *Criminal Code* from "...the offender shall pay..." to "...the judges shall impose..." *Criminal Code* (s.737(1)); and,
- Make the federal victim surcharge mandatory as is the provincial surcharge, thereby making it more enforceable.

The general tone of the Associate Chief Judge and 6 other judges interviewed was positive. Comments were noted such as:

- I am favourably disposed towards it and always address it (2 of 7);
- I basically agree with the philosophy behind the surcharge (3 of 7); and,
- It should remain as a discretionary measure (5 of 7).

Notwithstanding the positive tone of the interviews/surveys, the stakeholders raised several concerns regarding the practicalities of the federal victim surcharge process. These are discussed below. They included: who the real victims are, where the surcharge money goes, and the offender's lack of understanding about the surcharge.

#### 3.2.2.1. Who are the Victims?

Of the Associate Chief Judge and 6 other judges interviewed, several (n=4) raised the issue about the circumstances of the offenders. Who is the real victim? In many instances, offenders are victims themselves of wretched circumstances and in fact often end up using victim services themselves. To burden an offender with a surcharge to provide services that s/he might use later would be "nonsensical."

Another stakeholder captured this sentiment succinctly stating, “Simply put...the federal victim surcharge could be viewed by many, particularly the judges, as more hardship in an already difficult life.”

### **3.2.2.2. *Where Does the Money Go?***

#### **Judge’s Views**

Attitudes centering on expenditure of monies generated from the federal victim surcharge were varied and extreme. Several judges expressed a general lack of knowledge of how NB Victim Services is actually spending the money and an interest in receiving easy-to-read regular communiqués to remedy this. For instance the following suggestions were offered:

- Courts have no knowledge how these amounts (federal victim surcharge) are being dispensed to victims.
- I would like to see a black and white non-glossy one page accounting of monies spent by Victim Services on a yearly basis.
- Are victims of crime *directly* benefiting from federal victim surcharge revenues?
- When Victim Services funds a project it would be good to hear about it.
- When projects/services for victims are completed the courts would like to know.
- The courts are not hearing what they are doing with the monies.
- It would be nice to hear from Victim Services.
- Monies are used to pay someone to help victims generate a victim impact statement so that all the victim impact statements can sound the same.
- Positions in Victim Services are funded, but not the actual services being delivered to the victims. In other words, there are fears that bureaucracy is consuming funds generated by the federal victim surcharge.

#### **Stakeholders’ Views**

Conversely, strong enthusiastic endorsements were presented by many stakeholders (n=5):

- More money [from the federal victim surcharge] means a more diverse range of services can be provided to the victims.
- With more revenue an expansion of *professional* resources can be made available for victims.
- Several stakeholders emphasized that the victims are seeing every cent of the money and it is not being absorbed by bureaucracy.
- New Brunswick has a reputation for delivering highly effective and efficient victim services.
- Positive satisfaction surveys of Victim Services conducted at an earlier time were referred to by several stakeholders. (These client satisfaction surveys of actual victims who participated in the program were conducted in 2001 and were part of a comprehensive review of the Department of Public Safety Victim Services Program. The surveys reported that victims were very satisfied with the services they received during their justice system experience.)



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### 3.2.2.3. *Perceptions of the Offender's Understanding of the Federal Victim Surcharge*

There was complete consensus from the primary key informants and judges interviewed (n=11, so 100% ) in the perception that offenders *do not* make any connection between their payment of the federal victim surcharge and their actions inflicted on their victims. Those interviewed speculated that the typical offender:

- does not make the connection between the surcharge and their victim (n=4);
- thinks the monies are just one more thing to pay (n=6);
- views it as just a bigger fine (n=2);
- thinks that his (her) monies going to help them [victims] is irrelevant (n=3).

Justice personnel had the distinct impression that these offenders:

- just want in and out – no speeches, no understanding (n=3); and,
- don't care and wouldn't be interested in knowing about the federal victim surcharge (n=3).

