

**REPORT ON FINANCIAL
ASSISTANCE FOR
VICTIMS OF VIOLENT CRIME
IN ONTARIO**

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2. VICTIMS OF VIOLENT CRIME

No group or individual is exempt from the possibility of becoming the victim of a violent crime. Crime victims do not form a static or homogenous group. They are of all ages and gender, and can be found within all social, economic, religious, geographic and ethnic groups. Crime victims also include secondary victims such as the family members of crime victims. Families' lives, particularly the families of homicide victims, are often shattered by the serious victimization of an individual family member.

Understanding the impact of violent crime and the resulting needs faced by victims provides an important foundation for reviewing the role of financial assistance for victims of violent crime.

A. Impacts of Violent Crime

Violent crime can have significant emotional, financial and physical repercussions for victims.

During my meetings, I heard many stories about the emotional suffering borne by victims, including feelings of fear, shame, isolation, and humiliation. As the Canadian Resource Centre for Victims of Crime has written:

Criminal victimization is a frightening and unsettling experience for many Canadians. It is unpredictable, largely unpreventable and often unexpected. Unlike normal life experiences, victimization is not sought

out and never welcomed. It is debilitating and demoralizing. Its effects can be often long-term and difficult to overcome.⁴

In addition to short-term emotional and other suffering, it is undisputed that many victims of violent crime also suffer very significant and long-term psychological harm.

Violent crime can impose many financial burdens on its victims, including property damage, lost wages, and various other out-of-pocket expenses. The federal government estimates that “[i]n 2003, [all] crime in Canada cost an estimated \$70 billion, a majority of which — \$47 billion or 67% — is borne by the victims.”⁵

Violent crime often, of course, results in physical injuries. While some victims of violent crime may suffer relatively minor injuries that require little or no medical attention, the CICB’s decisions reveal that the physical injuries resulting from a single act of violence can, not surprisingly, compromise a victim’s quality of life.

In addition to the direct impacts of violent crime, crime victims may experience secondary victimization following the initial criminal act. Secondary victimization is the insensitive treatment that victims sometimes face in the criminal justice system and elsewhere. This insensitive treatment may occur as early as the initial police investigation and may continue for many months or years as a victim is required to navigate through criminal processes such as the preliminary hearing, the trial and perhaps a parole hearing.

⁴ Canadian Resource Centre For Victims of Crime, *The Impact of Victimization*, online: <<http://www.crcvc.ca/docs/victimization.pdf>>.

⁵ Government of Canada. “Cost of Crime in Canada”, online: <<http://www.victimsworld.gc.ca/archive2006/fact-sheets/p2.html>>. The \$70 billion is divided as follows: \$18 billion for violent crimes, \$40 billion for property crime and \$12 billion for other crime.

Often the cause of secondary victimization is simply a lack of training or understanding of victims' needs, or criminal justice processes and programs that are focused on the prosecution of the accused and operate at times without sufficient awareness or sensitivity to victims' needs.

B. Needs of Victims of Violent Crime

Those I met with who work with victims of crime directly, as well as the organizations and individuals who submitted written submissions, consistently identified five specific needs that victims of violent crime often face independent of safety concerns and the need for information and support relating to the prosecution process:

- (i) financial assistance,
- (ii) counselling,
- (iii) acknowledgment of victimization,
- (iv) an opportunity to relate what happened to an official decision-maker, and
- (v) individual assistance in navigating through the network of victim services and programs.

Not surprisingly, early assistance was identified as being most effective, although some victims of violent crime obviously require longer-term assistance and support.

Victims of violent crime very often face expenses in order to ensure their on-going personal safety and to regain a degree of normalcy in their daily lives. The list of these expenses can be quite varied, such as paying for counselling, installing security devices, replacing broken locks and windows, paying for temporary or alternative accommodation, replacing prescription eyeglasses, buying new clothing, etc. For those

with limited financial resources, even minor unexpected expenses can create additional uncertainty and anxiety.

