

Appendix C: Consultation Paper

This consultation paper is intended to provide a basis for discussions about improving Ontario's system for compensating victims of violent crime to better serve victims' needs. A discussion needs to take place about the circumstances in which financial awards are appropriate and, where this is the case, how financial awards can be delivered in a way that best responds to victims. These discussions will include considering whether victims' needs may be better served other than by direct monetary awards and, if so, identifying victim service priorities. The paper presents a brief history of the present compensation system, a summary of some of the purposes served by victim compensation, and an overview of the other services currently available in Ontario to assist victims. Four possible options to make the current victim compensation system more responsive to the needs of victims are also reviewed and discussed. Consultation questions are found at the end of the paper.

Introduction

Ontario was one of the first provinces in Canada to establish a system for the payment of monetary compensation to victims of violent crime. The *Compensation for Victims of Crime Act* was passed in 1971 and provided for the payment of monetary compensation to victims of violent crime. This victim compensation system, which remains in place today, is based on an adjudicative process in which applications for compensation must be individually reviewed by the Criminal Injuries Compensation Board (CICB). It remained the only publicly-funded program available to assist victims in Ontario until 1980, when the province began funding sexual assault and rape crisis centers. Ontario currently provides many different victim services that are designed to meet the various needs of victims. The government either delivers these services directly, or funds community agencies to deliver victim services locally.

Today, most provinces have some system for compensating victims of crime. Ontario's system is one of the most generous and has amongst the largest available maximum awards.

Recently, the Ontario Ombudsman criticized how the Ontario compensation system operates and distributes monetary awards to victims of crime. Even with a current annual budget of \$20 million to support its operation, it is clear that the victim compensation system is no longer working effectively.

1. The government responded to the Ombudsman's report by providing more funding for victims' programs and compensation as follows:
2. The Criminal Injuries Compensation Board received one-time additional funding for direct victim compensation, as well as for hiring additional adjudicators and staff to speed up the compensation process.

The Ministry of the Attorney General developed the Victim Quick Response Program (VQRP), which is a pilot program that provides eligible victims with immediate financial assistance for funeral expenses, counselling services, and emergency expenses.

The Ontario government also appointed the Honourable R. Roy McMurtry to independently review the existing system for providing direct compensation to victims of

violent crime. Mr. McMurtry's mandate is to examine and make recommendations about the role of direct compensation within the spectrum of victim services provided by the Ministry of the Attorney General and by the offices, agencies, boards and commissions accountable to the Attorney General. This shall include:

- a. considering whether there are better means than direct monetary awards to serve victims, including recommending service priorities for the diverse range of victims;
- b. examining the circumstances, if any, where financial awards may be appropriate; and
- c. if some form of financial awards is considered appropriate, advising on the appropriate delivery mechanism.

The terms of reference for the McMurtry Victim Compensation Review ("the McMurtry Review") are attached at the end of this paper.

Purpose of Victim Compensation

A number of rationales have been advanced in the literature relating to victim services to support the proposition that victims of crime should receive public compensation for their injuries. There has also been international recognition that it is desirable to compensate victims of violent crime, particularly where compensation from other sources is unavailable (see United Nations' Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly Resolution 40/34, 1985)).

The various rationales underlying state funded victim compensation can be broadly summarized as follows:

1. Victim compensation reflects society's compassion for innocent victims and a collective desire to help those who have been harmed as a result of violent crime.
2. The state funds a number of programs that are designed to promote the welfare of its citizenry and compensation for victims of crime is a reasonable extension of these kinds of state funded programs.
3. Similarly, the state provides several insurance-like programs that are intended to spread certain inevitable risks in society such as illness, injury, and unemployment. Examples include health care insurance, unemployment insurance and workplace injury insurance. Again, compensation for victims of crime is seen as a reasonable extension of these kinds of programs.

Victim Services Available in Ontario Today

Apart from the compensation system, publicly funded programs to assist victims of crime now include (see Appendix for dates of key developments in victim services):

1. The **Victim Crisis Assistance and Referral Service (VCARS)**, a community-response program, provides immediate on-site help to victims of crime, 24 hours a day, seven days a week. Its services include emotional support to victims, accompanying victims to shelters or hospitals, crime scene clean up and referrals to community services for longer-term assistance.