Anecdotal evidence was offered surrounding the offenders' court experience and federal victim surcharge. It was suggested that often offenders are afraid to ask for more time to pay their fines and surcharges, assuming that jail time may be immediately imposed if they are not agreeable during the sentencing process. Thus, it was speculated that the offenders leave the court knowing they do not have the means to pay their fines and surcharges in a *timely manner* and that they are inevitably heading for a default status. It was suggested that if the offender knew they could negotiate the time to pay the surcharge the collection process may improve.

### 3.2.3. *Amendments to the Criminal Code*

Provincial and territorial surcharges are not consistent across the country as the percentage levied by the province, i.e., 20% in New Brunswick, is a provincial decision. In some jurisdictions it is 15% and in some it is 20%. Over the years different jurisdictions have increased their surcharge. Thus, in this context stakeholders were asked if they considered the present federal victim surcharge sufficient, i.e., 15% of fine dispositions, or if a symbolic increase would be appropriate to emphasize offender accountability to victims. Among primary key informants and judges who participated (n=11), two opposing views emerged surrounding this issue. Sentiments in favour of maintaining the status quo (7 of 11) were:

- Any increase becomes irrelevant [too much] when the ability to pay is lacking to begin with.
- Several stakeholders (5 of 11) thought that an increase may actually be counter-productive as judges may waive the federal victim surcharge even more often if the payment was much higher or viewed as too big of a gouge.

Conversely, at least one informant/stakeholder viewed the discrepancy between the provincial victim surcharge (20%) and the federal victim surcharge (15%) as nonsensical. The informant wondered about the message the discrepancy send. Others (6 of 11) agreed, stating that at the very least the federal victim surcharge should equal the provincial victim surcharge. This is particularly true when there is more actual victimization as a result of those offenders who are required to pay the federal victim surcharge compared to provincial offences.



Others (2 of 11) countered this question with the suggestion that the present graded federal victim surcharge regime, i.e., imposing a percentage of fines and flat rates according to the type of conviction, (e.g., \$50 summary, \$100 indictable), should be abandoned for a flat fee/rate regardless of conviction, e.g., \$50. This was as prior to the 1999 amendments to the *Criminal Code*. This idea reverberated with others (4 of 11) who also suggested abandoning a surcharge on convictions and opting for a court fee, reminiscent of airport fees, imposed on all those charged with any offence.

### **3.2.4. Mandatory Imposition**

Informants were further asked about their views on making changes to the federal victim surcharge process and whether the federal victim surcharge should be mandatory or “built-in”. One stakeholder made the suggestion to “...remove the federal victim surcharge from the sentencing process and simply make it a mandatory surcharge as is the provincial victim surcharge that is applied automatically by the Court Registry upon conviction rather than by the judge...”. This would require amendments to the *Criminal Code* and, if passed, would remove the federal victim surcharge regime from the sentencing process.

Strong opposition was voiced by all judges interviewed (n=6) and some stakeholders (n=3) at the prospect of the federal victim surcharge becoming “built-in” as is the provincial victim surcharge. Judges expressed their appreciation of the freedom that the current wording of the *Criminal Code* affords them to waive the federal victim surcharge in cases where if it were applied it would cause undue hardship. They reiterated the necessity for discretion and flexibility in applying the federal victim surcharge, citing that every rule has an exception and their expertise is required to negotiate those instances. In short, as one judge stated, “It [the federal victim surcharge] should not be mandatory...judges should have a discretionary authority [to waive the surcharge]”. Thus, when judges are exercising this discretion – what are the factors they are considering before waiving the federal victim surcharge? This was explored in the next portion of the interviews.

### **3.2.5. Waiver**

When considering a waiver, there exists real variation in judges’ perceptions about their role and discretionary power regarding the federal victim surcharge. For example, one judge stated ... “[It is not my role to impose the federal victim surcharge]...the law imposes an automatic surcharge unless dispensed...therefore it is not my practice to impose a surcharge in open court as this is an administrative measure.” In other words, the only role the judge plays in the federal victim surcharge process is to waive the surcharge, while the court personnel are responsible for the paper work. It was noted several times during the interviews by various stakeholders that at the time of the amendments in 1999, when the federal victim surcharge became automatic, court personnel strongly objected to the changes stating they “...felt unsafe ‘imposing’ the surcharge and resented being the person to inform the offender they had to pay more money on top of their fine...”

