

1969 Bill 33

Second Session, 16th Legislature, 18 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 33

**An Act to provide for the Payment of Compensation
in respect of Persons Injured or Killed by
Certain Criminal Acts or Omissions**

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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BILL 33

1969

An Act to provide for the Payment of Compensation
in respect of Persons Injured or Killed by
Certain Criminal Acts or Omissions

(Assented to _____, 1969)

HER MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Alberta,
enacts as follows:

1. This Act may be cited as *The Criminal Injuries Compensation Act*.

2. (1) In this Act,

- (a) "Board" means The Crimes Compensation Board established under this Act;
- (b) "child" includes an illegitimate child and a child with respect to whom a victim stands *in loco parentis*;
- (c) "dependant" means a spouse, child or other relative of a deceased victim who was, in whole or in part, dependent upon the income of the victim at the time of his death and includes a child of the victim born after his death;
- (d) "injury" means actual bodily harm and includes pregnancy and mental or nervous shock;
- (e) "victim" means a person to whom or in respect of whom compensation is or may be payable under this Act.

(2) A person shall be deemed to be a spouse for the purposes of this Act if, although not married to the other person, he cohabits with another person as man and wife and they are known as such in the community where they live and if

- (a) the relationship is of some permanence, and
- (b) a legal impediment exists to their marriage.

(3) Notwithstanding that a person for any reason is legally incapable of forming a criminal intent, he shall,

Explanatory Notes

1. This new Act would give legislative effect to the Report on Compensation for Victims of Crime prepared by the Institute of Law Research and Reform.

2. Interpretation.

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.

3. (1) There is hereby established a board with the name The Crimes Compensation Board.

(2) The Board shall be composed of three members appointed by the Lieutenant Governor in Council, one of whom shall be named as chairman and another who shall be named as vice-chairman.

(3) One of the members of the Board shall be a barrister and solicitor.

(4) A member of the Board who is not an employee of the Government may be paid such remuneration for his services and such allowances for travelling and other expenses as the Lieutenant Governor in Council may determine.

4. (1) The chairman is the chief executive officer of the Board and shall preside at all meetings, inquiries and hearings of the Board.

(2) During the illness or absence of the chairman for any other reason, or if the office of chairman is vacant, the vice-chairman shall act in his place.

5. (1) Except as otherwise provided in this Act or the regulations, the Board may determine its own procedure.

(2) Two members of the Board constitute a quorum for the transaction of business.

(3) In the event of a vacancy on the Board, the remaining members may exercise the powers and carry out the duties of the Board.

6. The Board and each member thereof have, for the purposes of this Act, all the powers of commissioners appointed under *The Public Inquiries Act*.

7. (1) Where a person is injured or killed and the injury or death

(a) is the direct result of an act or omission of another person that occurred in Alberta and is within the description of any of the criminal offences set out in Schedule 1, or

(b) directly resulted to the person while he was endeavouring to

(i) arrest any person or preserve the peace, or

3. The Crimes Compensation Board established.

4. Chairman of the Board.

5. Board procedure.

6. Power of inquiry.

7. When compensation may be awarded.

- (ii) assist a peace officer in carrying out his duties with respect to law enforcement in Alberta,

the Board may upon receipt of an application in writing, make an order in accordance with this Act for the payment of compensation

- (c) to or for the benefit of the injured person, or
- (d) to a person, in respect of pecuniary loss suffered or expenses incurred by the person, as the result of an injury to a victim where the maintenance of the victim is the responsibility of the person, or
- (e) to any one or more of the dependants of a victim.

(2) The Board shall not make an order for compensation

- (a) where the application for compensation is made after the expiration of one year from the date of the injury or death, as the case may be, or
- (b) where the injury or death, as the case may be, and the act or omission or the event resulting in the injury or death are not reported within a reasonable time after the happening thereof to the proper law enforcement authority,

but notwithstanding clause (a), the Board may, where it considers it to be advisable, extend the time for applying for compensation.