Counselling is also a critical need faced by many victims of violent crime. In order to be effective, such counselling is often best delivered by persons outside the medical profession who have significant experience working with crime victims. Social workers, psychologists and experienced victim support workers appear to provide a great deal of the victim counselling in Ontario. As one victim whose son had been murdered observed during our meeting: “Victims don’t have mental illnesses – we don’t need psychiatrists for our counselling.” The Ontario Health Insurance Plan, however, only covers the costs of psychiatrists. The services of social workers, psychologists and other victim counsellors are not similarly funded.

Victims of violent crime also often desire a formal acknowledgment about what happened to them. The criminal trial process, of course, focuses on determining whether an accused person is guilty or not. Its purpose is not to provide victims with societal acknowledgment of their victimization. In contrast, the issue at a CICB hearing is whether an applicant was a victim of a violent crime. When the CICB grants an application, the written decision that is sent to the victim specifically states that the applicant was a victim of crime, and acknowledges the injustice that individual suffered. For many victims, the CICB decision is the first official acknowledgment of their victimization and the acknowledgment can be very meaningful.

There is also a desire among some victims of violent crime to have the opportunity to relate what happened to an official decision-maker and therefore it is clear that a hearing may be quite therapeutic. For example, a study of the effect that the workers' compensation process in Quebec can have on workers' health noted:

One of the facets of the process that was identified as having a favourable effect on the workers' health was that part of the appeal hearing where the workers could be said to have had their day in court.⁶

There is considerable literature supporting the notion that individuals often highly value the opportunity to be heard by decision-makers and that people are more accepting of outcomes, even negative ones, when they have had an opportunity to participate in the decision making process through a hearing.⁷

Finally, victims of violent crime require individual assistance in navigating through the network of victim services and programs. Most of these services and programs in Ontario are delivered by local community agencies, and it can be confusing for crime victims to determine which agency has the services most appropriate to their needs.

C. Police and Crime Victims

The duties of all police officers in Ontario include "assisting victims of crime".⁸ Police officers are often a victim's first contact with the criminal justice system following the commission of a crime. This contact may continue for some time if there is a police

⁶ Katherine Lippel, "Workers describe the effect of the workers' compensation process on their health: A Québec study" (2007) 30 *International Journal of Law and Psychiatry* 427 at 438.

⁷ See, for example, E. Allen Lind & Tom R. Tyler, *The Social Psychology of Procedural Justice* (New York: Plenum Press, 1988).

⁸ *Police Services Act*, R.S.O. 1990, c. P.15, s. 42(1)(c).

investigation, particularly if criminal charges are laid. Police are therefore well situated to play an important and positive role in the lives of crime victims and to ensure that they are treated with respect and compassion. While many victims of violent crime described very positive experiences with police officers, some individuals described insensitive treatment, particularly in the immediate aftermath of the crime.

Police officers are under tremendous pressure to enforce the law and to investigate crimes, and often face competing pressures at a crime scene. Notwithstanding this, victims must be given a high priority by police services and police officers must receive the necessary training and support so that they are able to convey a sense of societal compassion and sensitivity to crime victims.

4. CURRENT FINANCIAL ASSISTANCE PROGRAMS

New Zealand established the first modern financial assistance system for victims of violent crime in 1963. A year later, the United Kingdom established a non-statutory tribunal that awarded compensation to victims of violent crime similar to what they could have expected to recover in a successful civil action. The United Kingdom enacted the *Criminal Injuries Compensation Act* in 1995, which provides victims of violent crime with loss of earnings payments as well as compensation for pain and suffering through an injury-based tariff.¹⁵ The British program remains the most generous in the world, and provides awards to crime victims ranging from £1,000.00 for minor injuries to £250,000.00 for quadriplegia or severe brain damage.

In 1967 Ontario¹⁶ and Saskatchewan followed New Zealand and the United Kingdom in providing financial assistance to victims of violent crime, and today all provinces except Newfoundland provide violent crime victims with some form of financial assistance.¹⁷

A. Policy rationales for financial assistance

There are various policy rationales that underlie providing financial assistance to victims of violent crime:

¹⁵ United Kingdom, Criminal Justice System, *Rebuilding Lives Supporting Victims of Crime* (United Kingdom, The Stationary Office: 2005) at 15, online: <
<http://www.cjonline.gov.uk/downloads/application/pdf/Rebuilding%20Lives%20-%20supporting%20victims%20of%20crime.pdf>>.

