

1982 BILL 17

Fourth Session, 19th Legislature, 31 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 17

**CRIMINAL INJURIES COMPENSATION
AMENDMENT ACT, 1982**

MR. LITTLE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 17
Mr. Little

BILL 17

1982

CRIMINAL INJURIES COMPENSATION AMENDMENT ACT, 1982

(Assented to _____, 1982)

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

1 *The Criminal Injuries Compensation Act is amended by this Act.*

2 *Section 1(2) is repealed and the following is substituted:*

(2) Persons living in a common law relationship shall be deemed to be spouses for the purposes of this Act if, although not married to each other, they have cohabited with each other as husband and wife for

(a) at least the 5 years immediately preceding the victim's application for compensation, or

(b) at least 2 years immediately preceding the victim's application for compensation, if there is a child of the common law relationship.

3 *Section 2 is amended*

(a) *in subsection (1) by striking out "or" at the end of clause (a) and by repealing clause (b) and substituting the following:*

(b) directly resulted to the person while he was

(i) arresting or attempting to arrest any offender or suspected offender,

(ii) assisting a peace officer in making or attempting to make an arrest in Alberta,

(iii) preventing or attempting to prevent the commission of any criminal offence or suspected criminal offence, or

Explanatory Notes

1 This Bill will amend chapter C-33 of the Revised Statutes of Alberta 1980.

2 Section 1(2) presently reads:

(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 Section 2 presently reads:

2(1) When 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 a person or preserve the peace, or

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

in Alberta,

(iv) assisting a peace officer in preventing or attempting to prevent the commission of a criminal offence or suspected criminal offence in Alberta,

or

(c) is the direct result of an act of a peace officer performed in Alberta while that officer is endeavouring to prevent a criminal offence or suspected criminal offence or to apprehend an offender or suspected offender,

(b) in subsection (2) by striking out “An order under subsection (1) may” and substituting “The Board may, under subsection (1),”;

(c) in subsection (3) by striking out “but notwithstanding clause (a), the Board may, if it considers it to be advisable, extend the time for applying for compensation” and substituting “unless the applicant for the compensation provides to the Board an explanation considered reasonable by the Board of the failure to make the application within the year or to report the matter to the proper law enforcement authority within a reasonable time, as the case may be”.

(d) by adding the following after subsection (3):

(4) Subsection (1) does not apply to a person who is convicted of a criminal offence that arises out of the events in respect of which he received his injury.

4 *The following is added after section 2:*

2.1(1) When a person’s property, whether real or personal, is destroyed or damaged as a result of an act performed by a peace officer while the peace officer is endeavouring to

(a) prevent a criminal offence or a suspected criminal offence, or

(b) apprehend an offender or suspected offender who has committed or is suspected of having committed a criminal offence or a suspected criminal offence,

that is within the description of any of the criminal offences set out in Schedule 1, the Board may, on receipt of an application in writing, make an order in accordance with this Act for the payment of compensation.

(2) The Board may, under subsection (1), order the payment of compensation

(a) to or for the benefit of the person whose property was destroyed or damaged, or

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

(2) An order under subsection (1) may order the payment of compensation

(a) to or for the benefit of the injured person,

(b) to any person, in respect of

(i) expenses incurred by that person as the result of the death of the victim, or

(ii) pecuniary loss suffered by or expenses incurred by that person as the result of an injury to the victim if the maintenance of the victim is the responsibility of that person,

or

(c) to any one or more of the dependants of a victim.

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

(a) if 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) if 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, if it considers it to be advisable, extend the time for applying for compensation.

4 Compensation for damage to property; restriction on those eligible for compensation.

(b) to any one or more of the dependants of a victim.

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

(a) if the application for compensation is made after the expiration of 1 year from the date of the destruction of or damage to the property, or

(b) if the destruction of or damage to the property and the act causing the destruction or damage are not reported within a reasonable time after the happening thereof to the proper law enforcement authority,

unless the applicant for the compensation provides to the Board an explanation considered reasonable by the Board of the failure to make the application within the year or to report the matter to the proper law enforcement authority within a reasonable time, as the case may be.

(4) Subsection (1) does not apply to a person who is convicted of a criminal offence that arises out of the events in respect of which the property was destroyed or damaged.

(5) The amount of compensation awarded to any one victim under subsection (1) shall not exceed \$10 000.

5 *Section 4(2)(a) is repealed and the following is substituted:*

(a) the person

(i) whose act or omission caused the injury or death referred to in section 2,

(ii) who committed or is suspected of having committed the criminal offence or suspected criminal offence referred to in section 2.1(1)(a), or

(iii) who is an offender or suspected offender referred to in section 2.1(1)(b),

has not been charged with a criminal offence or, if charged, was not convicted of a criminal offence,

6 *Section 8 is amended*

(a) *in subsection (1) by adding “or to the destruction of or damage to the victim’s property” after “of the victim”;*

(b) *by repealing subsection (2) and substituting the following:*

(2) The Board may decline to make an order for compensation or may reduce the amount of compensation it would otherwise order if the victim

5 Section 4(2) presently reads:

(2) A hearing by the Board of an application for the payment of compensation shall be held in private when

(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 a criminal offence,

(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.

