

McMurtry Victim Compensation Review

Presented to: The Honourable R. Roy McMurtry, Q.C.

November 13, 2007

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Opening statement

This brief has been prepared by the Canadian Resource Centre for Victims of Crime (CRCVC), but is written to represent the views of two organizations. The Canadian Resource Centre for Victims of Crime (CRCVC) is a non-government, non-profit advocacy group for victims and survivors of violent crime. Since 1993, we have provided direct assistance to victims across the country, as well as advocating for improved services and rights for people victimized by violent crime. Victims of Violence Canadian Centre for Missing Children (VOV), founded in 1984, is a national, charitable organization dedicated to the prevention of crimes against children, educating children on personal safety issues and assisting victims of violent crime.

During the last 15 years, our organizations have worked hand in hand to present the voices of victims to all levels of government. The joint recommendations made in this brief are based on the wealth of practical experience of both agencies in dealing with Ontario’s Criminal Injuries Compensation Board (CICB). Our recommendations are made in an attempt to improve the treatment and services afforded to victims and survivors of violence by the Board.

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Introduction

The CRCVC provides direct assistance and support to victims and survivors from their requesting an application, through until a decision has been made regarding a potential award. We do not generally provide direct assistance with appeals, since they must be based on a point of law, and this is beyond the scope of the services that we can provide. Some victims use our agency as their agent or representative in their dealings with the CICB (meaning that we receive correspondence from the Board on behalf of the victim and forward it to them) and we can make inquiries on the victims’ behalf. We can also attend hearings, where possible and practical, as a support person for the victim or survivor.

We were pleased to receive an invitation from the Honourable Roy McMurtry to participate in the review of Ontario's system for providing direct compensation to victims of violent crime. We agree whole heartedly with the Ombudsman's report that concluded Ontario's current compensation system is not meeting the victims' needs effectively. We will provide examples of the frustrations we have heard directly from victims, as well as commenting on the consultation questions.

It is our sincere hope that Ontario's system for providing compensation to victims and survivors of violent crime will be improved. We look forward to the Honourable Roy McMurtry's findings and recommendations. The message we have attempted to convey in this brief is that compensation for expenses and losses is very much needed. What we have heard directly from survivors is:

- simplify the application process;
- provide sensitive support to applicants;
- shorten waiting times between the application and adjudication of files; and
- provide prompt, generous awards to those victims deemed eligible.

Purposes of compensation

1. What purpose is served by paying compensation awards to victims?

State compensation for victims of crime is a relatively recent phenomenon. The first compensation scheme for victims of violent crime commenced in New Zealand on the 1st January 1964, while the United Kingdom followed later in the same year (California established a scheme in 1965 and New South Wales was the first Australian State in 1967 to institute a similar scheme).¹

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the United Nations General Assembly resolution 40/34 of 29 November 1985. It states:

Compensation

¹ November 9 2007, Email correspondence with Sam Garkawe, Professor at Southern Cross University, NSW, Australia. "Financial Recovery from Government Victim Compensation Schemes" p. 11.3.

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Internationally, it has been accepted that States should attempt to provide financial compensation to victims, or dependants of victims, of intentional violence where compensation is not available by any other means.

Compensating victims of violent crime for expenses reasonably incurred as a result of a criminal offence is an initiative society has supported since legislation was first passed. It should be noted that there is no obligation on the State to compensate victims of crime, except perhaps a moral one. Several rationales for compensation have been offered over the years, including ‘strict liability’ or ‘government liability’ theory (where the government is said to have broken its social contract between it and its citizens); the ‘social welfare’ theory (the state has a humanitarian obligation to assist crime victims); and the ‘shared risk’ or ‘equal protection’ theory (the burdens of victimization should be shared throughout society).² In his book *Criminal Injuries Compensation* (1992), Peter Burns concludes that victims compensation “*is primarily a form of state charity designed to soothe the public...*”³ Whatever the true motivation behind compensation programs for victims of crime is, we believe it is in the public interest.

For those whose lives have been devastated by violent crime, the impact of the crime may remain for the rest of the survivor’s life. While monetary awards will never make up for

² Ibid at 11.5.

³ Peter Burns, *Criminal Injuries Compensation*, (Butterworths: Toronto, 1992) at 237.

the injuries suffered or loss of life, it can compensate for some of the financial losses (emergency expenses, lost wages, medical expenses, psychological counselling, pain and suffering and funeral costs) and provide victims with a means to get their lives back in order.

While victims can sue their offender in civil court, it is an expensive and drawn out process that is not a realistic option for many victims. In most cases, the offender will be unable to pay an award the court orders anyway so the victim may never collect any money.