2. **Community-based sexual assault centres and hospital-based sexual assault/domestic violence treatment centres** now operate in 30 communities across the province. These centres provide a variety of supports for victims of sexual assault and domestic violence including the conduct of crisis intervention, the provision of trauma counselling for groups and individuals, public education and advocacy.
3. The **Victim/Witness Assistance Program (V/WAP)**, established 20 years ago, helped more than 66,000 Ontarians last year. It provides information, assistance, referrals and support to victims and witnesses of crime involved in the criminal court process in all 54 court districts across the province.
4. **Child Victim/Witness Centres** in four Ontario communities offer court assistance to thousands of children who are victims or witnesses of violent crime each year, and an additional four centres are scheduled to open next year. The centres prepare children to testify in court, help them cope with fears and concerns, familiarize children with court procedures, arrange and attend meetings between children and Crown Attorneys, assist with the preparation of Victim Impact Statements and accompany child witnesses to court.
5. The **Domestic Violence Court Program** facilitates the prosecution of domestic assault cases and early intervention in abusive domestic situations, provides better support to victims and increases offender accountability. Teams of specialized personnel, including police, Crown Attorneys, Victim/Witness Assistance Program staff, probation services, Partner Assault Response program staff and community agencies work together to ensure priority is given to the safety and needs of domestic assault victims and their children. (The Partner Assault Response programs are special counselling and educational programs intended to hold individuals who have abused their partners accountable for their behaviour and to enhance victim safety.)
6. In 10 Ontario locations, the **Bail Safety Pilot Project** provides for specially trained teams of Crown counsel, victim services staff and police to conduct in-depth interviews with victims of domestic violence at the bail stage of criminal proceedings, a time of high risk for victims. The project helps identify high-risk situations, allowing Crown attorneys to make better recommendations at bail hearings to stop the cycle of violence.
7. The **Victim Support Line** is a free province-wide information line providing services in English and French. This program provides referrals to community agencies, information on the criminal justice system and access to information about the status and scheduled release date of provincially incarcerated offenders.
8. The **Barbra Schlifer Commemorative Clinic** is a multi-service agency for female victims of violence. The Ministry of the Attorney General funds a specialized legal service for assaulted women at the clinic.
9. The **Support Link Program** provides victims of domestic violence, sexual assault and stalking with intensive safety planning and 911-programmed cell phones in 20 Ontario locations.
10. Recently, the government announced the creation of the **Victim Quick Response Program (VQRP)**, bringing in three new pilot victim service programs. The

Emergency Expenses Fund will cover a variety of victim needs in the immediate aftermath of a crime. It will pay up to \$1000.00 for costs incurred for crime scene cleanup, emergency costs for the care of dependents, emergency home repairs needed to secure premises for the immediate safety of victims, and transportation costs for a family member to identify a victim of homicide or to support a victim who has suffered a serious injury. The Counselling Certificates Program will assist victims by offering payment for up to 10 sessions or \$1000.00 of a private counsellor's fees for short-term, early intervention trauma counselling. The government will also pay funeral expenses to the families of homicide victims. Under this program, \$5,000 will be available for burial or cremation costs.

11. The Ministry of the Attorney General provides **community grants** that fund time-limited victim service projects across Ontario. These projects must directly benefit victims and must address gaps in supports and services to victims. This year the province is funding 107 community projects across the province.

Discussion

A wide range of public services is available today to address the various individual needs of victims of crime. Despite the addition of many new and more innovative programs to assist victims of crime in Ontario, the compensation system has not changed significantly since it was conceived almost 40 years ago.

The Honourable R. Roy McMurtry is independently reviewing the role of direct victim compensation in the province's range of victim services with a view to improving Ontario's compensation system to better serve victims' needs. A discussion needs to take place about the circumstances in which financial awards are appropriate and, where this is the case, how financial awards can be delivered in a way that best responds to victims. Where financial awards may no longer be appropriate, a discussion is required about whether victims' needs may be better served other than by direct monetary awards and, if so, identifying victim service priorities.

Four possible changes to the current victim compensation system are discussed below. These four proposals are aimed at achieving the goals of quickly responding to the needs of victims, giving special consideration to those most in need of assistance, and using finite public resources available to victims in a manner that is transparent and would achieve the most benefit. These proposals reflect possible approaches to improving the system, and do not preclude consideration of other options for delivering victim compensation that might be raised during the McMurtry Review. As well, while compensation systems outside Ontario feature some elements of one or more of these proposals, there is no favoured model of compensation.

