

1980

c 82 Compensation for Victims of Crime Act

Ontario

© Queen's Printer for Ontario, 1980

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/rso>

Bibliographic Citation

Compensation for Victims of Crime Act, RSO 1980, c 82

Repository Citation

Ontario (1980) "c 82 Compensation for Victims of Crime Act," *Ontario: Revised Statutes*: Vol. 1980: Iss. 1, Article 84.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1980/iss1/84>

CHAPTER 82

Compensation for Victims of Crime Act

1.—(1) In this Act,

Inter-
tation

(a) “Board” means the Criminal Injuries Compensation Board;

(b) “child” means a child born within or outside marriage, subject to sections 86 and 87 of the *Child Welfare Act* (which relate to the effect of adoption), and includes a grandchild of the victim and a person whom the victim has demonstrated a settled intention to treat as a child of his family, and includes a child of the victim conceived before and born alive after the victim’s death, but does not include a child placed in the home of the victim as a foster child for consideration by a person having lawful custody; R.S.O. 1980, c. 66

(c) “dependant” means,

(i) the spouse of the victim,

(ii) a parent of the victim, including a grandparent and a person who has demonstrated a settled intention to treat the victim as a child of his family, but does not include a person in whose home the victim was placed as a foster child for consideration by a person having lawful custody,

(iii) a child of the victim,

(iv) a brother or sister of the victim, and

(v) any other relative of the victim,

who was in whole or in part dependent on the victim for support at the time of his death;

(d) “injury” means actual bodily harm and includes pregnancy and mental or nervous shock and “injured” has a corresponding meaning;

(e) "Minister" means the Attorney General;

R.S.C. 1970,
c. C-34

(f) "peace officer" means a peace officer as defined in the *Criminal Code* (Canada);

(g) "victim" means a person injured or killed in the circumstances set out in section 5. 1971, c. 51, s. 1 (1); 1972, c. 1, s. 9 (7); 1977, c. 40, s. 89 (1).

Unmarried
spouses

(2) The Board may direct that a person was the spouse of a deceased victim for the purposes of this Act where the Board finds that,

(a) they were a man and a woman who, not being married to each other, had been cohabiting immediately before the death of the victim,

(i) continuously for a period of not less than five years, or

(ii) in a relationship of some permanence where there is a child born of whom they are the natural parents; or

(b) their marriage was terminated by a decree absolute of divorce or was declared a nullity and the spouse was a person to whom the victim was providing support or was under a legal obligation to provide support immediately before his death. 1977, c. 40, s. 89 (2).

Administra-
tion of Act

2. The Minister is responsible for the administration of this Act. 1971, c. 51, s. 2.

Criminal
Injuries
Compensa-
tion Board

3.—(1) The Criminal Injuries Compensation Board is continued and shall be composed of such number of members, not fewer than five, as are appointed by the Lieutenant Governor in Council, and the Lieutenant Governor in Council shall appoint one of such members as chairman and one or more of them as vice-chairmen. 1971, c. 51, s. 3 (1); 1979, c. 105, s. 1.

Board a
corporation
R.S.O. 1980,
c. 95

(2) The Board is a corporation to which the *Corporations Act* does not apply.

(3) The chairman shall have general supervision and direction over the conduct of the affairs of the Board, and shall arrange the sittings of the Board and assign members to conduct hearings as circumstances require. ^{Duties of chairman}

(4) The chairman may designate a vice-chairman who shall exercise the powers and perform the duties of the chairman when the chairman is absent or unable to act. 1971, c. 51, s. 3 (2-4). ^{Substitute chairman}

4. The Board shall prepare and periodically publish a summary of its decisions and the reasons therefor. 1971, c. 51, s. 4. ^{Publishing reports}

5. Where any person is injured or killed by any act or omission in Ontario of any other person occurring in or resulting from, ^{Injuries compensable}

- (a) the commission of a crime of violence constituting an offence against the *Criminal Code* (Canada), including poisoning, arson, criminal negligence and an offence under section 84 of that Act but not including an offence involving the use or operation of a motor vehicle other than assault by means of a motor vehicle; ^{R.S.C. 1970, c. C-34}
- (b) lawfully arresting or attempting to arrest an offender or suspected offender for an offence against a person other than the applicant or his dependant or against such person's property, or assisting a peace officer in executing his law enforcement duties; or
- (c) preventing or attempting to prevent the commission of an offence or suspected offence against a person other than the applicant or his dependant or against such person's property,

the Board, on application therefor, may make an order that it, in its discretion exercised in accordance with this Act, considers proper for the payment of compensation to,

