

2001 BILL 9

First Session, 25th Legislature, 50 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 9

VICTIMS OF CRIME AMENDMENT ACT, 2001

THE SOLICITOR GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 9

2001

VICTIMS OF CRIME AMENDMENT ACT, 2001

(Assented to _____, 2001)

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

Amends SA
1996 cV-3.3

1 The *Victims of Crime Act* is amended by this Act.

2 Section 1 is amended

(a) by repealing clause (a);

(b) by adding the following after clause (j):

(j.1) "Review Board" means the Criminal Injuries Review Board referred to in section 7;

3 Section 7 is repealed and the following is substituted:

Criminal
Injuries
Review Board

7(1) The Criminal Injuries Appeal Board is continued under the name "Criminal Injuries Review Board".

(2) The Review Board is to consist of not more than 6 members appointed by the Lieutenant Governor in Council, one of whom must be a physician.

(3) The Lieutenant Governor in Council may designate one of the members of the Review Board to act as chair and another to act as vice-chair of the Review Board.

(4) In the absence or incapacity of the chair, the vice-chair of the Review Board may act and exercise all of the powers of the chair.

Explanatory Notes

1 Amends chapter V-3.3 of the Statutes of Alberta, 1996.

2 Section 1 presently reads in part:

1 In this Act,

(a) "Appeal Board" means the Criminal Injuries Appeal Board established under section 7;

(j) "Minister" means the Minister determined under section 16 of the Government Organization Act as the Minister responsible for this Act;

3 Section 7 presently reads:

7(1) A Criminal Injuries Appeal Board is established consisting of up to 3 members appointed by the Minister, one of whom must be a physician.

(1.1) The Minister may appoint not more than 3 persons as associate members of the Appeal Board.

(1.2) If a member appointed under subsection (1) is unable to hear an appeal as a result of a reasonable apprehension of bias, the chair of the Appeal Board may select an associate member to be a member of the Appeal Board and to exercise the powers and perform the duties of the member who is unable to hear the appeal.

(2) The Minister may designate one of the members of the Appeal Board to act as chair and another to act as vice-chair of the Appeal Board.

(5) Members of the Review Board who are not employees of the Government may be paid remuneration, and may receive reasonable travelling and living expenses while away from their ordinary places of residence in the course of their duties as members of the Review Board, at rates determined by the Lieutenant Governor in Council.

(6) The Review Board and each member of the Review Board have all the powers of a commissioner under the *Public Inquiries Act*.

Panels

7.1(1) The Review Board shall, subject to and in accordance with the regulations, review decisions of the Director made under section 13 or 15.

(2) Where a hearing is required under this Act, the chair must designate any 3 members of the Review Board to sit as a panel, which may include the chair, to conduct the hearing.

(3) A decision or action made or taken by a panel is a decision or action of the Review Board.

(4) A panel of the Review Board may exercise and perform all the powers and duties of the Review Board under this Act.

(5) For the purposes referred to in subsection (4), any reference in this Act to the Review Board is a reference to a panel of the Review Board.

(6) If the chair is not a member of a panel, the chair must designate one of the members of the panel to preside over the panel.

(7) When a hearing is conducted by a panel and one of the members of the panel for any reason does not attend on any day or part of a day, the 2 remaining members present may exercise the powers and perform the duties of the panel with respect to that hearing.

(8) Panels may sit simultaneously or at different times.

(9) The Review Board may, subject to the approval of the Lieutenant Governor in Council, make rules governing the Board's and a panel's procedure and hearings.

(2.1) In the absence or incapacity of the chair, the vice-chair of the Appeal Board may act and exercise all of the powers of its chair.

(3) Members of the Appeal Board who are not employees of the Government may be paid remuneration, and may receive reasonable travelling and living expenses while away from their ordinary places of residence in the course of their duties as members of the Appeal Board, at rates prescribed by the Minister.

(4) The quorum of the Appeal Board is 2 members.

(5) The Appeal Board and each member of the Appeal Board have all the powers of a commissioner under the Public Inquiries Act.

4 Section 8(6) is repealed and the following is substituted:

(6) Section 34 of the *Corrections Act* does not apply to a surcharge.

5 Section 9(2)(a) is amended by striking out “727.9” and substituting “737”.

6 Section 10(1) is amended by striking out “Appeal Board” wherever it occurs and substituting “Review Board”.

7 Section 12(2)(a) is amended by striking out “one year of” wherever it occurs and substituting “2 years from”.

8 Section 13 is repealed and the following is substituted:

4 Section 8(6) presently reads:

(6) Section 34(1) of the Corrections Act and section 718.1 of the Criminal Code (Canada) do not apply to a surcharge.

