



BERMUDA

CRIMINAL INJURIES (COMPENSATION) ACT 1973

1973 : 107

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SCHEDULE

[preamble and words of enactment omitted]

CRIMINAL INJURIES (COMPENSATION) ACT 1973

Interpretation

1 (1) In this Act, unless the context otherwise requires—

“barrister and attorney” means a person who has been admitted under section 51 of the Supreme Court Act 1905 to practise law in Bermuda;

“Board” means the Criminal Injuries Compensation Board established under section 2;

“child” includes stepchild, adopted child and the child of a spouse;

“defendants”, in respect of a deceased victim, means such of the relatives of the victim as were wholly or partially dependent upon his income at the time of his death or would have been so dependent but for the incapacity due to the injury from which the death resulted; and for the purposes of this definition, a child of the victim conceived prior to the injury which caused the victim’s death, but born after that death, shall be deemed to have been wholly dependent upon the victim’s income at the time of that death;

“injury” means actual bodily harm and includes pregnancy and mental or nervous shock;

“Minister” means the Minister responsible for justice;

“motor vehicle” has the same meaning as “motor car” in the Motor Car Insurance (Third Party Risks) Act 1943 ;

“offence” means a criminal offence and includes any act which would be a criminal offence were the act performed by a person of full age and capacity, as well as an attempt to commit a criminal offence;

“relative”, in respect of a victim, means his or her spouse (including any spouse by any former marriage), parent, grandparent, great-grandparent, stepfather, stepmother, child, grandchild, great-grandchild, brother, sister, half-brother, half-sister or spouse’s parent;

“victim” means a person who has sustained an injury in the circumstances set out in section 3;

“violence” includes—

- (a) the use of physical force;
- (b) the threatened or apprehended use of physical force;
- (c) the use of any poison, fire or other dangerous substance.

(2) For the purposes of this Act “crime of violence” means—

- (a) any offence constituted by any provision of law of which violence is an element;
- (b) any offence constituted by the Criminal Code of which negligence is an element,

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but does not include an offence arising from the driving or use of a motor vehicle unless the motor vehicle was, at the time of the commission of the offence, being primarily used for the purpose of—

- (i) causing injury; or
- (ii) committing, or facilitating the commission of, some other offence; or
- (iii) avoiding arrest, or escaping detention, in connection with some other offence.

(3) For the purposes of this Act the Board may deem persons to be spouses of each other if—

- (a) although not married, they cohabit as man and wife and were known as such in the community where they lived; and
- (b) the relationship was of some permanence.

(4) For the purposes of this Act the Board may deem a person not to be the spouse of another if he or she were living apart from such other person in circumstances that would have disentitled such person from maintenance.

[Section 1 subsection (1) "child" and "relative" amended by 2002:36 Sch para 7 effective 19 January 2004; "barrister and attorney" and "Minister" inserted by 2005:27 s.2 effective 1 April 2006; "Minister" deleted and substituted by BR 5/2011 para.5 effective 25 February 2011]

Criminal Injuries Compensation Board

2 (1) For the purposes of this Act there shall be established a body of persons to be called the Criminal Injuries Compensation Board.

(2) The members of the Board shall be appointed by the Minister, and shall consist of—

- (a) a Chairman, who shall be a barrister and attorney with at least ten years' experience;
- (ab) a Deputy Chairman, who shall be a barrister and attorney with at least eight years' experience;
- (b) two members who shall be persons entitled to practise in Bermuda as a medical practitioner under the Medical Practitioners Act 1950 [*title 30 item 8*];
- (c) *[deleted]*
- (d) two other members.

(3) The incidental provisions contained in the Schedule shall have effect with respect to the Board.

[Section 2 subsection (2) amended by 2005:27 s.3 effective 1 April 2006; Section 2 subsection (2) amended by 2020 : 9 s. 2 effective 1 June 2020]

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Injuries which may be compensated

3 (1) Where a person is killed or injured, and the death or injury is directly attributable to—

- (a) the commission by any other person of a crime of violence;
- (b) the lawful arrest, or lawfully attempted arrest, of any person for having committed an offence or who is suspected of having committed an offence;
- (c) assisting a police officer in the execution of such officer's duties under any provision of law;
- (d) the prevention or attempted prevention of an offence,
the Board may on application make an order for the payment of compensation, in such amount as it may determine—
 - (i) to or for the benefit of the victim; or
 - (ii) where the compensation is in respect of pecuniary loss suffered or expenses incurred, as a result of the victim's injury, by any person responsible for the maintenance of the victim, to that person; or
 - (iii) where the death of the victim has resulted—
 - (A) to or for the benefit of the victim's dependants or any one or more of them; or
 - (B) if there are no such dependants and the compensation is in respect of expenses incurred as a result of the victim's death, to the person who incurred those expenses.