(3) Where the person injured or killed is not a resident of Alberta, the Board shall not make an order for the payment of compensation

- (a) unless the injury or death occurred in the circumstances mentioned in subsection (1), clause (b), or
- (b) unless, in other cases, the jurisdiction in which the person injured or killed resides would pay compensation in respect of a resident of Alberta injured or killed therein in similar circumstances.

8. (1) The Board shall, upon receipt of an application for the payment of compensation, fix a time and place for the hearing of the application and shall cause written notice thereof to be given to the applicant and to any other party that the Board considers to be interested in the proceedings.

(2) Where a person entitled to apply for the payment of compensation

- (a) is an infant, the application may be made on his behalf by his parent or guardian or by such person as the Board may direct, or
- (b) is a person of unsound mind, the application shall be made on his behalf by his committee or, if the person has no committee, by such person as the Board may direct.

8. A hearing is to be held.

(3) Where any notice in respect of the hearing of an application for the payment of compensation is required to be served

- (a) on a person of unsound mind for whom no committee or guardian has been appointed, the notice may be served upon the Public Trustee and from the time of the service the Public Trustee shall attend actively to the interests of that person before the Board, or
- (b) on an infant who is residing at the home of his parents or guardian, the notice may be served upon either of the parents or on the guardian, as the case may require, and from the time of the service the parent or guardian shall attend actively to the interests of the infant before the Board.

9. (1) Subject to subsection (2), the hearing by the Board of an application for the payment of compensation shall, except where the Board considers that the hearing or part thereof should be held *in camera*, be open to the public.

(2) All hearings by the Board of an application for the payment of compensation shall be held *in camera* where

- (a) the person whose act or omission caused the injury or death has not been charged with a criminal offence or, if charged, was not convicted of any criminal offence, or
- (b) it would not be in the interests of the victim, or of the dependants of the victim, of an alleged sexual offence to hold the hearings in public, or
- (c) it would not be in the interests of public morality to hold the hearings in public.

10. Any person appearing before the Board in respect of an application for the payment of compensation may appear and be represented by counsel.

11. (1) The Board may receive in evidence any statement, document, information or matter that, in its opinion, may assist it to deal effectually with the matter before it, whether or not the statement, document, information or matter would be admissible as evidence in any court of law.

(2) 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.

9. Hearings are to be public wherever possible.

10. Representation by counsel at hearings.

11. Evidence.

12. (1) The Board, in making an order for the payment of compensation, shall consider and take into account all such circumstances as it considers relevant to the making of the order and, without limiting the generality of the foregoing, the Board shall consider and take into account any behaviour that directly or indirectly contributed to the injury or death of the victim.

(2) The Board may decline to make an order for compensation if the injured person does not co-operate fully with the Board and, in particular, if he

- (a) refuses to submit to a medical examination by a duly qualified medical practitioner appointed by the Board, or
- (b) refuses to testify under oath at the hearing by the Board.

13. (1) Compensation may be awarded by the Board in respect of any one or more of the following matters:

- (a) expenses actually and reasonably incurred as a result of the victim's injury or death and any other expenses that, in the opinion of the Board, it was necessary to incur;
- (b) pecuniary loss to the victim resulting from the total or partial incapacity of the victim to work;
- (c) pecuniary loss to dependants as a result of the victim's death;
- (d) maintenance of a child born as a result of rape;
- (e) other pecuniary loss resulting from the victim's injury.

(2) Where the injury to a person occurred in the circumstances mentioned in section 7, subsection (1), clause (b) the Board may, in addition to the matters set out in subsection (1), award compensation to the injured person, in an amount not exceeding \$10,000, as damages for physical disability or disfigurement and pain and suffering.

(3) The Board shall not make an order for the payment of compensation

- (a) for loss of or damage to property, except clothing, eyeglasses or other like property on the person of the victim, or
- (b) in respect of offences arising out of the operation of a motor vehicle, except as provided in subsection (4), or
- (c) where the amount of compensation to be awarded is less than \$100.

(4) Where a person is killed and the death is a direct result of an act or omission of another person that occurred

12. Factors to be considered by the Board.

13. Basis of compensation.

in Alberta and is within the description of any of the criminal offences set out in Schedule 2, a person who was a spouse of the deceased person within the meaning of section 2, subsection (2) may, subject to all the other requirements of this Act, be paid compensation.