6 Section 8 presently reads:

8(1) The Board, in making an order for the payment of compensation, shall consider and take into account all circumstances 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) fails to provide any information or documentation that the Board may require that relates to the claim for compensation,

(b) does not co-operate with a law enforcement agency in relation to the investigation of the alleged crime or the identification and prosecution of the alleged offender,

(c) refuses to submit to a medical examination by a duly qualified medical practitioner appointed by the Board, or

(d) refuses to testify under oath at a hearing by the Board.

7 Section 9 is amended

(a) in subsection (1) by adding “under section 2” after “by the Board”;

(b) in subsection (3) by adding “under section 2” after “payment of compensation”.

8 Section 10 is amended by adding “, with respect to an applicant under section 2,” after “When”.

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

7 Section 9 presently reads in part:

9(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.*
- (3) The Board shall not make an order for the payment of compensation*
- (a) for loss of or damage to property, except clothing, eye-glasses or other like property on the person of the victim,*
 - (b) in respect of offences arising out of the operation of a motor vehicle, except as provided in subsection (4), or*
 - (c) when the amount of compensation would be less than \$100.*

8 Section 10 presently reads in part:

10(1) When

- (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.*

9 *Section 11 is repealed and the following is substituted:*

11 In determining the amount to be awarded to an applicant under section 2, the Board shall deduct any payment or benefit

(a) made or provided by the person whose act or omission resulted in the injury or death, and

(b) received or to be received by the applicant in respect of his injury or by his dependants in respect of the death of the victim under

(i) the *Workers' Compensation Act* or any equivalent Act of Canada or of a province, or

(ii) any policy or contract of insurance or other arrangement that provides for payment to the victim or his dependants on an injury to or death of the victim, other than payments made pursuant to the Canada Pension Plan.

11.1 In determining the amount of compensation to be paid under section 2.1, the Board shall deduct any payment or benefit

(a) made or provided by

(i) the person who committed or is suspected of having committed the criminal offence or suspected criminal offence referred to in section 2.1(1)(a), or

(ii) the offender or suspected offender referred to in section 2.1(1)(b),

or

(b) received or to be received by the applicant in respect of the destruction of or damage to his property under any policy or contract of insurance or other arrangement that provides for payment to the victim or his dependants on the destruction of or damage to the victim's property.

11.2(1) The Board may, with respect to a hearing, inquiry or other proceeding under this Act, make any order as to costs that it considers appropriate.

(2) Any compensation or other amount awarded as costs paid or payable under this Act is not subject to garnishment, attachment, seizure or any legal process and is not assignable.

10 *Section 14 is repealed and the following is substituted:*

14(1) An applicant for or a person awarded compensation shall forthwith notify the Board of any action he has brought against

9 Section 11 presently reads:

11(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 Workers' Compensation Act or any other Act of Canada or of Alberta or of any other province,

(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, sickness or life insurance or private pension schemes or payable by an organization that is supported in whole or in part by public funds.

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

(3) Any compensation or other amount awarded as costs paid or payable under this Act is not subject to garnishment or attachment or seizure or any legal process and is not assignable.

10 Section 14 presently reads:

14(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.

(a) the person whose act or omission caused the injury or death referred to in section 2,

(b) the person who committed or is suspected of having committed the criminal offence or suspected criminal offence referred to in section 2.1(1)(a), or

(c) the person who is an offender or suspected offender referred to in section 2.1(1)(b).

(2) The Board may request an applicant for or a person awarded compensation to bring an action against

(a) the person whose act or omission caused the injury or death referred to in section 2,

(b) the person who committed or is suspected of having committed the criminal offence or suspected criminal offence referred to in section 2.1(1)(a), or

(c) the person who is an offender or suspected offender referred to in section 2.1(1)(b),

and if he fails to do so within the time specified by the Board, the action may be commenced and maintained in his name and on his behalf by the Attorney General.

(3) The consent of the Board shall be obtained to a settlement of an action referred to in subsection (1) or (2) that is commenced and a settlement without that consent is void.

(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, if compensation was previously awarded, reduce or revoke the award.

11 Section 15(1) is repealed and the following is substituted:

15(1) If compensation is awarded by the Board and the person who received or is receiving the compensation receives money as a result of an action commenced in respect of the injury or death or the destruction of or damage to property or by settlement of that action or otherwise, that money shall be applied

(a) first, in payment of the legal costs and fees incurred in obtaining the money, and

(b) secondly, in reimbursing the Crown for compensation paid,

(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 a 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.

(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, if compensation was previously awarded, reduce or revoke the award.

11 Section 15(1) presently reads:

15(1) If 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.

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

12 Section 25(1) is amended by adding “under section 2” after “for compensation”.

13 The following is added after section 25:

26 This Act applies in respect of claims for compensation under section 2.1 arising from destruction of or damage to property occurring after the coming into force of section 2.1.

In accordance with section 4(1) of the Interpretation Act, this Bill comes into force on the date it receives Royal Assent.

12 Section 25(1) presently reads:

25(1) This Act applies in respect of claims for compensation arising from injury or death occurring on or after October 1, 1969.

13 Effective date for compensation for destruction of or damage to property.