

by Milena Celap

# Victim Compensation

## Closure & Cash

Sadly, most Canadians know at least one individual who has been a victim of crime. Criminal acts may cause physical injury, death, emotional suffering, or loss of enjoyment of life, among other things, all of which in legal circles are called “damages”. Those who survive may experience financial hardship due to time away from work, the inability to return to gainful employment, the necessity of attending at therapy sessions, the purchasing of medical aids and prescription drugs, and paying for funeral costs.

A victim is at liberty to sue the offender for damages. However, if the victim cannot afford legal services and is unable to handle the court action without a lawyer’s assistance, suing is not the way in which to bring closure to the ordeal. Even worse, crime victims are not always able to sue their offenders for damages. Sometimes the offenders are unknown to them. In other cases, the offenders seem to “disappear” and cannot be readily located. In both of those situations, there is no way to serve a claim (bring it to his or her attention directly). In addition, most criminals are not people with a lot of money, so it may not be possible to collect any money awarded by a court. Finally, when the offenders are related to the victim, there may be pressure from family members to not sue. In all of the above circumstances, personal injury lawsuits will likely be futile.

For many victims, government compensation programs may be the only way of achieving closure — and cash.

## Government Programs

The problems of claiming damages from criminal offenders have long been recognized by our federal and provincial governments. Generally speaking, it is the provinces that administer victim compensation programs, although the federal government contributes funding. This article provides a glance at the victim compensation programs across Canada, followed by some general principles.

### Prince Edward Island

P.E.I. enacted *Victims of Crime Act* in 1989. This Act provides that applicants may apply if they have been injured through an act of crime. Injury means emotional trauma resulting from sexual assault, bodily harm, or mental/nervous shock. The Act also provides compensation for pain and suffering.

Crimes that qualify the victim for relief are offences such as murder, robbery, arson, sexual assault, assault, criminal negligence, and impaired driving. The Act also provides for the maintenance of child born as a result of sexual assault.

The time limit for applying is within one year of the occurrence of the crime. Although exceptions are made in exceptional circumstances, it is best to apply in a timely manner and not rely on an extension.

If there is only one victim of a particular criminal act, then the maximum compensation that can be granted is \$15,000. Obviously, the more serious the injury, the higher the award.

If there is more than one victim of crime, the award can be as high as \$30,000, but that award is apportioned between the victims of the crime. For example, if there are three victims to a

robbery, each would receive a maximum of \$10,000.

Although the Act does not compensate victims for property losses, it will pay for such items as medical and dental expenses, funeral expenses, wage losses, and other reasonable expenses.

This Act provides that interim payments can be awarded if it is likely that the award will be successful, but only in the cases of extreme financial hardship.

### New Brunswick

New Brunswick's *Compensation for Victims of Crime Act* provides for modest compensation for pain and suffering resulting from criminal acts. It also provides compensation for amounts not covered by private compensation programs or insurance policies.

Expenses that are covered are medical and dental costs, physiotherapy sessions, counselling sessions, funeral expenses, relocation expenses, and child care expenses.

Crimes that make a victim ineligible are property crimes and driving offences (e.g., being hit by an impaired driver).

There is a one-year time limit for applying, starting from the date of the crime. The only exception is in cases of sexual assault, where the time limit runs from the date the crime is reported to police.

The maximum amount of any award is \$5,000.

### Newfoundland

The Criminal Injuries Compensation Program was terminated in 1993 and nothing replaced it.

## Victimized outside of Canada?

Canada is one of the few countries to establish government-funded victim compensation programs. These are the others:

Australia  
Austria  
Belgium  
Bermuda  
Columbia  
Cyprus  
Czech Republic  
Denmark  
Estonia  
Finland  
France  
Great Britain  
Hong Kong (SAR)  
Hungary  
Iceland  
Ireland  
Israel  
Italy  
Japan  
Luxembourg  
The Netherlands  
New Zealand  
Norway  
Philippines  
Poland  
Portugal  
Republic of Korea  
Slovakia  
Spain  
Sweden  
Switzerland  
Taiwan  
Trinidad & Tobago  
United States of America

If you are a victim of crime while travelling in one of the listed countries, check with a local lawyer, administering office, or victims' rights/support group as to whether non-residents are eligible for compensation.