¹⁶ Ontario's *Law Enforcement Compensation Act, 1967*, S.O. 1967, c. 45 provided criminal injury financial assistance only in relation to injuries suffered while assisting a law enforcement officer to make an arrest or preserve the peace. Ontario expanded the scope of financial assistance to all victims of violent crime in 1971 when it passed the *Compensation for Victims of Crime Act*, R.S.O. 1990, c.C.24.

¹⁷ The territorial governments do not provide criminal injuries compensation programs.

- (a) Criminal injuries financial assistance reflects society's compassion for innocent victims and a collective desire to help those who have been harmed as a result of violent crime.
- (b) Governments fund a number of programs that are designed to promote the welfare of its citizenry and financial assistance for victims of violent crime is a reasonable extension of these kinds of state funded programs.
- (c) Similarly, governments provide several insurance-like programs such as health care insurance, unemployment insurance and workplace injury insurance that spread certain inevitable risks in society. Victim financial assistance is seen, again, as a reasonable extension of these kinds of programs.

B. Role of the federal government

The federal government originally funded all provincial financial assistance programs on a cost-sharing basis, which ended in 1992. At around the same time, the federal government introduced a victim surcharge on *Criminal Code* fines, to be applied to provincial victim services and programs, thereby offsetting the provinces' loss of federal revenue to some extent. Today the federal Department of Justice continues to provide some financial assistance directly to crime victims in strictly prescribed circumstances through a Victims Fund administered by its Policy Centre for Victim Issues.¹⁸ For example, Canadians who are victims of serious violent crimes abroad can apply for

¹⁸ The federal Policy Centre for Victim Issues engages in legislative reform, consultation, policy development, research, and project funding relating to how to improve the experience of crime victims in the criminal justice system, how to enhance their participation therein, and how to ensure that they are aware of their role and available support services. The Policy Centre for Victim Issues also chairs the Federal/Provincial/Territorial Working Group on Victims of Crime, which consists of all the provincial and territorial Directors of Victim Services who meet twice annually to discuss legislation and policies.

emergency financial assistance with travel and counselling costs where no other source of financial assistance is available. The Victims Fund also helps victims who are registered with the Correctional Service of Canada or the National Parole Board with travel and accommodation costs to attend a hearing related to the offender who harmed them.

C. Provincial financial assistance programs

Victim services and programs are now viewed primarily as a provincial responsibility and the provinces that do provide financial assistance programs for victims of violent crime do so according to their own legislation and procedures.¹⁹

Generally, the provincial financial assistance programs are available to victims of violent crimes or dependents of homicide or sexual assault victims. The amount of financial assistance can be reduced if the victim contributed to his or her injuries. Limitation periods are usually set at one or two years, with discretion to extend in appropriate circumstances. All provincial programs provide victims of violent crime with some assistance with various crime-related expenses and losses such as dental and eye glasses replacements, counselling, wage losses, funeral costs, or childcare.

The amount of financial assistance paid varies between provincial programs, ranging from \$2,000.00 in Nova Scotia for counselling expenses, to Quebec's program at the other end of the spectrum, which has no maximum limits on what may be paid to crime victims. In Ontario, the CICB may make a lump sum award up to a maximum of

¹⁹ Appendix G is a chart prepared by the federal Policy Centre for Victim Issues, which highlights the key features of the provincial programs.

\$25,000.00, or a monthly award of up to \$1,000.00, to a maximum of \$365,000.00.²⁰
(Monthly payments constitute about 10% of the CICB's total payments each year.²¹)

D. Operation of the Criminal Injuries Compensation Board

The CICB is an independent adjudicative tribunal established in 1971 under the *Compensation for Victims of Crime Act*. It is composed of a full-time Chair, one full-time Vice Chair and two part-time Vice Chairs and, currently, 28 part-time adjudicators.²² The Chairs and the adjudicators are appointed by the Government for fixed terms. The CICB staff are government employees who process applications, prepare files for hearing and arrange for payment of awards.