(2) In determining whether to make an order under this section, the Board shall, without prejudice to section 6(4)(a), have regard to all such circumstances as it considers relevant and, in particular, to any provocative or negligent behaviour of the victim which it is satisfied contributed, directly or indirectly to his injury or death.

(3) Without restricting the generality of the discretion vested in the Board under this section the Board may refuse to make an order hereunder if the victim was, at the time when the injury was sustained, living with the offender as his wife or her husband or as a member of the offender's household.

(4) No order shall be made under this section—

- (a) if the injury is one for which a total compensation of less than \$400 would be payable; or
- (b) if the victim fails, without reasonable cause—
 - (i) to undergo any medical examination which he may be required to undergo by the Board; or
 - (ii) to produce or cause or permit to be produced to the Board any medical records, X-rays or other documents relating to his injury or medical history which the Board may require to be produced.

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(5) The Board may refuse to entertain a claim for compensation where no person has been prosecuted for the offence giving rise to the injury or death unless the offence has been reported to the police as soon as reasonably practicable after its commission by the victim or some other person on behalf of the victim or, in the event of his death, by one of his dependants or some other person on behalf of such person.

(6) The Board shall refuse to entertain a claim for compensation where an application for compensation is made to the Board after the end of the period specified by the Board under section 4(1) in respect of the application.

[Section 3 amended by 1991:105 effective 1 April 1992; subsection (6) inserted by 2005:27 s.4 effective 1 April 2006]

Application for compensation

4 (1) An application for compensation shall be made within one year of the date of the injury or death in respect of which the application is made; but the Board may, if it thinks fit, extend the period of one year for a further period not exceeding twelve months.

(2) A copy of every application under subsection (1) shall be served on such persons as the Chairman of the Board may direct and every person upon whom such copy is served shall be deemed to be a party to the proceedings with effect from the date of such service.

(3) An application for compensation may be made by any of the persons mentioned in section 3(1)(i), (ii) or (iii), but so that—

(a) where the death of the victim has resulted, the application may be made by the victim's spouse on behalf of both the applicant and of such of the children of the marriage, if any, as are the victim's dependants;

(b) where—

(i) there is no surviving spouse of a deceased victim; or

(ii) the victim or other person entitled to apply for compensation is, by reason of age or other wise, incapable of making the application,

the application may be made by such person as the Board may allow.

[Section 4 subsection (1) amended by 2005:27 s.5 effective 1 April 2006]

Procedural matters

5 An order may be made under section 3 whether or not any person is prosecuted for, or convicted of, any offence connected with the injury, but so that an application may be made, by or on behalf of the Attorney General, at any time before the order is made, for an adjournment of any proceedings under this Act on the ground—

(a) that a prosecution or appeal in respect of an offence connected with the injury has been commenced; or

(b) that such a prosecution or appeal is likely to be commenced soon,

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and, in any such case, the Board may adjourn the proceedings for such period as it thinks fit.

Assessment of compensation

6 (1) Subject to the succeeding provisions of this section, compensation may be awarded under this Act in respect of any one or more of the following matters only—

- (a) expenses actually and reasonably incurred as a result of the victim's injury or death;
- (b) pecuniary loss to the victim as a result of total or partial incapacity for work;
- (c) pecuniary loss to dependants as a result of the victim's death;
- (d) other pecuniary loss resulting directly from the victim's injury;
- (e) any other expenses resulting directly from the victim's injury which, for special reasons stated by the Board, it is, in the opinion of the Board, reasonable and proper to make good to the victim or his dependants out of public funds;
- (f) pain and suffering of, and loss of amenities by, the victim;
- (g) maintenance of a child born as a result of rape;
- (h) costs of proceedings under this Act.

(2) No compensation shall be awarded by way of exemplary or vindictive damages, or by way of aggravated damages.

(3) When the victim of a criminal injury dies, the compensation, if any, under subsection (1)(c) shall, subject to subsection (4), be determined without reference to any loss or gain to his estate consequent on the injury.

(4) The Board, in determining the amount of compensation, if any, to be awarded under this section, shall—

- (a) make such deduction, as in the circumstances it may think fit, in respect of any provocative or negligent behaviour of the victim which the Board is satisfied contributed, directly or indirectly, to the injury;
- (b) deduct any sums paid to or for the benefit of the victim or any of his dependants, by way of compensation or damages from the offender or any person on the offender's behalf, consequent on the injury or on death resulting therefrom; and
- (c) take into account any right to pension, gratuity, statutory benefit or compensation under a contract of insurance or assurance payable to or for the benefit of the victim or any of his dependants which the Board is satisfied has been or will be paid consequent on the injury or on death resulting therefrom.