Some judges (n=5) reported that they are actively waiving the federal victim surcharge on a case-by-case basis rooted in the belief that the offender does not have the means to pay it. The offender’s “inability to pay” is often considered in conjunction with non-fine dispositions. This is because according to the judges, when an offender is sentenced to a lengthy jail term the inability to pay the federal victim surcharge is viewed as inevitable.



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According to one judge the paradox of the imposition process is:

“...that the worse the offender, the bigger the fine, the heavier the fine, the more it is perceived as too great a burden so then the fine (and federal victim surcharge) are waived ... On the other hand, those that are not fined and are headed to custody are viewed as having no means to pay the fine so the federal victim surcharge is again not imposed – who is left? Typically those with smaller fine amounts – those who have imposed the least amount of damage on victims...”

### 3.2.6. Undue Hardship

*Criminal Code* section 737.(5) states that:

(5) When the offender establishes to the satisfaction of the court that undue hardship to the offender or the dependants of the offender would result from payment of the victim surcharge, the court may, on application of the offender, make an order exempting the offender from the application of subsection (1).

If the court waives the federal victim surcharge, it is required to *provide reasons* why it is not being imposed and enter the reasons in the record of the proceedings (s.737(6)).

At present, it appears that mere assertions of an inability to pay by offenders or perceptions by judges that the offender cannot pay are sufficient to prove undue hardship in the Provincial Court of New Brunswick. The ability to pay the federal victim surcharge is never raised by the defence as a separate issue from the offender’s general ability to pay a fine. Questions from the judges such as, “Are you working?” or “Can you pay that fine?” or “Are you going to the Fine Option Program?” suffice as evidence for undue hardship.

Information obtained from the Pre-Sentence Report is another common source of information guiding judges in these decisions. During the interviews a judge commented that, “No formal evidence is heard – it is determined usually by the accused’s financial capacity as presented in a Pre-Sentence Report...with the consent of the parties.” Judges cited examples of factors they consider for waiving the federal victim surcharge:

- Unemployed with kids;
- Senior citizen on fixed income;
- Offender on welfare;
- A heavy debt load that is already unmanageable;
- Just a student, knows he can’t afford to pay it.

One judge explained the process of determining if the surcharge should be applied as follows “...when I am deciding on the fine amount I always am considering it in terms of the total monetary penalty....for example if I think they can pay \$500 then I work backwards and apply a lesser fine so the total including the federal victim surcharge will not exceed the \$500...”

Not one single interviewee, including the defence counsel, had any recollection of the defence making application to establish “undue hardship” for their client. During the file review, there was no documentation of application by any defence counsel for consideration of undue hardship. Given that

s.737(5) stipulates that *the offender* must establish to the satisfaction of the court that undue hardship would result, there would appear to be a disconnect between the procedure in the legislation and what is occurring in practice.

### **3.2.7. Documentation of the Federal Victim Surcharge**

A survey was conducted by the Director of Program Support Services (DOJ-NB) on behalf of the researcher regarding individual court location practices involving endorsements on Information Sheets in all 14 Provincial Court locations, which included eight court supervisors. Results from this survey reported significant variations in documenting federal victim surcharge practices.

Sixty-four percent of the Provincial Court locations (9 of 14) reported that when the federal victim surcharge is waived it is consistently and automatically documented by the court stenographer on the back of the Information Sheet. Two more court locations reported consistent practices of court staff asking the judge to clarify whether the federal victim surcharge should or should not be applied and then documenting the waiver accordingly on the back of the Information Sheet. Two court locations indicated inconsistent reporting regarding waiver or application on the Information Sheet. “It is *generally* noted, or 95% of the time we document the waiving of the federal victim surcharge on the back of the Information Sheets.” Only one court location documented in the opposite manner, noting the *imposition* of the federal victim surcharge on the back of the Information Sheet, rather than it being waived.