## **Nova Scotia**

Nova Scotia's *Victims' Rights and Services Act* was enacted in 1989 and has since been amended. It includes a payment of up to \$2,000 for counselling of victims of crime.

Crimes covered include violent offences such as assault, sexual assault, robberies, and others.

Applications must be made within one year of the crime.

## **Quebec**

In Quebec, the *Crime Victims Compensation Act* provides for salary replacement of up to 90%, to a maximum of \$53,500, as set out in the *Worker's Compensation Act*. It also provides a monthly payment for the maintenance of a child born to a sexual assault victim.

Anyone who has lost a child to a criminal act is eligible to receive a benefit of \$2,000, but only one parent, or the custodial parent, is eligible.

Property loss may be reimbursed for an amount up to \$1,000 in cases where the victim was assisting police in arresting the offender or trying to prevent a crime from occurring.

A maximum of \$3,000 is allowed for funeral expenses in certain circumstances.

The program provides for taking measures to assist with psychotherapeutic rehabilitation.

Most violent offences are covered, but driving and property offences are not.

Applications must be made within one year of the commission of the criminal act.

## **Ontario**

Ontario's Compensation for Victims of Crime Act provides for compensation for victims of crimes across all "heads of damages" or, for example, pain and suffering, death, loss of earnings, support for a child conceived during a sexual assault, funeral and transportation costs, and other monetary losses. The maximum award is \$25,000, or if a monthly maintenance award is made, it can be as high as \$1,000 per month.

Applications must be made within two years of the crime and are applicable to all violent crimes (assault, sexual assault, robbery, murder, etc).

Ontario is the only province whose program involves notifying the offender in cases where there has been no conviction for the crime.

## **Manitoba**

Victims of violent crimes, or dependents of deceased victims, may apply for compensation.

Although there is no award for pain and suffering, Manitoba's program covers medical expenses, rehabilitation, counselling, funeral and some other expenses. Compensation for lost wages may be made in cases of permanent disability or death. Support payments are also available to dependents of deceased victims.

The Compensation Board has authority to commence legal action on behalf of the

victim to help cover the compensation.

## **Saskatchewan**

In Saskatchewan, eligible victims may seek compensation for loss of earnings, expenses arising out of their injuries, funeral costs (up to \$3,500), and some other monetary losses. Counselling costs are generally covered. However, there are no awards for pain and suffering or for support for a child born out of a sexual assault.

The maximum award is \$25,000.

It is expected that the crime is reported to police. It is further required that the application for compensation be brought within one year of the crime.

Applications must be brought within two years of the injury or, in the case of sexual assault, within two years of reporting the assault to police.

## **Alberta**

Alberta was the first province to establish a victim compensation program. In 1969, it launched the Alberta Criminal Injuries Compensation Program, a program still in effect today.

The program covers many offences, but not impaired driving and property offences.

A victim is eligible for a financial benefit if he or she has suffered an emotional or physical injury and if the crime was reported to police.

Under the *Victims of Crime Act*, Alberta offers a one-time benefit that cannot exceed \$110,000, with the exact benefit depending upon the severity of the injuries.

## **Compensation Programs Telephone Numbers**

### **British Columbia**

(604) 660-3888

### **Alberta**

(780) 427-7217

### **Saskatchewan**

(306) 787-3500

### **Manitoba**

(204) 945-0899

### **Ontario**

(416) 326-2900

### **Quebec**

(800) 561-IVAC

### **Nova Scotia**

(902) 424-4651

### **New Brunswick**

(506) 453-3992

### **Prince Edward Island**

(902) 368-4582

Remember, there are time limits to filing applications. Acting promptly may bring compensation and closure sooner. More importantly, it will ensure that the application is accepted for processing. Extensions of time are rare and are granted only at the discretion of the board members and/or program administrators. So, it pays to apply early on!

Eligible surviving members of a deceased victim's family can receive a death benefit of \$12,500 per victim.

The purpose behind Alberta's program is to acknowledge the victims and not to compensate for their medical and therapy expenses, funeral costs, and property losses.