5 Section 9(2)(a) presently reads:

(2) The following must be deposited into the Fund:

(a) money from victim fine surcharges collected in Alberta pursuant to section 727.9 of the Criminal Code (Canada) directed by the Lieutenant Governor in Council to be paid into the Fund;

6 Section 10(1) presently reads:

10(1) The Minister may, in accordance with this Act and the regulations, request that payments be made from the Fund

(a) for grants under section 11;

(b) for costs incurred by the Committee and Appeal Board in carrying out their duties under this Act;

(c) for remuneration and expenses payable to the members of the Committee and the Appeal Board;

(d) for financial benefits payable pursuant to sections 13, 15 and 19(3);

(e) to pay the costs of administering this Act.

7 Section 12(2)(a) presently reads:

(2) An application under subsection (1)

(a) must be made within one year of the date of the injury or death or within one year of the date when the victim becomes aware of or knows or ought to know the nature of the injuries and recognizes the effects of the injuries, and

8 Section 13 presently reads:

13(1) On receipt of an application for financial benefits, the Director must determine, in accordance with this Act and the regulations, whether financial benefits are payable and the amount of those financial benefits, if any.

Determining
financial
benefits

13(1) On receipt of an application for financial benefits, the Director must determine, in accordance with this Act and the regulations, whether a person is eligible under section 12 for financial benefits and, if so, the amounts of the financial benefits, if any.

(2) Subject to the regulations, for the purpose of determining whether a person is eligible under section 12 for financial benefits or the amounts of financial benefits, the Director may

- (a) require the applicant to provide information respecting how the injuries were acquired and describing the injuries suffered by the victim, and
- (b) receive in evidence any statement, document, information or matter that, in the opinion of the Director, may assist in dealing with the application, whether or not the statement, document, information or matter would be admissible as evidence in a court of law.

(3) The Director may dismiss an application made under subsection (1)

- (a) if the Director determines that the applicant or victim is not eligible under section 12,
- (b) if, in the opinion of the Director, the applicant or victim
 - (i) did not fully cooperate with any investigation into the events that resulted in the injury or death of the victim, or
 - (ii) did not provide information required under subsection (2)(a),

or

(c) for any other reason provided for in the regulations.

(4) Subject to the regulations, if, in the opinion of the Director, the victim's conduct directly or indirectly contributed to the victim's injury or death, the Director may, in accordance with the regulations, deny the payment of any financial benefits or reduce the amount of the financial benefits.

(2) Subject to the regulations, for the purpose of determining the amount of financial benefits, the Director may

- (a) require the applicant to provide information respecting how the injuries were acquired and describing the injuries suffered by the victim, and*
- (b) receive in evidence any statement, document, information or matter that, in the opinion of the Director, may assist in dealing with the application, whether or not the statement, document, information or matter would be admissible as evidence in a court of law.*

(3) In determining the amount of financial benefits, if any, to be paid to or on behalf of a victim or other applicant, the Director may, in accordance with the regulations, reduce the amount of the financial benefits if in the opinion of the Director, subject to the regulations, the victim's conduct directly or indirectly contributed to the victim's injury or death.

(4) The Director must

- (a) give written notice of the determination under this section to the applicant, and*
- (b) notify the applicant that the applicant may appeal the determination and may request that the appeal be in person or by written submission.*

(5) The Director's determination under this section may be appealed to the Appeal Board in accordance with the regulations.

Information

13.1(1) The Director is authorized to collect information, including personal information that the Director reasonably believes is necessary, for the purpose of determining whether a person is eligible for financial benefits under this Act or determining the amounts of those financial benefits.

(2) The Director is authorized for the purposes of subsection (1) to collect and use information, including personal information, from

- (a) a law enforcement agency relating to the event that resulted in the injury or death of the victim or to determine previous conduct of the victim,
- (b) a person who provided diagnostic, treatment or care or other similar medical services to the victim, or
- (c) a public body as defined in the *Freedom of Information and Protection of Privacy Act* to determine or verify whether a person is eligible for financial benefits under this Act or to determine the amounts of those financial benefits.

(3) The persons, bodies and agencies referred to in subsection (2) are authorized to provide information, including personal information, to the Director for the purpose of determining whether a person is eligible for financial benefits under this Act or determining the amounts of those financial benefits.

(4) The Director may disclose information, including personal information, collected under this Act

- (a) to any person for the purpose of determining whether a person is eligible for financial benefits under this Act or determining the amounts of those financial benefits, or
- (b) to a parent, spouse, child or other family member of an applicant or victim or to a recognized victim services agency for the purpose of
 - (i) confirming the existence or status of an application received from an applicant or victim, or
 - (ii) disclosing the amount of any award if, in the Director's opinion, it would not be an

unreasonable invasion of the applicant's or victim's personal privacy.