The first two proposals involve replacing the current adjudicative process with a wholly new administrative process. In an adjudicative system, one or more decision makers make the decision about whether to award compensation based on oral and written evidence presented at a hearing. In an administrative system, the government pays compensation to victims based on amounts set out in a fixed schedule or formula. There is no formal hearing in an administrative system, although applicants must file written materials to support their compensation claim.

The first two proposals differ from each other principally based on the kind of benefits that the administrative scheme would provide to victims (i.e. injury-based benefits or expense-based benefits). The third proposal does not involve any change to the current adjudicative process. This proposal would retain the adjudicative process for cases where there is the highest need for individualized treatment. The fourth proposal is a hybrid system in which some forms of compensation are delivered through an administrative process while others are delivered through an adjudicative hearing process.

1. Replace the Current Compensation System with an Administrative Injury Benefits Model

The United Kingdom, Australia and Alberta all employ compensation systems that award benefits through an administrative benefits model instead of one that requires a form of adjudication. In these jurisdictions, applicants are required to provide documentary information to support their claims such as police reports and medical reports. A government body then determines the amount of an award by considering the information provided in the application and a benefits schedule that establishes pre-determined awards based on the injury suffered and other factors. The award may take into consideration the type of offence and the circumstances in which it occurred to ensure that psychological injuries as well as physical injuries are compensated. Utilizing an administrative benefits system appears to allow victims to obtain awards more quickly than adjudicative models. It also appears to be simpler and more accessible for victims.

This option raises a number of considerations:

1. Use of a benefits schedule could lead to a more transparent, efficient and predictable process.
2. A schedule of benefits may be seen as arbitrary or insensitive unless a meaningful connection can be established between the benefits and the injury and the nature of the crime.
3. Strict adherence to a benefits schedule with little room for discretion to allow for some tailoring of an award to fit unique circumstances may be seen as impersonal; however, conferring any discretion would reduce efficiency and the predictability and consistency of awards.
4. Greater efficiencies gained by eliminating the need for hearings may come at the expense of depriving victims who want to tell their stories the benefit of doing so.
5. A pre-established schedule may not cover the actual expenses incurred by a victim of crime, nor appropriately recognize a victim's pain and suffering.

2. Replace the Current Compensation System with an Administrative Expenses Compensation Model

Similar to the administrative benefits jurisdictions discussed above, American jurisdictions now largely employ an administrative process, where no hearing is necessary, to compensate victims. Compensation is paid based primarily on a victim's expenses and losses incurred as a result of a crime. Compensation is generally not provided on the basis of the nature of a victim's injuries.

American compensation programs cover major expenses such as medical and dental care, counselling, lost wages, lost support for dependents, and funerals. Each state sets the scope of coverage, including caps on categories of expenses and the overall award. More recently, some states have begun to include other categories of expenses, such as crime-scene cleanup, relocation costs, rehabilitation services and modifications to homes or vehicles.

While many victims with physical injuries in Ontario would be able to rely on the publicly-funded health care system (as well as their private health plan where they have one) to meet their medical needs, providing compensation to victims for uninsured medical and non-medical expenses would ensure more complete coverage of expenses incurred solely because of victimization. A compensation system could be created whereby victims would be compensated for certain expenses after submitting police reports, medical reports, and other supporting documents establishing that the expenses are directly related to injuries resulting from a violent criminal incident. Eligible expenses could include expenses for:

1. medical and dental care not covered by OHIP;
2. prescription drugs;
3. disability aids;
4. homemaker, childcare and personal care;
5. home or vehicle modification and related expenses;
6. travel for treatment;
7. relocation; and
8. medical reports.

This option raises a number of considerations:

1. Use of a compensation-for-expenses model would lead to a more transparent, efficient and predictable process.
2. Compensation for expenses neither takes into account the nature of the crime that the victim experienced, nor pain and suffering. This approach, however, provides funding for victims' immediate and high-priority needs.
3. Prescribing a cap on expenses may result in cases where the compensation paid represents only a small portion of the expenses incurred.
4. Greater efficiencies gained by eliminating the need for hearings may come at the expense of depriving victims who want to tell their stories the benefit of doing so.

3. Retain the Current Compensation System Only in Cases of Catastrophic Injury

Catastrophically injured victims are those who would typically receive periodic payments awards under the current system and would be given at or close to the maximum periodic payments award available, which is currently \$365,000. Catastrophic injuries could be defined as those that result in permanently debilitating life-altering physical and/or psychological disabilities affecting an individual's capacity to lead a normal life over an extended period of time and could include a demonstrated need for on-going care.