The CRCVC strongly supports the premise behind compensation. We believe the purpose of compensation is to provide victims and survivors of violent crime with a financial award or token, as a means of showing society's compassion for and solidarity with those innocents irrevocably harmed by acts of violence. We feel that society has an ethical obligation to recognize and repair the harm done to individuals as a result of their victimization. Given the amount of public funds used to incarcerate, rehabilitate and supervise offenders, compensation for victims of violent crime should be seen as a welcoming means of balancing the scales of justice. Although victims, survivors and their advocates may be highly critical of the ineffectiveness of Ontario's Board this in no way means that compensation is unnecessary.

2. Should any groups or individuals be excluded from receiving victim compensation payments (e.g. persons whose behaviour significantly contributed to their injury or loss, persons whose expenses or losses are compensable through other sources such as disability insurance)?

The CRCVC generally agrees with the legislation, as it is currently written in the *Compensation for Victims of Crime Act*. People who have contributed in some manner to their own death or injury⁴, those who do not cooperate with law enforcement or those who do not report the offence promptly⁵ should not be eligible for compensation in

⁴ *Compensation for Victims of Crime Act*, R.S.O. 1990, c. C.24, as am. by 1999, c. 6, s. 11; 2000, c. 26, Sch. A, s.4 [hereinafter *Compensation Act*] at s. 17.(1): "In determining whether to make an order for 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 or her injury or death."

⁵ Ibid at s.17(2).

Ontario. That being said, there are several serious concerns surrounding the dynamics of sexual violence that adjudicators must recognize in order to ensure that victims can be compensated. This includes recognition that many sexual assault victims do not report immediately or at all to the police for various reasons. Also, there are societal myths surrounding sexual violence that must not be interpreted by Board adjudicators to mean a victim contributed to their own injury thereby reducing or denying an award.

We also agree that it is reasonable to require that the incident be an act of violence as per the *Criminal Code* and that there be enough reliable information to support the claim (medical/therapeutic and other forms of corroboration should be allowable in the case of sexual violence where there is no police report made). We also agree that compensation should not be allowed if the victim has received any benefits, compensation or indemnity from other sources.

We strongly oppose the waste of Board time and resources for applications by incarcerated offenders and others. While we believe the Board must investigate thoroughly all claims for compensation, by setting clear ineligibilities in the legislation, frivolous applications can be denied at the outset. For example, convicted offenders currently incarcerated for violent crimes should not be eligible to benefit from crimes compensation legislation if injured while in prison. Such applications should be deemed ineligible on the basis that being incarcerated contributed directly or indirectly to their injury. Manitoba appears to partially deny inmates compensation in that they cannot collect on any award granted until they are released from prison. Several American states, including Kentucky, Montana and Washington, deny compensation to persons incarcerated in state prisons.⁶

We recommend amending the Act to ensure offenders currently incarcerated for crimes of violence are ineligible for compensation.

⁶ Canadian Resource Centre for Victims of Crime, *Balancing the Scales: The State of Victims' Rights in Canada*, (Ottawa, 1998) at 23.

3. Are there ways other than direct monetary compensation to better serve victims of crime? If so, what are the victim service priorities that the government should consider?

The value of and need for compassionate services and sensitive support for persons who have the misfortune of becoming victims of crime cannot be understated. We appreciate the dedication of professionals working in victims' services and the practical assistance and support offered by so many service providers in Ontario.

That being said, the cost of crime in Canada is largely borne by victims.

In 2003, crime in Canada cost an estimated \$70 billion, a majority of which, \$47 billion or 67%, was borne by the victims. Victim costs include the value of damaged or stolen property, pain and suffering, loss of income and productivity, and health services. Criminal justice system expenditures such as police, courts, and correctional services comprised \$13 billion or 19% of the estimated total cost of crime. The remaining \$10 billion, or 14%, was spent on defensive measures such as security devices and protective services. Assessments by type of crime category revealed that property crimes cost Canadians the most, at \$40 billion, while violent crimes cost \$18 billion and other crimes \$12 billion.⁷

The figures, which are conservative estimates, are astounding. We know that there are on average 100,000 victims of violent crime in Ontario each year, yet only a small number of new applications are received each year, 4,000 – 5,000 by the Board.⁸ The Board simply needs to help more victims. If only a small percentage of crime victims apply for compensation, then this should mean that the schemes should be better publicized and made more accessible. The answer should not be to abolish the schemes.⁹

The costs of crime directly impact victims, thus compensation must remain a government priority. Helping victims overcome the devastating impact of violent crime is an important way to serve crime victims. Monetary compensation is necessary in many cases, especially with respect to emergency payments, income loss,

⁷ Policy Centre for Victim Issues, *Cost of Crime in Canada*, accessed on 7 November 2007:

http://www.victimsworld.gc.ca/archives_2006/fact-sheets/p2.html

⁸ Ombudsman Ontario, *Adding Insult to Injury*, (Toronto: February 2007) at 56.