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Standard amount of compensation

6A (1) The Board, after consultation with the Minister, may make Regulations providing for a standard amount of compensation, determined by reference to the nature of the injury.

(2) Regulations made under subsection (1) shall provide for the standard amount to be determined—

- (a) in accordance with a table (the "Tariff"); and
- (b) where no provision is made in the Tariff, in accordance with such provisions of this Act as may be relevant.

(3) The Tariff shall show, in respect of each description of injury mentioned therein, the standard amount of compensation payable in respect of that description of injury.

(4) An injury may be described in the Tariff in such a way, including by reference to the nature of the injury, its severity or the circumstances in which it was sustained, as the Board considers appropriate.

(5) The Board, after consultation with the Minister, may at any time alter the Tariff—

- (a) by adding to the descriptions of injury mentioned therein;
- (b) by removing a description of injury;
- (c) by increasing or reducing the amount shown as the standard amount of compensation payable in respect of a particular description of injury; or
- (d) in such other way as he considers appropriate.

(6) Regulations made under subsection (1) or subsection (5) shall be subject to the affirmative resolution procedure and may include such transitional provisions as the Board considers appropriate.

[Section 6A inserted by 2005:27 s.6 effective 1 April 2006]

Terms of the order

7 (1) An order for the payment of compensation under this Act may be made on, and subject to, such terms and conditions as the Board thinks fit as to—

- (a) the payment, disposition, allotment or apportionment of the compensation;
- (b) 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.

(2) Any compensation payable in respect of expenses may, in the discretion of the Board, be paid directly to the person entitled thereto.

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Interim compensation

8 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 shall not be recoverable from the applicant.

Form of compensation

9 Subject to section 10 the Board may order compensation to be paid in a lump sum or in periodic payments, or both, as the Board thinks fit.

Maximum awards

10 The amount awarded by the Board to be paid in respect of the injury or death of one victim shall not exceed—

- (a) in the case of lump sum payments, \$100,000; and
- (b) in the case of periodic payments, \$700 per month, up to a maximum of \$100,000,
- (c) in the case of both lump sum and periodic payments, \$100,000, \$20,000 as the lump sum, and \$700 per month as the periodic payment.

[Section 10 repealed and replaced by 1991:105 effective 1 April 1992; amended by 2005:27 s.7 effective 1 April 2006]

Variation of award

11 (1) The Board may at any time on its motion or on the application of the victim or any dependant of the victim or the Attorney-General, 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 proceedings 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
- (c) any other matter the Board considers relevant.

Civil proceedings and subrogation

12 (1) Subject to the following provisions of this section, nothing in this Act affects the right of any person to recover from any other person by civil proceedings damages in respect of the injury or death.

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(2) The Board shall be subrogated to all the rights of the person for whose benefit an award of compensation is made under this Act to recover damages by civil proceedings in respect of the injury or death and the Board may maintain an action in the name of such person against any person against whom such action lies.

(3) Any amount recovered by the Board under this section shall be applied,—

- firstly, to payment of the costs actually incurred in the action and in levying execution;
- secondly, to reimbursement to the Board of the value of the compensation awarded,

and the balance, if any, shall be paid to the person whose rights were subrogated.

(4) Any settlement or release shall not bar the rights of the Board under subsection (2) unless the Board has concurred therein.

Recovery from victim or defendant

13 (1) Where compensation is paid under this Act to or for the benefit of any victim or defendant and there has been or is subsequently paid to or for the benefit of such victim or defendant, by way of compensation or damages from the offender or any person on the offender's behalf, any sum which has not been deducted under section 6(4)(b), the person receiving any such sum shall forthwith notify the Board and shall forthwith reimburse to the Board—

- the amount of the compensation paid under this Act to or for the benefit of such victim or defendant, if that amount is equal to or less than the said sum; or
- the said sum, if the amount of the compensation paid under this Act is greater,

but so that no person shall be required by virtue of this subsection to reimburse, in all, to the Board more than the amount of the compensation paid by the Board.

(2) Any moneys required to be reimbursed under subsection (1) and not so reimbursed shall be recoverable as a debt due to the Crown.

(3) Any person who, being required by subsection (1) to notify the Board of the receipt of any sum by way of compensation or damages, fails to do so shall, without prejudice to his liability under that subsection to reimburse any moneys to the Board, commits an offence:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$1,000, or both such imprisonment and fine.