Allowing these victims to talk about how their lives have changed as a result of their victimization and to discuss their specific needs through an adjudicative process could allow for more finely crafted compensation awards to be given to those with arguably the greatest need.

The current system makes anywhere from 15 to 30 such awards to victims each year. However, this small group of victims may not be adequately served even where the maximum award available today is made to them. Often victims with this severity of injury will no longer be able to work and may need to retrofit residences and pay for full-time home care at considerable expense.

This option raises a number of considerations:

1. The reduction of cases that would need to be heard, if hearings were restricted to cases involving catastrophic injury, would allow qualifying cases to receive more attention sooner and any resources saved could be utilized elsewhere to provide services to more victims.
2. Establishing a threshold for when hearings may take place (such as defining what constitutes a “catastrophic injury”) may be difficult and lead to appeals or judicial review applications.

4. Replace the Current Compensation System with a Hybrid System that includes Administrative and Adjudicative Processes

This option would allow victims who have suffered particular injuries (for example, catastrophic injuries) to seek compensation through an adjudicative hearing process that is able to make an award that is better fine-tuned to their needs. Other victims of crime may be eligible for more limited compensation (based on either the nature of the crime, or the injury or expenses incurred) delivered through an administrative process.

Consultation Questions:

Purposes of Compensation

1. What purpose is served by paying compensation awards to victims?
2. Should any groups or individuals be excluded from receiving victim compensation payments (e.g. persons whose behaviour significantly contributed to their injury or loss, persons whose expenses or losses are compensable through other sources such as disability insurance)?
3. Are there ways other than direct monetary compensation to better serve victims of crime? If so, what are the victim service priorities that the government should consider?

Determining Compensation

4. Should victim compensation be based on the nature of the injury, expenses incurred, or a combination of both? If injury-based, what criteria should be considered in the development of a benefits schedule (e.g., loss of income, pain and suffering,)? If expense-based, what expenses should be recoverable?

5. Should compensation be based on other factors? If so, what are they?

Compensation Delivery Model

6. In awarding compensation, which delivery model would be more responsive to victims' needs: an administrative model, an adjudicative hearing model; or a hybrid administrative/adjudicative hearing model?

Considerations

1. What are the victim priorities that the government should address in developing any new compensation system?
2. In which situations would an adjudicative hearing model be preferable (if any)? Is one model preferable for certain kinds of cases, e.g. adjudicative hearings for victims with catastrophic injuries; an administrative system to award expenses?
3. Are there compensation delivery models other than the options mentioned in this paper that would better serve victims' needs?

Catastrophic Injuries

7. How should catastrophic injury be defined?
8. What delivery model should be used to determine compensation claims by victims who have suffered catastrophic injury?

Other

9. Is there anything else relating to victim compensation that the McMurtry Review should consider?

APPENDIX: Key Developments in Victim Services in Ontario

- 1971 – Establishment of the Criminal Injuries Compensation Board (CICB)
- 1980 – Province begins funding Sexual Assault/Rape Crisis Centres
- 1987 – Creation of Victim Crisis Assistance and Referral Services (VCARS)
- 1987 – Establishment of the Victim/Witness Assistance Program (V/WAP)
- 1993 – Implementation of Victim Impact Statements
- 1994 – Establishment of the Victims' Justice Fund
- 1996 – Enactment of the *Victims' Bill of Rights*
- 1996 – Institution of Victim Support Line and Victim Notification System
- 1997 – Establishment of the first Domestic Violence Court
- 1998 – Creation of the Office for Victims of Crime (OVC)
- 1998 – Establishment of Support Link
- 1999 – Implementation of the Partner Assault Response (PAR) Program
- 2001 – Creation of the Victim Services Division, Ministry of the Attorney General (now the Ontario Victim Services Secretariat)

- 2002 – Establishment of the Community Projects Grants Program
- 2004 – Launch of 4-year Domestic Violence Action Plan that emphasizes prevention and enhanced community support for abused women and their children
- 2006 – Implementation of the Provincial Strategy to Protect Children From Sexual Abuse and Exploitation on the Internet (pilot)
- 2006 – Completion of VWAP expansion to all 54 court jurisdictions
- 2006 – Domestic Violence Court Program is established in all 54 court jurisdictions
- 2007 – Launch of the Victim Quick Response Program (VQRP) (pilot)

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