Information collected during the survey of existing practices regarding endorsing Information Sheets indicated that several unique practices have evolved in some court locations. One such understanding that has evolved is a blanket non-imposition of the federal victim surcharge. That is, there is an understanding among some judges and court personnel that if the federal victim surcharge is not actively applied by the presiding judge then the court stenographer is to document a waiver of the federal victim surcharge. Another unique practice is that at the time of sentencing the judge will offer the offender the choice to serve jail time rather than imposing the federal victim surcharge. Another judge was identified as imposing the condition of donating an indicated sum to a charity of the offender’s choice rather than impose the federal victim surcharge. These practices appear to be the rare exception to the rule.

### **3.2.8. Suggestions to Reduce Waiver Rates**

Finally, stakeholders were asked to offer any suggestions they considered a viable means to reduce waiver rates by improving the FVS process. All suggestions are recorded unedited. The suggestions that are already implemented have been included in the section to serve as indicators of low awareness of the established initiatives to improve the federal victim surcharge regime. These suggestions were not evaluated as to the plausibility of implementation. Interviewees were asked if they knew of any potential limitations to their suggestion and these limitations are noted. The suggestions are presented in no particular order:

1. Documentation by Court Personnel – forced field in data entry phase on whether the surcharge was imposed (this would not reduce waiver rates, but would clearly indicate, on the Justice Information System, when the surcharge was waived).
2. Provision of a surcharge grid to court clerks, stenographers, and/or judges.
3. Collection of the surcharge right off the top of the imposed fine.
4. Make the federal victim surcharge mandatory; as is the case with provincial fines e.g., speeding tickets, the provincial victim surcharge is automatically processed as part of the imposed fine.
5. Court stenographers should remind judges.



6. Creation of posters to remind personnel/offenders the federal victim surcharge is the law<sup>3</sup>.
7. Abandon federal victim surcharge for court user fees as in other provinces.
8. Development of forms with a statement regarding the purpose of the federal victim surcharge that the judges would give to an offender with the amount and explanation of why and where the money goes. This would help “to connect the dots” for offenders as a statement by the judge reminding the offender of the impact on the victims and also as a reminder of their requirement to pay the federal victim surcharge.

### 3.2.9. Collection / Enforcement

At present the only enforcement strategy in place in New Brunswick is to serve default time. That is, if the offender does not pay her/his surcharge and they do not show up for their default hearing to explain why the payment has not been satisfied, a warrant for their committal is issued. Many (n=6) of the 13 stakeholders commented that:

- Jail time is ineffective and irrelevant to the federal victim surcharge mandate but jail time is easiest to implement.
- There was a commonly held presupposition by many informants (n=7) that the best way to increase federal victim surcharge revenue is to focus on collection.
- The comment that the system needs a secondary compliance mechanism was reiterated by a few informants (n=4).

There was an overwhelming consensus (n=13, 100%) by all stakeholders that the current consequence of offenders serving time for non-payment of the surcharge was counter-productive. Most interviewees pointed out that if it costs the government approximately \$100 to house the offender overnight for non-payment of a \$50 victim surcharge. In fact, the sentence of one day results in offenders being admitted and released serving no penalty. Opinions on the default formula provided in the *Criminal Code* included:

- The default formula itself is fine, but the ill-thought out concept of serving time in lieu of surcharge payment needs to be reconsidered.
- Time served is “irrelevant, an easy way out, a completely useless tool.”
- RCMP and other police forces are already loaded and the last thing they need is more paper work.
- If the RCMP come across the offender while on duty and bring them in that is one thing but to send them out specifically to arrest the offender in default of satisfying his/her surcharge is a huge waste of resources.

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3 The Policy Centre for Victim Issues re-designed and distributed posters on the federal victim surcharge to Directors of Victim Services in most jurisdictions (which included New Brunswick). These were then distributed to courthouses and other locations to raise awareness about the federal surcharge legislation.