- (d) the victim;
- (e) a person who is responsible for the maintenance of the victim;
- (f) where the death of the victim has resulted, the victim's dependants or any of them or the person

who was responsible for the maintenance of the victim immediately before his death or who has, on behalf of the victim or his estate and not being required by law to do so, incurred an expense referred to in clause 7 (1) (a) or (e) arising from the act or omission. 1971, c. 51, s. 5.

**Limitation
period for
application**

6. An application for compensation shall be made within one year after the date of the injury or death but the Board, before or after the expiry of the one-year period, may extend the time for such further period as it considers warranted. 1971, c. 51, s. 6.

**Compensa-
tion**

7.—(1) Compensation may be awarded for,

- (a) expenses actually and reasonably incurred or to be incurred as a result of the victim's injury or death;
- (b) pecuniary loss incurred by the victim as a result of total or partial disability affecting the victim's capacity for work;
- (c) pecuniary loss incurred by dependants as a result of the victim's death;
- (d) pain and suffering;
- (e) maintenance of a child born as a result of rape;
- (f) other pecuniary loss resulting from the victim's injury and any expense that, in the opinion of the Board, it is reasonable to incur.

Idem

(2) Where the injury to a person occurred in the circumstances mentioned in clause 5 (b) or (c), the Board may, in addition to the compensation referred to in subsection (1), award compensation to the injured person for any other damage resulting from the injury for which damages may be recovered at common law. 1971, c. 51, s. 7.

**Referral
for hearing**

8. Where an application is made under section 5, the chairman of the Board shall refer the application,

- (a) to the Board for a hearing conducted by at least two members of the Board; or
- (b) to one member of the Board for a hearing by him,

as the chairman may direct. 1971, c. 51, s. 8.

9.—(1) The Board or member to whom an application is referred under section 8 shall fix a time and place for the hearing of the application and shall at least ten days before the day fixed cause notice thereof to be served upon the applicant, upon the Minister, upon the offender where practicable and upon any other person appearing to the Board or member to have an interest in the application.

Notice of hearing by one member of Board

(2) Every person upon whom notice of a hearing is served and any other person added by the Board or member is a party to the proceedings.

Parties

(3) The Board or member shall hold the hearing and make an order under section 5, and, subject to section 10, this Act applies in respect of the hearing and jurisdiction of the member in the same manner as to the Board. 1971, c. 51, s. 9.

Jurisdiction of member

10.—(1) Where an application is heard by a single member of the Board under section 9, the applicant or the Minister may, within fifteen days after service of the decision of the member, require a hearing and review by the Board and the Board shall fix a time and place for the hearing and shall at least ten days before the day fixed cause notice thereof to be served upon the parties to the proceedings.

Hearing and review by Board

(2) The Board may add persons as parties to the proceedings during a review under this section.

Adding parties

(3) The hearing shall be conducted and the jurisdiction of the Board shall be exercised by at least two members of the Board and the member whose decision is being reviewed shall not sit on the review.

Quorum

(4) After a hearing and review by the Board under this section, the Board shall make its order in accordance with this Act and its order supersedes the order of a single member made under section 9 that is the subject of the hearing and review. 1971, c. 51, s. 10.

Order of Board

11. If a person is convicted of a criminal offence in respect of an act or omission on which a claim under this Act is based, proof of the conviction shall, after the time for an appeal has expired or, if an appeal was taken, it was dismissed and no further appeal is available, be taken as conclusive evidence that the offence has been committed. 1971, c. 51, s. 11.

Conviction as conclusive evidence

12. All hearings shall be held in public except where, in the opinion of the Board, it is necessary to hold the hearing *in camera* for the reason that a public hearing,

Hearings to be open to public; exceptions

- (a) would be prejudicial to the trial of the person whose act or omission caused the injury or death; or
- (b) would not be in the interests of the victim, or of the dependants of the victim, of an alleged sexual offence. 1971, c. 51, s. 12.