9 Section 14 is repealed and the following is substituted:

Reviews

14(1) A person may apply to the Review Board for a review of a decision of the Director under section 13 or 15 not later than 30 days after the receipt of a copy of the decision of the Director provided under section 15.1.

(2) The Review Board may, on an application made before or after the expiry of the period referred to in subsection (1), extend that period where the Review Board is of the opinion that there are sufficient grounds for doing so.

(3) On receipt of an application for review, the chair of the Review Board or a member designated by the chair must evaluate the application to determine whether there are grounds for the review or if the application is frivolous or vexatious, and if the chair or the designate is of the opinion that there are no grounds or that the application is frivolous or vexatious, the chair or the designate may dismiss the application.

(4) The Review Board may, with respect to an application, review all evidence considered by the Director whether or not it would be admissible in a court of law.

(5) The Review Board may

(a) request persons with special technical knowledge to advise the Review Board on matters relevant to a review, and

(b) require a victim to undergo a medical examination by a physician named or approved by the Review Board.

(6) The Review Board may

(a) rescind, confirm or vary a decision of the Director as to eligibility for financial benefits under this Act or under an order under the *Criminal Injuries Compensation Act*,

(b) rescind or confirm a decision of the Director made under section 13(3)(b) or (c), or

9 Section 14 presently reads:

14(1) The Appeal Board must hear appeals with respect to the Director's determination of financial benefits and the review, variance or rescission of an order pursuant to section 15.

(1.1) An appeal must be submitted to the Appeal Board not later than 30 days after the receipt of a notice of the determination of the Director under section 13 or 15.

(1.2) The Appeal Board may, on application made before or after the expiry of the period referred to in subsection (1.1), extend that period where the Appeal Board is of the opinion that there are sufficient grounds for doing so.

(2) The Appeal Board may, with respect to an application, review all matters submitted to the Director and all evidence considered by the Director whether or not they would be admissible in a court of law.

(3) The Appeal Board may

(a) request persons with special technical knowledge to advise the Appeal Board on matters relevant to an appeal, and

(b) require an applicant to undergo a medical examination by a physician named or approved by the Appeal Board.

(4) The Appeal Board may

(a) rescind, confirm or vary the decision of the Director as to eligibility for financial benefits under this Act or under an order under the Criminal Injuries Compensation Act, and

(b) confirm the determination of the Director or vary the determination of the Director as to the amount of financial benefits, determined in accordance with the regulations under this Act, by increasing or decreasing the amount to be paid.

(5) The decision of the Appeal Board is final and there is no appeal from the decision except on a question of jurisdiction or on a question of law.

(c) confirm the determination of the Director or vary the determination of the Director as to the amount of financial benefits determined in accordance with the regulations under this Act by increasing or decreasing the amount to be paid.

(7) If significant new evidence is provided to the Review Board, the Review Board may refer the matter back to the Director to review the original decision, taking into account the new evidence.

(8) As soon as possible after making a decision under this section, the Review Board must provide the applicant and the Director with a copy of the decision.

(9) Subject to subsection (10) and section 14.1, a decision of the Review Board is final.

(10) The Minister may, on an application for judicial review, challenge a decision of the Review Board that rescinds

(a) a decision of the Director under section 13(3) to dismiss an application, or

(b) a decision of the Director under section 13(4) to deny payment of financial benefits.

Appeal to
Court of
Appeal

14.1(1) The applicant may appeal a decision of the Review Board to the Court of Appeal only on a question of jurisdiction or on a question of law.

(2) Notice of an appeal under subsection (1) must be made within 30 days of the receipt of a copy of the Review Board's decision by the person appealing.

(3) Notice of the appeal must be given to the parties affected by the appeal and to the Review Board.

10 Section 15(4) is repealed.

10 Section 15(4) presently reads:

(4) The Director's determination under this section may be appealed to the Appeal Board in accordance with the regulations.

Director's
decision

11 The following is added after section 15:

15.1 After making a decision under section 13 or 15, the Director must provide the applicant with a copy of the decision and must advise the applicant

- (a) that the applicant may apply to have the Director's decision reviewed by the Review Board, and
- (b) that the applicant may request that the review be conducted in person or by written submission.

12 Section 17 is amended

(a) in clause (j) by striking out "section 13(3)" and substituting "section 13(4)";

(b) by adding the following after clause (l):

- (l.1) respecting other reasons for which the Director may dismiss an application made under section 12(1);

(c) by repealing clause (n) and substituting the following:

- (n) respecting reviews by the Review Board.

13 This Act comes into force on Proclamation.

11 Director's decision.

12 Section 17 presently reads in part:

17 The Lieutenant Governor in Council may make regulations

(j) describing conduct for which and providing for amounts by which financial benefits are to be reduced for the purposes of section 13(3);

(n) respecting appeals to the Appeal Board.

13 Coming into force.