### 3.2.10. Suggestions to Improve Federal Victim Surcharge Collection

All key informants believed that collection of the federal victim surcharge should be more rigorous. Informants were asked what other options could be considered for collection and what if any impediments would need to be overcome jurisdictionally to implement options other than default time as a penalty. These suggestions are presented as proposed by the various key informants. The potential viability of these options was not explored beyond those limitations the various key informants offered.

1. Work off a federal victim surcharge just as fines are worked off in the Fine Option Program<sup>4</sup> (thereby potentially improving satisfaction of the surcharge, but this would not effect the collection of monies).
2. Approach the Department of Public Safety to explore the feasibility of using Motor Vehicle Registration renewal and/or driver's license suspension as a mechanism for collection if the surcharge is not satisfied. This particular suggestion generated a significant amount of feedback from respondents who, while seeing the many benefits of this recommendation, also noted some of the challenges:
  - i) offenders may drive without them and insurance rates may be impacted;
  - ii) may have an economic and lifestyle impact on whole family;
  - iii) renewal of a driver's license is only required every four years; and,
  - iv) there would be a cost to administer the program.
3. Civil judgments may be filed, but this may not be cost effective in time and money.
4. Make offender aware they can pay the federal victim surcharge in more "payable" increments.
5. Collection agencies could collect surcharges that are not satisfied after a specified time. This requires:
  - i) strict scripts to be followed; and,
  - ii) the loss of a percentage of the collected funds to the collection agency.
6. Submit a record of the unpaid federal victim surcharge to credit reporting bureaus.
7. Provide incentives to pay in a timely manner by increasing the amount after a designated lapsed time (six months) or offer a reduced amount if paid immediately (24 hours) or before leaving court.
8. Garner social assistance cheques, unemployment benefits.
9. Request that probation officers monitor/collect monies.

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4 Such a change would require amendments to *Criminal Code*, s.737(10) which stipulates "...the program referred to in section 736 for the discharge of a fine may not be used in respect of a victim surcharge."



## 4. Conclusions

The objective of this research was to develop a better understanding of the current status of the federal victim surcharge regime in the province of New Brunswick, to identify challenges that are present in the current process, and to generate possible solutions to circumvent impediments in maximizing the effectiveness of this process. Thus, the question posed at the beginning of this report, “Why has the anticipated revenue to be generated in NB from the 1999 amendments to the *Criminal Code* provisions related to surcharge not been realized?” has been explored. Conclusions drawn are as follows:

1. There is a high level of awareness surrounding all aspects of the Federal Victim Surcharge (FVS).
2. The average rates of waiver (66.2%), imposition (33.8%) and collection (82.7%) in New Brunswick were noted over a five-year period from 2000-2005 based on 61,714 eligible dispositions from the New Brunswick Justice Information System.
3. The anticipated revenue to be generated in New Brunswick from the 1999 amendments to the *Criminal Code* provisions related to surcharge have not been realized due primarily to high waiver rates. In fact, revenue has remained constant at pre-1999 *Criminal Code* amendment levels.
4. Interviews with key informants revealed that many suspected the losses were due to low federal victim surcharge collection rates. This study suggests the opposite - that change must come from reduced waiver rates (currently at an average of 66.2%), to result in increased imposition rates (currently at an average of 33.8%), rather than increased collection rates (currently at an average of 82.7%).
5. There is a low waiver rate on fine dispositions (25.2%) compared with non-fine dispositions related to summary (84%) and indictable (91.3%) offences. The lowest waiver rate is for driving under influence convictions (DUI) (26.0%) followed by drug convictions (61.6%) and non-violent property offences (72.8%).
6. It appears that one of the primary reasons judges feel that an offender cannot pay the federal victim surcharge is if they will be serving time, as only 4% with a custody order and 84% with no custody order had the federal victim surcharge imposed. Nonetheless, when collection rates were examined for offenders who have received a custody order, the average collection rate across the province is 52.8%, with a maximum FVS collection rate of 75.2% in Bathurst. This indicates that using a custody order as an indicator of an offender’s ability to pay the federal victim surcharge may not be the most sensitive measure.
7. Policy directives are in place related to court administration of automatic imposition and these directives are being followed. All court locations had a system to ensure the federal victim surcharge was being automatically applied unless actively waived by the judge. There were consistent documentation practices within court locations; there was considerable variation, however, in the documentation practices between different Provincial Court locations. This conclusion is supported from the interview and the manual file review data.
8. Interviews with key informants indicated that the primary criterion judges used for waiving the federal victim surcharge was the *perception* of the offender’s ability to pay. During the manual file review of 861 court files there was no documentation to indicate that evidence had been produced to prove “undue hardship” to the courts’ satisfaction, nor were reasons documented (in 99% of cases).