14. (1) 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.

(2) In an order for the payment of compensation, the Board may provide for all or part of the cost of measures to rehabilitate or retrain the victim.

15. (1) Subject to the regulations, in determining the amount of compensation, if any, to be awarded to an applicant, the Board shall deduct

- (a) any amount received or to be received
 - (i) by the victim in respect of his injury, or
 - (ii) by his dependants in respect of the death of the victim,

under *The Workmen's Compensation Act* or any other Act of Canada or of Alberta or of any other province or territory of Canada,

- (b) any amount recovered from the person whose act or omission resulted in the injury or death, whether as damages or compensation, pursuant to an action at law or otherwise, and
- (c) any benefits received by the victim or the dependants of a deceased victim as a result of the injury or death through any accident or sickness or life insurance or private pension schemes.

(2) Notwithstanding subsection (1), an amount received or to be received under a pension plan or program provided under an Act of Canada or of Alberta or of any other province or territory of Canada shall not be taken into consideration by the Board in determining the amount of compensation to be awarded.

(3) The Board may, with respect to any hearing, inquiry or other proceeding under this Act, make such order as to costs as it thinks fit.

(4) Any compensation or other amount awarded as costs paid or payable under this Act are not subject to garnish-

14. Interim compensation.

15. Determination of amount of compensation.

ment or attachment or seizure or any legal process and is not assignable.

16. (1) Subject to this Act and the regulations, where the Board makes an order for the payment of compensation it may award such amount as it thinks fit and compensation so awarded may be a lump sum or periodical payments during such period as the Board thinks fit, or both.

(2) 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 to or for the benefit of the victim or the dependants, or any of them, 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.

17. (1) When the Board makes a decision on an application it shall furnish to each person affected thereby a written statement setting out

- (a) the findings of fact upon which it based its decision, and
- (b) the reasons for the decision.

(2) Where the Board makes an order for the payment of compensation, a copy of the order shall be sent by the Board to the Attorney General.

18. (1) An applicant for or a person awarded compensation shall forthwith notify the Board of an action he has brought against the offender who caused the injury or death of the victim.

(2) The Board may request an applicant for or a person awarded compensation to bring any action he may have against the offender who caused the injury or death of the victim, and if he fails to do so within the time specified by the Board, the action may be commenced in his name and on his behalf by the Attorney General.

(3) The consent of the Board shall be obtained to any settlement between

- (a) a person injured or a dependant of a person killed who is an applicant for or has been awarded compensation, and
- (b) the offender who caused the injury or death, and a settlement without that consent is void.

16. Terms of payment.

17. Board to give written decisions.

18. Civil action for damages against the wrong-doer.

(4) If an applicant for or person awarded compensation fails to bring or prosecute an action or fails to co-operate with the Attorney General in an action brought on his behalf, the Board

- (a) may decline to award compensation, or
- (b) may, where compensation was previously awarded, reduce or revoke the award.

19. (1) Where compensation is awarded to a person injured or to a dependant of a person killed and the person or the dependant receives money from the offender who caused the injury or death pursuant to a judgment in an action brought against the offender or by a settlement or otherwise, that money shall be applied

- (a) firstly, in payment of the legal costs and fees incurred in obtaining the money, and
- (b) secondly, in reimbursing the Crown for compensation paid,

and the balance, if any, goes to the person or dependants by or for whom the money was recovered.

(2) The Board may reduce or discontinue any monthly compensation payments to a person injured or a dependant of a person killed where he has received any money from the offender who caused the injury or death.

(3) Any compensation required to be refunded under subsection (1) may be recovered by the Attorney General as a debt due to Her Majesty.

20. Where a person is convicted of an offence under section 23 and the Board has made an award of compensation on the basis of the evidence of the convicted person, the Attorney General may recover from the person to whom the compensation was paid all or a portion of the compensation as a debt due Her Majesty.

21. (1) The Board may at any time of its own motion or on the application of the Attorney General or the victim or any dependant 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 dealing with an application under subsection (1), the Board shall consider

- (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

19. Recovery of money from wrong-doer.

20. Recovery of compensation when awarded on false evidence.

21. Variation of compensation award.

(c) any other matter the Board considers relevant.