Publication
of evidence

13.—(1) The Board may make an order prohibiting the publication of any report or account of the whole or any part of the evidence at a hearing where the Board considers it necessary but in making an order under this subsection the Board shall have regard to the desirability of permitting the public to be informed of the principles and nature of each case.

Offence

(2) Any person who publishes a report or account of any evidence at a hearing contrary to an order of the Board under subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Corporations

(3) Where a corporation is convicted of an offence under subsection (2), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. 1971, c. 51, s. 13.

Interim
compensa-
tion

14. Where,

- (a) the applicant is in actual financial need; and
- (b) it appears to the Board that it will probably award compensation to the applicant,

the Board may, in its discretion, order interim payments to the applicant in respect of maintenance and medical expenses and, if compensation is not awarded, the amount so paid is not recoverable from the applicant. 1971, c. 51, s. 14.

Service

15.—(1) Any notice or document required to be served under this Act or the regulations is sufficiently served if delivered personally or sent by registered mail addressed to the person upon whom service is required to be made at the latest address for service appearing on the records of the Board.

Idem

(2) Where any notice or document mentioned in subsection (1) is served by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person to be served did not, acting in good faith, through absence, accident, illness or other cause beyond his control, receive the notice or document or receive it until a later date.

(3) Notwithstanding subsections (1) and (2), the Board may ^{Exception} order any other method of service of any notice or document mentioned in subsection (1). 1971, c. 51, s. 15.

16.—(1) An order for compensation may be made whether ^{Compensation not dependent on a conviction} or not any person is prosecuted for or convicted of the offence giving rise to the injury or death but the Board may, on its own initiative or upon the application of the Minister, adjourn its proceedings pending the final determination of a prosecution or intended prosecution.

(2) Notwithstanding that a person for any reason is legally ^{Capacity for mens rea} incapable of forming criminal intent, he shall, for the purposes of this Act, be deemed to have intended an act or omission that caused injury or death for which compensation is payable under this Act. 1971, c. 51, s. 16.

17.—(1) In determining whether to make an order for ^{Considerations of Board} compensation and the amount thereof, the Board shall have regard to all relevant circumstances, including any behaviour of the victim that may have directly or indirectly contributed to his injury or death. 1971, c. 51, s. 17 (1).

(2) The Board may, in its discretion, refuse to make an ^{Idem} order for compensation where it is satisfied that the applicant has refused reasonable co-operation with, or failed to report promptly the offence to, a law enforcement agency. 1973, c. 34, s. 1.

(3) In assessing pecuniary loss, the Board shall take into ^{Idem} consideration any benefit, compensation or indemnity payable to the applicant from any source. 1971, c. 51, s. 17 (2).

18. The Board may order compensation to be paid in a ^{Form of compensation} lump sum or in periodic payments, or both, as the Board thinks fit. 1971, c. 51, s. 18.

19.—(1) The amount awarded by the Board to be paid in ^{Maximum awards} respect of the injury or death of one victim shall not exceed,

(a) in the case of lump sum payments, \$15,000; and

(b) in the case of periodic payments, \$500 per month,

and where both lump sum and periodic payments are awarded, the lump sum shall not exceed half of the maximum therefor prescribed in clause (a).

(2) The total amount awarded by the Board to be paid to ^{Maximum total of payments for occurrence} all applicants in respect of any one occurrence shall not exceed,

(a) in the case of lump sum payments, a total of \$100,000; and

(b) in the case of periodic payments, a total of \$175,000.

Pro rata
distribution

(3) Where the total amount awarded in respect of any one occurrence exceeds the maximum amount prescribed by subsection (2), the amount prescribed shall be distributed *pro rata* in proportion to the amounts of the awards that would otherwise have been made.

Acts deemed
an
occurrence

(4) For the purposes of this section, the Board may deem more than one act to be one occurrence where the acts have a common relationship in time and place.

Application
of subss.
(1) and (2)

(5) Subsection (1) does not apply to amounts awarded in respect of an injury or death incurred under clause 5 (b) or (c) and such amounts shall not be taken into account for the purposes of subsection (2). 1971, c. 51, s. 19.

Award not
subject to
garnish-
ment,
etc.

20. Any money paid or payable by way of compensation under this Act or held by the Public Trustee or other person under an order made by the Board under subsection 21 (3) is not subject to garnishment, attachment, execution, set-off or any other legal process and the right thereto is not assignable. 1973, c. 34, s. 2.