9. The sole enforcement strategy of the federal victim surcharge regime in New Brunswick is incarceration according to the current default formula whereby an amount equal to eight times the provincial minimum wage can be satisfied for each day spent in jail. If, for example, an offender failed to pay a \$50 surcharge, this would only result in a single day's incarceration, which in fact the offender does not serve. These levels are adjusted as the level of minimum wage changes.

10. All stakeholders interviewed agreed the default formula in the *Criminal Code* was *not* a meaningful consequence in the collection process, as it does not generate income for victim services and costs the government money to incarcerate offenders.

11. A difference in documentation practice did not impact collection rates either way. When the summons portion of the fine/surcharge order was filled out on the offender's fine/surcharge order, there was not a consistent trend relating to the success of federal victim surcharge collection. That is, when the summons portion of the order was completed, sometimes greater collection rates were noted and in other regions, they were not. These findings are based on the manual file review.

12. At present, the findings from this study indicate that the rationale underlying the federal victim surcharge is not being realized in New Brunswick – that is to make offenders accountable in some way to victims and to generate revenues for victim services. Offenders of serious crimes (Table 6), offenders who receive a custodial sentence (Table 7), and offenders who have been convicted of crimes involving victims (Table 8) are all having the federal victim surcharge waived.

Although the *Criminal Code* was amended in 1999 to provide provinces with more surcharge revenue to devote to services for victims of crime, in fact, in New Brunswick, the federal surcharge revenue has remained at the same level as before the amendments.

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## 5. Recommendations

The data were analyzed with a view to providing recommendations for improving revenues from the federal victim surcharge in the province of New Brunswick. Within the constraints for this review, the recommendations present no obvious limitations and/or have been purported to have been implemented with success in other jurisdictions.

1. In an attempt to address the high waiver rate and ensure the federal surcharge provisions of the *Criminal Code* are fully addressed, it is recommended that:

(i) The Department of Public Safety in partnership with the Department of Justice initiate the opportunity to meet once with the Chief Provincial Court Judge to provide information on the Victim Services Program and to determine the most effective mode to communicate program successes to the full judiciary. This should happen as soon as possible.

(ii) A feasibility study and possible pilot project based on its results be undertaken to further explore the offender's ability to pay in situations where offenders receive custody dispositions. The goal of such a study would be to produce concrete resources to aid judges in their decision making (e.g. alternative payment schedules, easy to use guidelines/tables), recognizing that surcharge amounts on non-fine dispositions are small (\$50 for summary convictions, \$100 for indictable offences).

2. To maximize surcharge collection rates, the Department of Public Safety examine the feasibility of utilizing motor vehicle registration and/or driver's license renewal as a mechanism for satisfying the surcharge. As part of this feasibility assessment, the use of this option in other jurisdictions should be examined, as well as the success of using this as a remedy for non-payment.

3. In order to better understand the positive and challenging aspects of federal victim surcharge regimes in other jurisdictions, it is recommended that similar research be conducted in other provinces and territories and results shared with relevant stakeholders and decision makers (e.g. Federal Provincial Territorial Working Group on Victims of Crime, FPT Deputies and Ministers Responsible for Justice).

4. Given the disconnect between the intention of the 1999 amendments to the *Criminal Code* federal victim surcharge provisions and what is occurring, it is recommended that once research has been completed in other jurisdictions, a summary and discussion paper that focuses on this disconnect be provided to relevant stakeholders and decision makers (e.g. Federal Provincial Territorial Working Group on Victims of Crime, FPT Deputies and Ministers Responsible for Justice).