⁹ *Supra* note 1 at 11.11.

medical/dental/therapy expenses, loss of support, travel expenses, pain and suffering and funeral/burial costs. The formal process of being awarded compensation itself has substantial psychological and/or therapeutic benefits for crime victims.¹⁰

While many jurisdictions around the world are doing away with pain and suffering awards, we believe these awards are crucial to many victims whose lives are broken by violent crime. They are an important recognition of the physical, emotional and psychological harm caused by violence and can allow survivors to regain some lost ground.

In Australia, the Victorian government's decision in 1996, with the enactment of the *Victims of Crime Assistance Act 1996* (Vic), to abolish government-funded victim compensation for 'pain and suffering' was drastic. This was by far (well over 90%) the most substantial element of victim compensation awards in Victoria. The government did so because the other generally allowable entitlements of victim compensation – actual expenses incurred by victims and 'loss of earnings' often were not nearly as important for the majority of victims (especially the unemployed or where other sources covered any loss of salary). In fact, early figures showed that the introduction of the *Victims of Crime Assistance Act 1996* in Victoria cut the number of applications for victim compensation from about 5,000 per year to only 124 in 1997-98. The reasoning behind this move was articulated in parliament by the then Victorian Attorney-General, Jan Wade, when she introduced the Bill that eventually abolished government funded compensation for pain and suffering. The focus of victim compensation was to be far more responsive to the needs of crime victims. The new service (the Victims Referral and Assistance Scheme) would offer free immediate counselling using a voucher system, and its main basis would be the psychological and physical recovery of victims, resulting in a more 'integrated approach'. She argued that it is not certain that monetary benefits deriving from pain and suffering awards really assist victims to recover and seek counselling. This is especially the case as

¹⁰ Supra note 1 at 11.11.

often this compensation comes many months after the criminal event, and counselling is often not provided until this time as well. However, it is clear from some parts of her speech that financial cost-cutting was also a major motivation behind the changes.¹¹

While there are certainly administrative problems in the functioning of the Board, Ontario's legislation is comprehensive. We oppose the government highlighting of "victim service priorities", which will only succeed in achieving the broader government goal of cost-cutting. We strongly oppose limiting entitlement to compensation to specific groups of victims, such as victims of domestic violence and sexual abuse, those with a disability and the elderly. Similarly, we oppose suggestions for focusing the program only on catastrophic injuries and death benefits. The discretion in the current legislation for the Board to make appropriate decisions in individual cases is important. For example, the Board can assess income loss and provide funding for therapy expenses for an individual, which may both be equally important factors in that individual's recovery and healing.

We believe it is important for all survivors of violent crime to be able to access the services they need and want, including compensation. When governments attempt to highlight victim service priorities, groups of individuals who have equally been victimized by violent crime, who suffer similar losses and devastation, will be left out. An award of financial compensation provides crime victims with choices as to how they should spend the money, whereas an 'assistance' only model assumes that the victim only needs counselling or other forms of psychological assistance, and is thus paternalistic.¹²

Determining compensation

4. Should victim compensation be based on the nature of the injury, expenses incurred, or a combination of both? If injury-based, what criteria should be considered in the development of a benefits schedule (e.g., loss of income, pain and suffering)? If expense-based, what expenses should be recoverable?

¹¹ Supra note 1 at 11.7 – 11.9.

¹² Supra note 1 at 11.11.

Compensation in Ontario should be a combination of both injury and expense-based benefits. We believe strongly that physical, emotional and psychological injuries should be compensated, as well as expenses that are reasonably incurred as a result of violent victimization. Ontario's current allowable expenses are appropriate and include:

- Expenses incurred or to be incurred as a result of the victim's injury or death. This would include the cost of counselling, physiotherapy, eye glasses, dentures, etc.
- Emergency expenses incurred as a result of the victim's injury or death. These expenses include such items as medical costs, funeral expenses and interim counselling.
- Loss of wages up to \$50 per day or a maximum of \$250 per week in cases where total or partial disability affects the victim's ability to work.
- Financial loss to dependants of a deceased victim.
- Pain and suffering.
- Maintenance of a child born as a result of sexual assault.

The flexibility of the current Act, allows for the Board to pay protective measures and relocation expenses for victims of domestic violence. It can also respond to the needs of a victim who is catastrophically injured by paying for home health care visits, special transportation requirements, and housing renovations where needed.