22. (1) Upon a question of jurisdiction or a question of law, an appeal lies from an order or decision of the Board to the Appellate Division of the Supreme Court.

(2) Except as provided in subsection (1), there is no appeal from an order or decision of the Board and its proceedings, orders and decisions are not reviewable by any court of law or by *certiorari*, *mandamus*, prohibition, injunction or other proceeding.

23. A person who, in any hearing, inquiry or other proceeding under this Act, knowingly

(a) makes a false statement to the Board or a member thereof, or

(b) misleads or attempts to mislead the Board,

is guilty of an offence and liable on summary conviction to a fine of not more than \$500 and in default of payment to imprisonment for a term not exceeding 60 days.

24. (1) The Lieutenant Governor in Council may make regulations

(a) prescribing the procedure to be followed in respect of applications to the Board and in respect of any proceedings under this Act, including the procedure for the service of notices and documents,

(b) prescribing fees to be paid in respect of applications or proceedings under this Act,

(c) fixing the maximum amount of compensation that may be awarded in respect of any of the matters set out in section 13, subsection (1),

(d) designating certain payments or amounts, or certain classes of payments or amounts, received or to be received by a victim or his dependants that shall or shall not be considered by the Board in determining compensation, and

(e) generally, for carrying out the provisions of this Act.

(2) The Lieutenant Governor in Council may amend Schedule 1 or 2

(a) by adding thereto a description of any criminal offence, and

(b) by deleting therefrom the description of any criminal offence set out therein.

22. Jurisdiction of courts to review Board decisions.

23. Offence and penalty.

24. Regulations.

25. (1) Sums required for the purposes of this Act may be paid out of moneys appropriated by the Legislature for the purpose.

(2) Any compensation or amount refunded or repaid under this Act shall be deposited in the General Revenue Fund.

26. (1) This Act applies in respect of claims for compensation arising from injury or death occurring after this Act comes into force.

(2) Notwithstanding subsection (1), where a person was injured in one of the circumstances mentioned in section 7, subsection (1) before this Act came into force and if the injured person

(a) is still wholly or partly incapacitated, and

(b) is still in actual financial need,

the Board, in its discretion, may make an order for the payment of compensation to the injured person.

(3) Any payment made pursuant to subsection (2) is made *ex gratia* and section 22, subsection (1) does not apply to an order or decision of the Board acting under subsection (2).

27. This Act comes into force on a day to be fixed by Proclamation.

SCHEDULE 1

Section of Criminal Code

| | |
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| 78 | failure to take reasonable care in relation to explosives where death or bodily harm results |
| 79 | causing explosion with intent to do bodily harm or endanger life |
| 137 | attempted rape |
| 138 | rape |
| 148 | indecent assault |
| 189 | abandoning child and endangering its life |
| 190 | causing bodily harm to servant [para. (a)] |
| 192 | causing death by criminal negligence |
| 193 | causing bodily harm by criminal negligence |
| 206 | murder |

25. Money.

26. Effective date of compensation scheme.

| | |
|--------|---|
| 207 | manslaughter |
| 210 | attempted murder |
| 216 | causing bodily harm with intent |
| 217 | administering poison |
| 218 | overcoming resistance to commission of offence |
| 219 | setting traps with intent to cause death or bodily harm |
| 226A | dangerous operation of vessel [ss (1) and (4)] |
| 230 | interfering with transportation facilities with intent to endanger safety or any person |
| 231 | common assault: causing bodily harm |
| 232 | assault with intent to commit indictable offence: assault on persons enforcing |
| 233 | kidnapping: illegal confinement |
| 237(1) | procuring miscarriage |
| 238 | robbery |
| 366 | intimidation by violence [ss (1) para. (a)] |
| 374 | arson |

SCHEDULE 2

Section of Criminal Code

| | |
|-----|--|
| 221 | criminal negligence in operation of motor vehicle: dangerous driving |
| 222 | drunken driving |
| 223 | impaired driving |