Applications must be made within two years of the date of the crime. Only in limited circumstances is this deadline extended, so timeliness is essential.

#### **Nunavut**

Nunavut has not passed legislation providing for victim compensation.

#### **Northwest Territories (NWT)**

There is no program for compensating victims of crime in NWT. It's program ended in 1996.

#### **Yukon**

Yukon does not have a program for compensating victims of crime. Its program ended in 1993.

#### **British Columbia**

B.C.'S Crime Victim Assistance Act provides a wide range of compensation in addition to the usual monetary losses, such as loss of earnings, monies for crime scene clean-up and repair to some personal property, and installation of security systems, among other compensation.

An Applicant must apply within one year of the crime.

There are different upper limits on awards depending upon the criminal offence.

Injuries and death resulting from motor vehicle offences are not covered, unless there was an assault using a vehicle.

Each program is different and the above summaries set out basic information only. Victim compensation and rehabilitation services may be available from other sources, including, in limited cases, the provincial worker compensation. For further information or clarification, victims should contact the administrators of their provincial programs.

### Some General Principles

The following points apply generally to government victim compensation programs:

1. The purpose of these programs is to acknowledge the victimization and to compensate it to some extent. The purpose is not to compensate fully for every loss incurred.
2. There must be proof of the crime, although not necessarily a criminal conviction, and in many cases there must be a police report filed to establish eligibility. To be eligible, the crime must also fit within the program's definition (e.g., impaired driving is covered by some programs, but not others).
3. There must be proof of injury and any other loss or expenses claimed and the injury and losses have to be connected to the crime and be supported by medical or other evidence. To be eligible, the injury, loss or expense must also fit within the program's definition (e.g., pain and suffering is covered by some programs, but not others).
4. The maximum amount of the award is generally reserved for the most severe cases of injury or death.
5. An award may be reduced if the victim was doing something unlawful at the time that

he or she was victimized, if the victim is partly to blame for the crime or if the victim provoked the crime.

6. An award may usually be varied after it is awarded if there is a material change in circumstances, such as the full extent of the injury not being known at the time the award was initially made.
7. There is no double dipping. This means that if the victim is able to recover monies from insurance plans, civil law suits, or other sources, the award can be reduced by the amounts received from those sources.
8. Applicants may be the direct victim of crime, the child born of sexual assault, or a parent or guardian of a crime victim, although this varies across the country.
9. Some payments are made as lump sums and others as periodic payments, depending upon the type of award, the reason for the award, and the provincial legislation
10. It may take months or years to receive an award, so it is another reason to apply early.
11. Applications must be made in the province where the crime occurred in accordance with a set of rules.
12. A single or a team of people determine whether compensation should be granted in a particular case, as well as the nature and amount of the award.
13. An award may be granted with or without a hearing.
14. If a hearing is required, one can proceed without a lawyer, although that may impact upon the amount of the award given that lawyers know what evidence to present and how to advocate at

the hearing in order to maximize the award.

15. In the cases where the monetary amount of loss (most commonly, property loss) can be proven, the criminal courts can award restitution at the time of sentencing an offender. Restitution is money paid into the court by the offender that is then forwarded to the victim. This is something that can be discussed with the local victim services group or Crown Attorney's Office. However, courts will not order restitution if the offender has no means to pay.

### Conclusion

Government programs acknowledge victimization in part through compensation. However, the awards have upper limits and may not fully compensate victims for their injuries, losses and expenses.

It is, therefore, good to be mindful of other mechanisms for receiving compensation or damages. Benefits may be available through insurance, automobile legislation, employee assistance programs, and civil actions.

Victim compensation is a large topic that cannot be covered fully in one article. However, it is the author's hope that this article will serve to bring awareness about the programs that do exist. After all, crime has a serious, often life-long, impact on victims and it is only appropriate that they avail themselves of programs designed to compensate and bring closure to their ordeals.

Milena Celap, B.Sc., LL.B., is the author of the comprehensive book, *Victim Compensation, The Essential Guide for All Victims of Crime* (available for purchase at [www.self-mentor.ca](http://www.self-mentor.ca)).