With regard to income loss, we would prefer to see discretion used by the Board (as allowed by the Act) in individual cases, instead of setting rigid limits to abide by. The Ombudsman's report touched on this issue and we agree that the Board needs flexibility and the ability to tailor awards to fit specific cases. The law does not actually limit daily or weekly wage loss payments.¹³

We would also like to comment on the issue of awards for pain and suffering in claims arising from homicide. Ontario, PEI and New Brunswick are the only Canadian provinces with some pain and suffering compensation remaining. We strongly oppose

¹³ Supra note 8 at 55.

doing away with pain and suffering awards in Ontario, however, we do have serious concerns with the manner in which homicide survivors are treated by the Board. There appears to be a total lack of understanding of the impact of homicide, especially in the case of murdered children.

Ontario's Board will consider a pain and suffering award for a survivor of a deceased victim only if the injury known as mental or nervous shock can be established.¹⁴ This standard goes beyond normal grief in that it requires medical evidence of a psychiatric/psychological injury.

We submit that requiring the injury known as "mental or nervous shock" is too unyielding. Homicide survivors must provide medical evidence of a psychological injury, where such an injury is assumed for sexual assault survivors. The violent, unexpected murder of a close relative, particularly the murder of a child, should provide for an automatic pain and suffering award because the severe psychological trauma is implicit.

"Normal" grief that a parent would feel after a child has been murdered is not sufficient to qualify for pain and suffering under the current legislation. In order to qualify for mental or nervous shock, an applicant must be able to show that he/she was unable to function normally over an extended period. This normally means the applicant has been hospitalized or suffers a psychiatric/psychological injury that is lasting, for example depression or post-traumatic stress disorder, and can be substantiated by a medical doctor, therapist or counsellor. Victims must therefore be treated medically or psychologically to prove that they were so shocked by what occurred that they developed a psychological injury.

As an agency that works on a daily basis with families impacted by homicide, we can attest to the life-long psychological scars that result. Depression, suicidal ideations, phobias, anxiety and post-traumatic stress are common. The problem victims' encounter

¹⁴ CICB fact sheet, "*Information for Claims Arising from Homicide*", revised March 2007.

is they do not always have the ability or means to seek medical assistance or psychological counselling to address these issues, which can last for many years or even a lifetime after the murder. Furthermore, it is still not socially acceptable for fathers in particular, to seek therapy for the shock and devastation they endure when their child is murdered. They must continue to provide for their families. Also, it is not common practice for some ethnicities to seek counselling outside of the extended family setting. The Board needs to be responsive to the diverse needs of people of all ages, races, religions, ethnicity, sexual orientation, physical ability and socio-economic status.

What the legislation fails to recognize is that there is not a clear and accepted method of reacting to the murder of a loved one. Some people need to continue functioning in society to deal with the loss and return to work immediately, while others may appear to stop functioning normally and require hospitalization, medication for depression and/or counselling/therapy for years to come. The point is that each person is doing what it takes for him/her to survive. One should not have to have a nervous breakdown, be committed to a hospital, require medication or attempt suicide to show that he/she is experiencing pain and suffering.

Requiring the injury of mental or nervous shock succeeds in insulting many victims by telling them that they have not suffered enough or that they did not love their child/loved one enough. While this is surely not the intended effect of the legislation, it is far too often the result. The Board is simply unable to respond appropriately or fairly to this group of victims. Take for example a hypothetical case where two young girls are abducted and murdered by the same offender. Their families have suffered the exact same trauma, yet “mother a” collapsed, was hospitalized for some time, required medication and intensive therapy to cope in the aftermath. “Mother b” appeared to be functioning, although in a daze. She had nightmares, could not stop crying for months and became very over protective of her surviving children. “Mother b’s” suffering is as primal, intense and long-term as “mother a’s”, but she would not meet the standard for pain and suffering.

The murder of a child¹⁵ (or an immediate family member) is a severe psychological wound in and of itself. It is possibly the most shocking and horrible experience a person can endure.

We recommend the introduction of a grief payment, similar to what is done in South Australia for victims in homicide cases. South Australia has just passed amendments to its victim-compensation scheme (yet to be proclaimed) that increase grief payments to \$10,000 from \$4,200 (spouse) & \$3,000 (minor sibling).¹⁶

5. Should compensation be based on other factors? If so, what are they?

Compensation should be based on financial need, in some very specific circumstances, for example where the extent of injury will take time to determine, where dependants are left without a parent or where there is a catastrophic injury where the current ceiling on awards (which should be revised and increased) would not be sufficient to cover all of the required medical expenses, home care, housing renovations, etc. It is our understanding that the Board has discretion and flexibility to assess need where necessary.