The CICB receives about 4,000 applications each year.²³ About one-half of the applications that proceed to hearing each year are decided by way of an oral hearing presided over by two adjudicators, while the balance are decided by way of a written hearing in which a single adjudicator reviews the documentary evidence filed in support of an application.²⁴ The CICB can make awards in respect of reasonable expenses and pecuniary losses relating to the criminal injury, pain and suffering, and support of a child

²⁰ The other provincial maximum limits are:

New Brunswick - certain expenses up to \$5,000.00

British Columbia – no global cap but prescribed caps on particular expenses

Prince Edward Island - \$15,000.00

Saskatchewan - \$25,000.00

Alberta –\$110,000.00

Manitoba - \$100,00.00, exclusive of permanent impairment compensation

²¹ Ontario, Criminal Injuries Compensation Board, 32rd *Annual Report April 1, 2005 to March 31, 2006* at 25 [CICB 05/06 Annual Report].

²² 14 of the 28 adjudicators were appointed in the past year as part of the Ministry's efforts to reduce the CICB's backlog.

²³ CICB 05/06 Annual Report, *supra* note 21 at 20.

²⁴ *Ibid.* at 22.

born as a result of rape.²⁵ About 90% of hearings result in a payment to the victim.²⁶ Assault offences (including simple assault, assault causing bodily harm, domestic assault, sexual assault, and assault with a weapon) account for about 85% of all the applications in which the CICB awards financial assistance.²⁷

The average CICB payment made to victims of violent crime between 2003 and 2006 was about \$8,400.00.²⁸ This amount has slowly crept up from about \$4,700.00 in fiscal year 1995-1996.²⁹ No definitive explanation emerged to account for this increase, although CICB adjudicators and Deloitte Inc.³⁰ (“Deloitte”) identified the Divisional Court’s 1992 decision in *Evoy v. Ontario (Criminal Injuries Compensation Board)*³¹ as a contributing factor.

Under the *Compensation for Victims of Crime Act*, the CICB “may deem more than one act to be one occurrence where the acts have a common relationship in time and place”.³² The practice of many CICB adjudicators prior to the *Evoy* decision was to treat patterns of physical or sexual abuse as a single occurrence resulting in a single payment. In *Evoy*, the court held that the CICB must order a separate award for each assault that occurs in a relationship marked by a pattern of physical or sexual violence if the assaults are

²⁵ *Compensation for Victims of Crime Act*, *supra* note 16, s.7(1).

²⁶ CICB 05/06 Annual Report, *supra* note 21 at 20.

²⁷ *Ibid.* at 26.

²⁸ Report dated October 17, 2007 by Deloitte to the Ministry of the Attorney General at 27 [Deloitte October 2007 report].

²⁹ Ontario, Criminal Injuries Compensation Board, *29th Annual Report April 1, 2001 to March 31, 2002* at 40 (Summary of 30 Years of Awards to Victims).

³⁰ Report dated May 6, 2005 by Deloitte to Ministry of the Attorney General at 34 and Deloitte October 2007 report, *supra* note 28 at 27.

³¹ [2001] O.J. No. 2258.

³² *Compensation for Victims of Crime Act*, *supra* note 16, s. 19(4).

unrelated in time and place, with the result that the total CICB payments in these cases have risen since *Evoy*.

Pain and suffering is the largest component of the CICB's awards, accounting for about 80% of the total payments issued.³³ In deciding the quantum of pain and suffering awards, CICB adjudicators take into account a variety of factors, including the following:

- the nature of the occurrence (e.g. degree of violence, use of weapons, relationship with offender, length of the victimization, age of victim);
- the severity and nature of the injuries (including the degree of emotional trauma);
- the convalescence period and the time for the victim to be able to resume normal activities; and
- any continuing disability.³⁴

E. Ombudsman's Report

The Ombudsman of Ontario, in his report *Adding Insult to Injury*, concluded: "The Criminal Injuries Compensation Board is in deplorable shape".³⁵

The Ombudsman traced the slow and arduous journey that some victims of violent crime had to endure at the CICB, starting with the time it took to actually get an application form mailed to them and ending, on average, about three years later. During this time,

³³ CICB 05/06 Annual Report, *supra* note 21 at 24.

³⁴ Criminal Injuries Compensation Board, *Manual of Practice for Board Members* (revised October 2007) at 17-18 [*Manual of Practice for Board Members*].