## 6. References

Li, Kuan. (2005). *Projections for the Federal victim surcharge*. Research and Statistics Division, Department of Justice Canada.



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# Appendix A

## **Operational Review: Federal Victim Surcharge in New Brunswick**

### INFORMED CONSENT FOR KEY INFORMANTS

#### **Purpose**

The purpose of informed consent is to make sure that you understand the nature of the project and your involvement in it. This document provides you with information to help you decide if you wish to participate in the study.

#### **Research Title**

*Federal Victim Surcharge: An Operational Review of New Brunswick Provincial Courts.*

#### **Research Personnel**

The following people are involved in this project and may be contacted at any time: Dr. Moira Law, Principal Researcher (506-849-2746) or Dr. Susan MacDonald, Senior Research Officer with Department of Justice Canada (613-957-9315).

#### **Purpose of the Project**

The general purpose of the project is an operational review of the imposition, implementation and enforcement of the federal victim surcharge in New Brunswick Provincial Courts. The survey will include an examination of the rate of imposition/waives of federal victim surcharge by the court and the documentation surrounding the federal victim surcharge and the rate of offender's adherence to the imposed fine, as well as extenuating variables that influence the imposition or enforcement process. The Researchers will ask to meet with you for approximately an hour to answer questions about your experience with this process. Your participation would be greatly appreciated in helping us understand how the surcharge regime in New Brunswick presently operates, as well as giving directions for future amendments in its implementation.

#### **Right to Withdraw**

There are no rewards for participating in this project and you may withdraw at any time. This means you may refuse to answer any of the Researchers' questions at any time. There is no penalty for you if you decide not to participate in the project, or to withdraw from the project at a later date.

**Anonymity / Confidentiality**

All research information gathered during the project will remain confidential. *Absolutely no unique identifiers*, e.g. name, position, or court that could reveal a participant's identity will be reported. Results of this study will be presented by regions, not individual courts, thereby ensuring no individual's opinions or practices could be identified. Access to any of the research information collected is restricted to the Main Researcher and the Research Assistant. All information collected during the project will be kept in a locked cabinet at the Main Researcher's place of employment for approximately five years (March 31, 2011), after which it will be destroyed by shredding.

**Follow-Up**

At the end of the project, a summary report will be available upon request by contacting the Principal Researcher at 506-849-2746, [m1aw@unbsj.ca](mailto:m1aw@unbsj.ca), or [moiralaw@nbnet.nb.ca](mailto:moiralaw@nbnet.nb.ca).

**Authorizations**

I have read the above description of the federal victim surcharge: An Operational Review in New Brunswick Provincial Court study. The purpose and method of the project have been explained to me and I understand the explanation. I have been given an opportunity to ask questions about the study and I am satisfied with the answers that I have been given.

I hereby consent to participate as a volunteer in the project. I also give my permission to the Researchers to make use of the information gathered in the study, including scholarly publications.

Please print your name and add your signature and the date. Thank you for your participation in this project.

KEY INFORMANT

Name: .....

Signature: .....

Date: .....

RESEARCHER

Name: .....

Signature: .....

Date: .....



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## Key Informant Interview Guidelines

Key Informant .....

Agency .....

Position .....

Date     /     /      
      Y M D

Interviewer .....

### 2.1 Credentials and Experience

2.1.1 Academic discipline

Law Psychology Social Work Other

2.1.2 Number of months with provincial courts \_\_\_\_\_

2.1.3 Current work experience/position(s)

### 2.2 Federal victim surcharge: Information/Perceptions/Attitudes

2.2.1 Can you tell me what your understanding of the federal victim surcharge is? How is it applied?

2.2.2 How do you feel about the federal victim surcharge?

2.2.3 Firstly, what is your understanding of the purpose the federal victim surcharge and secondly in your opinion is the federal victim surcharge a meaningful consequence? Do you fundamentally agree with the philosophy behind the surcharge?

2.2.4 What is your perception regarding the usage of funds received from the federal victim surcharge? For instance, what do you think happens to the money collected? Are you aware that surcharge revenues are the sole source of funding for victim services in New Brunswick – i.e., there is no other source of funding for victim services?