The Board should also assess the long-term needs of victims, especially with respect to counselling. We agree with the Ombudsman's report that states that "predetermined compensation ceilings fail to recognize that it can take years for victims to achieve medically acceptable levels of recovery."¹⁷ It is not fair or right for victims to be suddenly cut off from trauma counselling due to reaching a limit or to be forced to seek pro bono counselling services on their own.

We recommend that the Act be amended to increase all of the current maximum awards, thereby allowing the Board to respond better to the long-term needs of victims. The

¹⁵ The murder of a child violates the very basic tenets of social appropriateness, fairness, and beliefs surrounding the sanctity of life. Parents are supposed to keep their children safe from harm, at any cost. The murder of a child looms as a profound failure of parental responsibility, regardless of whether or not that murder could have been prevented.

¹⁶ November 11, 2007, Email correspondence with Michael O'Connell, Commissioner for Victims' Rights, South Australia.

¹⁷ Supra note 8 at 56.

Board should also attempt to provide more consistent awards, including the more frequent use of periodic payments.

Compensation Delivery Model

6. In awarding compensation, which delivery model would be more responsive to victims' needs: an administrative model, an adjudicative hearing model; or a hybrid administrative/adjudicative hearing model?

In our view, the hybrid administrative/adjudicative model is the best solution. It allows the flexibility to hear directly from victims who wish to be heard in the adjudicative model, but is also sensitive to victims who do not wish to re-tell their stories again and again. These files can be handled on an administrative basis. We believe that the expenses to be considered by the Board should remain the same, even if the model for delivery becomes a hybrid model. Ontario offers one of the most comprehensive pieces of legislation in Canada in terms of benefits that can be provided.

We do not support the purely administrative model based solely on injury because these programs tend to forget the human element involved. The injuries victims have suffered do not easily fit into categories and are certainly not all physical in nature. We only have to look at Alberta to see that while their program may be highly efficient and offers very consistent awards, it does not respond to all the needs of victims. It provides direct assistance with a one-time financial benefit based on the severity of the victim's injuries. The benefit amount is set in the regulation to the Act. The program verifies the injuries from medical reports and records obtained from the hospitals, doctors, etc...involved with treatment. The regulations to the *Victims of Crime Act* sets severity levels by injury type and specifies the amount of benefit to be paid (maximum of three injuries, maximum total award of \$110,000). The Financial Benefits Program does not pay compensation for costs or losses. For example, it does not cover property damage, medical expenses, funeral costs, loss of wages or pain and suffering. This program effectively eliminates a large number of victims of violent crime from eligibility.

Ontario is one of the few provinces to use a board decision-making body, which has both benefits and limitations. It is currently a very slow process, but this is partly due to the time it takes for various forms (treatment, expenses, etc...) and questionnaires to be

returned by law enforcement and health care professionals. This delay in the retrieval of forms must be addressed. It is crucial that victims be given the choice to have an oral hearing if they wish to be heard, or to proceed through the administrative model, where possible (we understand difficult circumstances arise in which the Board does not have enough evidence and must hear from the victim/survivor directly in an oral hearing). What is positive about this model is that it allows some victims an opportunity to address the decision-makers directly.

There are certain instances where an adjudicative hearing model would be preferable, and the Board should retain the flexibility to allow for this, if and when, it is deemed necessary and/or it is at the victim's request. Using the hybrid model would allow for hearings when necessary, but also the ability make awards using an administrative system (although we do not believe fixed limits or amounts should be set in a schedule). The Board must remain empowered to vary its awards (if it makes a legal error, its decisions can be appealed).¹⁸

Catastrophic Injuries

7. How should catastrophic injury be defined?

Catastrophic injury should be defined as: Injuries that are considered devastating, due to the enormous impact they have on the lives of the individuals who experience them, including the following: brain injury, spinal cord injury, accidental amputation, severe burns, multiple fractures, or other, neurological disorders.¹⁹

8. What delivery model should be used to determine compensation claims by victims who have suffered catastrophic injury?

We believe the hybrid administrative/adjudicative model is best, to allow for the Board to tailor an award to the victim's specific needs, if necessary.

We are curious as to why this issue arises in this consultation when a minute number of victims (15-30) are impacted on an annual basis in Ontario. These victims are owed

¹⁸ Supra note 8 at 18.

¹⁹ "Catastrophic Injury Illness", Accessed 8 Nov 2007: www.PersonalInjuryLawyer.com/catastrophic.cfm

special care and consideration of course, but we oppose the government focusing solely on one group of victims who are deemed to “need it most”.