Conditions
of payment

21.—(1) An order for the payment of compensation may be made subject to such terms and conditions as the Board thinks fit,

(a) with respect to the payment, disposition, allotment or apportionment of the compensation; or

(b) as to the holding of the compensation or any part thereof in trust for the victim or the dependants, or any of them, whether as a fund for a class or otherwise.

Idem

(2) Any compensation payable for expenses under section 7 may, in the discretion of the Board, be paid directly to the person entitled thereto. 1971, c. 51, s. 20.

Payments
in case of
minor, etc.

(3) If a person entitled to an award under this Act is under the age of eighteen years or is of unsound mind or in the opinion of the Board is incapable of managing his own affairs, any amount payable to him may be paid on his behalf to his parent, spouse or committee or to the Public

Trustee or may be paid to such other person or applied in such manner as the Board considers in the best interest of such person, and amounts so paid shall be received and administered by the payee for the benefit of the person. 1973, c. 34, s. 3.

22. Notwithstanding section 19, the Board may, with ^{Costs} respect to any hearing or other proceeding under this Act, make such order as to costs as it thinks fit. 1971, c. 51, s. 21.

23. Subject to section 25, a decision of the Board is final ^{Appeal} except that an appeal lies to the Divisional Court from any decision of the Board on any question of law. 1971, c. 51, s. 22.

24. The Board shall, upon request, release documents and ^{Release of exhibits} things put in evidence at a hearing to the lawful owner or the person entitled to possession thereof within a reasonable time after the matter in issue has been finally determined. 1971, c. 51, s. 23.

25.—(1) The Board may at any time on its own initiative or ^{Variation of award} on the application of the victim, any dependant of the victim, the Minister or the offender, vary an order for payment of compensation in such manner as the Board thinks fit, whether as to terms of the order or by increasing or decreasing the amount ordered to be paid, or otherwise.

(2) In proceedings under subsection (1), the Board shall con- ^{Idem} sider,

- (a) any new evidence that has become available;
- (b) any change of circumstances that has occurred since the making of the order or any variation thereof, as the case may be, or that is likely to occur; and
- (c) any other matter the Board considers relevant.

(3) This Act, except section 6, applies to a review under sub- ^{Procedure, etc., on review} section (1) in the same manner as to an application for compensation. 1971, c. 51, s. 24.

26.—(1) Subject to subsections (2), (3) and (4), nothing in this ^{Civil proceedings} Act affects the right of any person to recover from any other person by civil proceedings damages in respect of the injury or death.

(2) The Board is subrogated to all the rights of the person ^{Subrogation} to whom payment is made under this Act to recover

damages by civil proceedings in respect of the injury or death and may maintain an action in the name of such person against any person against whom such action lies, and any amount recovered by the Board shall be applied,

- (a) first, to payment of the costs actually incurred in the action and in levying execution; and
- (b) second, to reimbursement of the Board for the value of the compensation awarded,

and the balance, if any, shall be paid to the person whose rights were subrogated.

Settlement (3) Any settlement or release does not bar the rights of the Board under subsection (2) unless the Board has concurred therein.

Civil actions (4) An applicant for or a person awarded compensation shall forthwith notify the Board of any action he has brought against the offender who caused the injury or death of the victim. 1971, c. 51, s. 25.

Payment of compensation **27.**—(1) Compensation ordered to be paid shall be paid out of the moneys appropriated therefor by the Legislature.

Disposition of money recovered (2) Any reimbursement to the Board under section 26 shall be paid into the Consolidated Revenue Fund. 1971, c. 51, s. 26.

Regulations **28.** The Lieutenant Governor in Council may make regulations,

- (a) prescribing rules of practice and procedure in respect of applications to the Board and proceedings of the Board;
- (b) requiring the payment of fees in respect of any matter in the jurisdiction of the Board, including witness fees, and prescribing the amounts thereof;
- (c) prescribing forms for the purposes of this Act and providing for their use;
- (d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1971, c. 51, s. 27.

Agreements with Canada **29.** The Crown in right of Ontario represented by the Minister, with the approval of the Lieutenant Governor in Council, may make agreements with the Crown in right of

Canada respecting the payment by Canada to Ontario of such part of the expenditures required for the purposes of this Act as is agreed upon. 1971, c. 51, s. 28.