³⁵ Ombudsman's Report, *supra* note 1 at 1, para. 1.

expenses, funeral expenses and counselling. The VQRP was established on a pilot basis and its original expiry date of March 31, 2008 was very recently extended to March 31, 2009. The VQRP provides victims of violent crime with the following financial assistance: (i) up to \$1,000.00 for certain immediate emergency expenses, including emergency home repairs and emergency accommodation, (ii) up to \$5,000.00 for burial or cremation costs, and (iii) up to \$1,000.00 for short-term counselling.

Victims of violent crime apply for VQRP financial assistance through local community agencies throughout Ontario known as VCARS agencies.⁴⁰ The VCARS agencies submit the VQRP application to the OVSS, which decides generally within three days whether or not to grant an application. VQRP monies are paid directly to service providers arranged by VCARS agencies.

G. Other Financial Remedies Available to Crime Victims

(i) Civil litigation

Victims of crime have traditionally been able to sue for damages relating to torts such as assault, battery, false imprisonment, intentional infliction of nervous shock and invasion of privacy. The *Victims' Bill of Rights* creates a statutory presumption that victims of sexual and domestic assault suffered emotional distress, thereby relieving a victim of having to prove this aspect of his or her injury in a civil suit against the offender.⁴¹

⁴⁰ "VCARS" refers to the Victim Crisis Assistance and Referral Services program that these agencies deliver. I discuss these agencies further on.

⁴¹ *Supra* note 13, s. 3(2).

While civil litigation is a vehicle by which offenders can be held directly accountable to crime victims, the reality is that civil litigation imposes a significant economic burden that many victims are unable to bear and offenders generally do not have sufficient financial resources to satisfy a civil judgment. As well, offenders often cannot be located or are unknown to their victims.

(ii) *Civil Remedies Act, 2001*⁴²

The *Civil Remedies Act* allows the Attorney General to seek a civil court order transferring title of property or proceeds relating to unlawful activity to the Crown, which the government then uses to compensate crime victims. This remedy, however, is rarely of assistance to victims of violent crime because it would be unusual for proceeds or property to be acquired as a result of the commission of these offences.

(iii) Restitution

Offender accountability is an important issue for many victims of crime. It is also an issue of societal interest, which is reflected in the fact that one of the objectives of criminal sanctions is “to promote a sense of responsibility in offenders”.⁴³ Restitution is one means by which offenders can be made directly financially accountable to crime victims for the harm they inflicted and therefore can contribute to this sense of direct responsibility.

⁴² S.O. 2001, c. 28.

⁴³ *Criminal Code*, R.S., 1985, c. C-46. s 718(f).

Section 738 of the *Criminal Code* authorizes a court to order that an offender compensate a victim for property damages and financial losses incurred as a result of bodily or psychological harm. Restitution cannot be ordered for non-monetary losses such as pain and suffering. A victim can file a restitution order in a civil court and use civil enforcement methods to collect the money. Like civil litigation, however, restitution is often not an effective remedy for victims of violent crime in Ontario. Crown attorneys rarely ask courts to impose restitution orders in cases involving personal violence. Further, in my experience, judges are reluctant to impose a financial obligation on offenders who often have no financial means to comply with restitution orders.

Some provincial and foreign jurisdictions have taken additional steps to assist victims of crime collect financially from offenders beyond simply informing them how to apply for restitution and having prosecutors make the restitution applications on their behalf. In Saskatchewan, for example, the payment of restitution is part of an offender's probation terms and is monitored through either a victim service program or by the provincial Corrections and Public Safety Department, depending on whether there are other probationary terms. Offenders can be charged with a breach of their probation if they fail to satisfy the restitution order. In Alaska and New Jersey, the state government pursues the collection of restitution orders directly against offenders on behalf of crime victims. California has established the Victim Compensation and Government Claims Board. This Board is fully funded by restitution fines, diversion fees, restitution orders, and penalties paid by offenders and makes restitution or compensation payments to crime victims directly out of these moneys.

The federal Policy Centre for Victim Issues⁴⁴ is currently undertaking research with the provinces on the use of restitution and how to best support victims who wish to enforce restitution orders. This research is just underway, however, and no results are yet available.

⁴⁴ See footnote 18 for a description of the mandate of the Policy Centre for Victim Issues.