Other

9. Is there anything else relating to victim compensation that the McMurtry Review should consider?

Average awards

The CRCVC believes awards in Ontario are simply not high enough, even though the Board provides the highest maximum payments in Canada.²⁰ When we examine the cost of crime that is directly borne by crime victims and the amount of public funds used for the investigation, prosecution, and incarceration of offenders, we can see clearly that the amount of compensation provided to victims in Canada is not equitable. The average award handed out in Ontario in 2004/05 was merely \$7,228.00.²¹ We also believe periodic payments should be used more frequently.

Other jurisdictions around the world are far more generous, particularly the United Kingdom. The UK offers £200,000,000 per year in compensation to victims, with a maximum award of £500,000. Ontario’s maximum is \$25,000 per incident, an amount that was set many years ago, and must be revised. Other jurisdictions such as California, some Australian states, Finland (€51,000 maximum per incident), Germany (there are no upper limits in respect of monthly or total compensation payments), Austria (essentially, there are no upper or lower limits to state aid, however income limits are laid down with respect to loss of earnings and maintenance) appear to be far more generous.²²

Delays

Current delays in hearing cases, on average taking 3 years for an application to be processed, is simply unacceptable. This delay interrupts healing and prolongs victimization. In fact, the manner in which the current Board operates further re-victimizes people who can barely cope and as noted by the Ombudsman, many simply end up withdrawing their applications. The requirement to wait 20 weeks after a hearing

²⁰ Supra note 8 at 18.

²¹ Criminal Injuries Compensation Board, *31st Combined Annual Report – 2003/2004 and 2004/2005*, at 13.

²² European Judicial Network, *Compensation to victims of crime*, Accessed 8 November 2007:
http://ec.europa.eu/civiljustice/comp_crime_victim/comp_crime_victim_ec_en.htm

in order to receive a compensation payment is ludicrous and must be reduced immediately.

Around the world, we see much larger jurisdictions, with many thousands more applications each year operating in a much more efficient manner. In Ontario there is a massive outreach failure.²³ How is it that while the Board receives 35,000 calls from victims annually, they only send out 7,500 new applications for compensation? And, then only manage to adjudicate, on average, 2,500 claims per year.²⁴ We hope that the Honourable Roy McMurtry will recommend an outreach of sorts by the Board in order to ensure greater numbers of entitled victims know about compensation and are motivated to apply.

Downsizing the current compensation program

We oppose any downsizing of compensation services including a highlighting of victim service priorities that will not serve the needs of all victims, but rather only serve to cut costs for the government. We oppose stricter time limits on eligibility and the closure of dormant files. We oppose limiting the size of awards to \$1,000, for example. We strongly oppose abolishing ‘pain and suffering’ and ‘income loss’ awards.

Training of adjudicators and staff

We recommend annual victim sensitivity training for Board adjudicators and staff, so that these employees can better understand the dynamics of violent victimization, in particular, adjudicators must be sensitized to the issues of survivors of a homicide victim.

We further recommend independent, annual Board member evaluations and assessments are conducted during oral hearings to ensure sensitivity to applicants.

²³ We would strongly recommend police in Ontario, who are most often first responders when victimization occurs, carry information cards to give to victims and survivors of violent crime, with contact information for victim services in their area, particularly highlighting the CICB (similar to what is done in Edmonton and across Quebec). We also suggest outreach at the various immigration services/offices, and promoting the CICB at distress centres/lines, sexual assault support groups, shelters, missions, hospitals, general practitioners’ offices, community health centres, community resource centre, walk in clinics, youth drop-in centres, high schools, Aboriginal agencies, Children’s Aid Societies, YMCA/YWCA’s, long-term care facilities, nursing homes, social assistance program offices and community legal clinics.

²⁴ Supra note 8 at 3.

Sexual assault victims

The CRCVC advocates on behalf of both female and male survivors of sexual assault. We believe that the Board adjudicators must have specialized sensitivity training in order to respond in a caring and compassionate manner to both of these groups of survivors. For female survivors, Board training must encompass responding to gendered crimes such as sexual assaults and domestic violence.²⁵ For male survivors, Board training should encompass training from community service providers, such as The Men's Project, who could expand on sub populations of victims who face even more barriers, for example, gay men or effeminate men, intellectually or physically disabled, etc...²⁶

Non-reporting of sexual violence must be able to be put into proper context by Board adjudicators and not punish victims who do not contact the police.²⁷ With respect to male survivors, research indicates they underreport sexual assault at higher rates than women.²⁸

Some sexual assault advocates want to see fewer closed hearings and fewer decisions subject to publication bans, so that decisions are transparent, the Board is accountable to taxpayers and that the public is allowed to scrutinize the Board's decisions.²⁹

The standard of proof in sexual assault cases must remain a civil one in that survivors should not have to prove their allegations "conclusively", and beyond a reasonable doubt.³⁰

²⁵ November 8 2007, Email correspondence with M. Louise Marchand, M.A. and women's advocate,.