Presumptions

14 (1) In any proceedings under this Act—

- the fact that a person has been convicted of an offence by or before any court in Bermuda shall be receivable by the Board as evidence for the

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purpose of proving the acts, omissions or conduct on which the conviction was based, whether he was so convicted upon a plea of guilty or otherwise; but no conviction other than a subsisting conviction shall be so receivable in evidence;

(b) in which a person is proved to have been convicted of an offence by or before any court in Bermuda he shall be taken to have been guilty of the acts, omissions or conduct on which the conviction was based, except in so far as the contrary is proved.

(2) In subsection (1)—

“conduct” includes the state of mind or manner in which anything was done or omitted;

“offence” means an offence resulting in injury or death;

“subsisting conviction” includes, where a conviction for an offence has been replaced on appeal by a conviction for another offence, the conviction for that other offence.

Exclusion of public

15 (1) The Board may, with the consent of the person making application for compensation, exclude the public or any representative of the press from any of its sittings.

(2) At any hearing held in public the Board may make an order prohibiting the publication of any report or account of the whole or any part of the evidence at such hearing where the Board considers it necessary.

(3) Any person who publishes a report or account of any evidence at a hearing contrary to an order of the Board under subsection (2) commits an offence:

Punishment on summary conviction: a fine of \$1,000.

Appeal to Court of Appeal

16 (1) The Attorney-General, or any party to the proceedings before the Board who is aggrieved by the decision of the Board, may appeal to the Court of Appeal for Bermuda against that decision within twenty-one days (or such longer period as the said Court of Appeal may in any particular case for good cause allow) after the Board delivers its decision, by lodging a notice of appeal with the Board upon the grounds that the decision of the Board is—

- (a) erroneous in law; or
- (b) unreasonable.

(2) Upon hearing any appeal under this section, the Court of Appeal for Bermuda may make such order, including an order for costs, as it thinks fit.

(3) Section 9 of the Court of Appeal Act 1964 shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under the provisions of this section.

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Payment of compensation

17 (1) Compensation ordered to be paid shall be paid out of the moneys appropriated therefor by the Legislature.

(2) Any reimbursement to the Board under section 13 shall be paid into the Consolidated Fund.

Rules

18 (1) The Chairman of the Board may make rules—

- (a) for regulating the practice and procedure of the Board;
- (b) providing for the manner in which the service of any document is to be effected for the purposes of this Act or the rules;
- (c) prescribing any matter which is necessary or convenient to be prescribed for the carrying out of or giving effect to this Act.

(2) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to rules made under this section.

Annual report

19 (1) The Board shall as soon as practicable after the termination of each calendar year, submit an annual report to the Minister on the activities of the Board.

(2) The Minister shall as soon as practicable after receiving the report of the Board, lay such report before both houses of the Legislature.

[Section 19 amended by 2005:27 s.8 effective 1 April 2006]

Application of Act

20 This Act applies in respect of claims for compensation arising from an act or omission that occurs after this Act comes into force.

Commencement

21 *[omitted]*

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SCHEDULE

(Section 2)

1 The Chairman and members of the Board shall be appointed to hold office for such period as the Minister thinks fit, but within such period shall hold office at the Minister's pleasure.

2 Any member of the Board may at any time resign his appointment by notice in writing addressed to the Minister.

3 The Board may act notwithstanding any vacancy in its membership, and no act of the Board shall be deemed to be invalid only by reason of a defect in the appointment of a member thereof.

4 The Board shall meet as often as may be necessary for it to dispatch its business under this Act.

5 A minute shall be made of every decision of the Board.

6 In any matter before the Board the Chairman or person acting as Chairman shall have a deliberate as well as a casting vote.

7 Where any member of the Board, including the Chairman thereof, is absent from Bermuda, ill, or otherwise unable to discharge the functions of a member of the Board, the Minister may, for the period of the inability, appoint any person he thinks fit to be a member of the Board in the place of the member who is so unable.

8 Subject to the foregoing provisions of this Schedule and the rules, the Board may determine its quorum and procedure.

9 [Repealed by 2020 : 9 s. 3]

[Schedule para. 9 amended by 2005 : 27 s. 9 effective 1 April 2006; Schedule amended by 2020 : 9 s. 3 effective 1 June 2020]

[Assent Date: 20 December 1973]

[This Act was brought into operation on 26 January 1974 by SR&O 5/1974]

[Amended by:

1977 : 35

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1984 : 5

1991 : 101

2002 : 36

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2005 : 27

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