2.2.5 Do you realize that victim services cost approximated \$1.6 million a year and the surcharge is only generating \$250,000? Knowing this, do you feel the % presently being imposed / collected is satisfactory?

2.2.6 Would a symbolic increase in the monetary amount of the federal victim surcharge be appropriate to emphasize offenders' accountability to the victim?

2.2.7 What has NB done to *improve* the awareness of the federal victim surcharge for all parties involved, e.g., crowns, defence, judges and offenders? How were you made aware of surcharge provisions? Has NB done anything to make professionals and offenders aware of the surcharge provisions? Can you give examples?

### 2.3 Federal victim surcharge: Imposition

- 2.3.1 *In practice*, does your court assume *automatic* imposition of the federal victim surcharge? Are you aware that the offender shall pay a surcharge unless waived by the court? How is the automatic nature of the imposition of the federal victim surcharge reflected in court documentation/proceedings? For instance, is the imposition/waiving of the surcharge noted on the back of the information?
- 2.3.2 Are you aware that in 1999 the law was changed to ensure that the imposition of the surcharge was automatic? In your recollection – is the surcharge being imposed in every case? If not, what practices or “understandings” have evolved at your local level?
- 2.3.3 In February 2003, a directive was forwarded to Court Services Division, indicating that court services staff were to add a surcharge if the court did not impose or waive the surcharge. To your knowledge is this being followed? How so?
- 2.3.4 In your opinion, is the present system as outlined in that 2003 directive the optimal means of implementing the federal victim surcharge or are there more effective ways of doing this?
- 2.3.5 The *Criminal Code* provides for means tests to prove undue hardship. In your experiences have you seen or heard such evidence in your area? In your recollection, what is the typical evidence used to prove “undue hardship”?
- 2.3.6 From your recollection...when the federal victim surcharge is waived, is a reason typically stated? Is this reason recorded as part of the endorsement on the back of the Information?
- 2.3.7 From your recollection, what is the typical reason(s) given for non-imposition?
- 2.3.8 In your recollection, how often (never/seldom/frequently/very frequently) have the defence *directly* spoken to an offender’s ability to pay?
- 2.3.9 Do you believe the federal surcharge should be mandatory as is the provincial...If so, why? If not, why not?
- 2.3.10 Are there any other thoughts you have on the imposition of the VFS that you would like to speak to?

### 2.4 Federal victim surcharge: Collection / Enforcement

- 2.4.1 As you may know, if an offender fails to pay the federal victim surcharge, (s)he may be incarcerated for non-payment based on the default formula whereby an amount equal to eight times the provincial minimum wage can be satisfied for each day spent in jail. If, for example, an offender failed to pay a \$50 surcharge, this would only result in a single day's incarceration. At present, incarceration is the only enforcement remedy in use. What other remedies could be used to encourage payment?
- 2.4.2 Is default time a meaningful consequence for non-payment of surcharge. Besides incarceration, what other remedies for non-payment could be considered?
- 2.4.3 What if any operational issues have the use of default time as a penalty imposed on your department i.e., shortfall in monies collected, overcrowding in correctional facilities?
- 2.4.4 How could this be changed for the better?



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- 2.4.5 What if any impediments would need to be overcome jurisdictionally to implement options other than default time as a penalty?? For instance, the Code provides options such as license sanctions, filing civil judgments however this would necessitate the need to address insurance issues or costs to implement such options.
- 2.4.6 Are there any other thoughts you have on the collection of the federal victim surcharge that you would like to speak to?

## **2.5 Federal victim surcharge: Implementation Issues**

- 2.5.1 In 1999 when the federal government amended the surcharge provisions for the Code they estimated \$1.6 million would be realized annually in NB. As mentioned earlier over the last five years \$250,000 has been raised annually– the same amount as prior to the CC amendments. In your opinion, why has the anticipated revenue to be generated in NB not been realized?

## **2.6 Other Concerns**

- 2.6.1 Are there any issues which we haven't covered that you would like to comment on?