²⁶ November 8 2007, Email correspondence with Rick Goodwin, Executive Director of the Men's Project.

²⁷ M. Louise Marchand, *Another Whack for Raped Women: Co-option of the Ontario Criminal Injuries Compensation Board by the Criminal Justice System, Publication Bans, Adjudicator Problems and Gendered Legal Solutions for the 21st Century*, Library and Archives Canada: ISBN: 0612989801 [2005], OCLC: 64669594, p. 88.

²⁸ November 8 2007, Email correspondence with Rick Goodwin, Executive Director of the Men's Project.

²⁹ Supra note 26 at 89.

³⁰ Supra note 26 at 127.

In all sexual assault claims, we oppose the current Board practice of providing electronic hearings, in which the alleged offender may participate in the hearing by means of a conference call.³¹

We further recommend that claims by female victims of sexual assault be reviewed or adjudicated by female Board members only, if the survivor prefers this.

Funding

We support the use of the Victim Justice Fund (VJF) as the appropriate source of funding for CICB awards. According to the Ombudsman, the VJF has a large surplus. This money has been promised to victims of crime and there is a strong need for it. We agree that it should be used to assist in fixing the CICB so it can do its legislated job.³²

We also support the return of the federal government cost-sharing model, in which they contributed 50% of the costs of victim compensation (such a reinstatement of federal funds would allow Newfoundland and the three territories to reinstate their compensation programs).

Holding offenders accountable for payments³³

The CRCVC supports the notion of making offenders pay. Traditionally, the funding for compensating victims of crime has come from the government. Funding from the provinces for compensation programs will always be necessary to some extent, but as much as possible we should be looking at other parties to compensate victims of crime. The taxpayers should not have to bear the entire burden. The most obvious place to look is at the person responsible for the crime: the offender.

A suggestion is for the Government to make the initial compensation award and then retrieve some or the entire award from the offender. This could be done by garnishing

³¹ Supra note 8 at 39.

³² Supra note 8 at 71.

³³ All information from: Canadian Resource Centre for Victims of Crime, *Balancing the Scales: The State of Victims' Rights in Canada*, (Ottawa, 1998) at 22-23.

the offender's prison wages, any pension benefits the offender may receive and/or employment cheques.

Kentucky, Massachusetts and New York are three American states, which attempt to recover some costs of compensation from offenders and in doing so, hold offenders accountable for awards under their compensation plan. They also attempt to prevent an offender from profiting from the crime by requiring any person who contracts "*with any person accused or convicted of a crime, with respect either to the reenactment of that crime or to the expression of the accused person's thoughts, feelings or emotions regarding that crime, shall pay to the Crime Victims Board any monies which would be payable to the accused or the convicted person...*" Other states like Washington and Florida, state that an award paid to a victim under the compensation plan constitutes a debt owed by the offender to the state but it is unclear if any serious attempts are made to retrieve the money from offenders.³⁴

Whatever the process, the point is that the offender must understand that there are consequences to his/her actions, and compensating the victim for expenses incurred as a result of the crime is one of them.³⁵ If the Victim Justice Fund were used, at least some of the funding for compensation in Ontario would come directly from convicted persons ordered to pay victim fine surcharges.

Emergency and Interim funding

The current processes for obtaining emergency and/or interim funding for expenses such as funeral costs or counselling are not clearly explained to victims in either literature that is made available by the Board, or when victims call to request applications. Most victims that we work with are not aware that they can make such a request, or do not use the correct terminology when making a request (which effectively denies them the opportunity to make the application). Publicizing and simplifying the process will assist

³⁴ Supra note 6 at 23.

³⁵ Note: limitations on this model may exist in cases where no offender has been identified or where has been no conviction rendered.

many victims in coping when they are experiencing great financial need. This may lessen future stress and suffering, and in fact speed up their recovery.

Victims of terrorism

In the aftermath of a terrorist attack that may take many lives and leave even more victims injured, compensation issues can become very complicated.³⁶ Canada's provincial compensation plans are not well-equipped to deal with a terrorist attack that would impact a large number of victims. In Ontario, the maximum award that can be paid for one incident is \$150,000. Therefore, if there was an attack in Toronto or Ottawa that killed 500 Canadians, the victims and their families would have to share \$150,000.³⁷

Our recommendation is for the \$150,000 maximum award per incident in Ontario be reviewed and increased in an attempt at preparedness for a large scale incident such as terrorism. During 9/11, "the impact of the crisis and scope of the victim needs were not anticipated, severely straining existing resources and jeopardizing effective compensation and victim assistance."³⁸ The CRCVC's own research entitled *Responding to the Needs of Canadian Victims of Terrorism* overwhelmingly highlights the need of survivors for compensation and for long-term counselling resources, along with needs for information about what happened to loved ones, legal assistance, advocacy, and care for children.³⁹

Conclusion

The Canadian Resource Centre for Victims of Crime and Victims of Violence agree with the Ombudsman's finding the Criminal Injuries Compensation Board has become an institution that causes more pain than healing by burying victim in paper, frustrating them with rigid rules instead of compassionate and supportive treatment.⁴⁰ We also agree that the Ministry of the Attorney General has, contrary to the legislation, interfered with the

³⁶ CRCVC's research has highlighted, at least in the U.S. and probably beyond, these issues have become more complicated because of the U.S. government's unprecedented response to the 9/11 attacks and the creation of a special 9/11 fund.

³⁷ Letter to CRCVC from Patricia Fiorini, Ontario Criminal Injuries Compensation Board, March 22, 2006.

³⁸ Office for Victims of Crime. *Responding to September 11 Victims: Lessons Learned From the States*, 2005: p. x.

³⁹ Canadian Resource Centre for Victims of Crime. *Responding to the Needs of Canadian Victims of Terrorism*, (Ottawa, March 2007) at 20.

⁴⁰ *Supra* note 8 at 70.

Board's autonomy by limiting the money available to the Board to fund its awards.⁴¹ It is not appropriate for the Ministry to influence the size or timing of awards. Victims should not be shortchanged!

We are pleased however, that in response to the report of the Ontario Ombudsman, in 2007-08 the government will provide \$12.75 million to enable the board to directly compensate victims of violent crime, and an additional \$2 million to allow the board to hire additional adjudicators and staff to speed up the compensation process.⁴²

For the most part, Ontario's legislation is not the problem, as the *Compensation for Victims of Crime Act* includes all victims of violent crime and offers broad-ranging support. We believe there are some policies and practices that need to change, particularly with regard to requiring proof of mental or nervous shock in claims for homicide. We stress the importance of treating sexual assault survivors with sensitivity and caring. By implementing a hybrid model, we hope that the backlog of cases can be cleared and that new applicants can have decisions made in a much lesser amount of time. We also believe the hybrid system will allow the Board to operate more efficiently, in terms of response to victims. It is crucial that the Board be able to respond to the needs of individual applicants, remembering that it is human beings who are hurt.

The compensation process must not be emotionally grueling or frustrating. It must be nurturing and supportive. The victims we represent are clear in their message: victim compensation is not about financial redress, but about recognition of the harm and loss. Victims are quite aware that money can never repair the injustice they have suffered!

Please consider the following statement from a victim of domestic violence with whom we work:

⁴¹ Ibid.

⁴² Ministry of the Attorney General, *PART I: Published Results-Based Plan 2007-08*, Accessed on November 6, 2007: http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/mag_annual/rbp-partI-mag-2007-8.asp

“My first husband was an OPP officer and he went to jail for three years for assaulting me. I applied to Criminal Injuries Compensation Board and was successful in getting some compensation.

What was difficult for me is the application process (and I am a university graduate!) I found it hard to read and make sure that you filled in all of the information. If someone had a literacy issue they would not have been able to follow it. Also, the time that it takes is outrageous. It is hard for victims to relive what they have been through 2 years or more later. Also, for women who have been victims of domestic violence the compensation that they receive is often insufficient to help them get on with their lives. We spend more combating terrorism than we do protecting women and children in Canada! It would be very interesting to have people on the Criminal Injuries Compensation Board that have actually been victims of domestic violence and other criminal acts instead of political appointees who get their position because they are owed favours from the political party that they belong to!”

We have also included a letter from the Moffitt family, whom we represent. Their son Andy was brutally murdered in Ottawa. This family almost gave up their application for a second time recently, but will address the Board in December in the hopes of being awarded pain and suffering. They do not have medical proof of a psychiatric/psychological injury. Like many so many victims, almost 10 years later, they still suffer depression. At the time Andy was taken from their lives, they debated amongst each other about which parent would kill themselves in order to join him. Suicide was not an option though, as they had two remaining sons to care for. These victims are slapped in the face by a Board that denies pain and suffering to them because it appears they were not shocked or devastated enough by their son’s murder to be hospitalized. This is the “ultimate insult” to quote Mrs. Moffitt.

We thank you for your consideration.