



# TOKEN GESTURE:



An overhaul of the *Compensation for Victims of Crime Act* compensation scheme is overdue

**FOR** over four decades, Ontario's Criminal Injuries Compensation Board has recognized the very real and deleterious physical, emotional, and financial effects of violent crime on victims and their families. Governed by the *Compensation for Victims of Crime Act*,<sup>1</sup> the Board continues to play an important role by easing some of the financial and emotional burdens that might otherwise cause even further victimization of those harmed by crime.

Yet for the last 28 years, the most the Board can award in respect of the injury or death of one victim is \$25,000 by way of lump sum payment, or \$1,000 per month as periodic payments to be reviewed annually. Until amendments to the Act in 1986, these figures stood at just \$15,000 and \$500 respectively.

When a single crime prompts more than one applicant to seek compensation, the maximum payable to *all* applicants, no matter how many, is \$150,000 by way of lump sum and \$365,000 by way of periodic payments.

With the exception of the award for periodic payments to multiple applicants in respect of one occurrence, which in the year 2000 was increased to \$365,000 from \$250,000, the Board's compensation "caps" have remained unchanged for almost three decades.

Imagine the transformation that would flow from the provincial government's decision to amend such an

antiquated compensation scheme. The financial insecurities clouding a victim's chance at recovery would start to lift. Hope would encroach on despair. With funds to redress, to the fullest extent possible, the psychological consequences of sexual assault, more "victims" might start viewing themselves as the "survivors" they truly are. The parents of a young man whose bullet to the brain has left him utterly and permanently dependent on round-the-clock attendant care would be more likely to meet the mounting costs of their son's care without having to re-mortgage their home or struggle to find a higher-paying or second job.

Granted, the Board is not always the sole source of financial support for victims of violent crime. Although they should never be considered substitutes for criminal injuries compensation, benefits through Ontario Works, the Ontario Disability Support Program, or the Canada Pension Plan can complement compensation from the Board. Victims and their families might even have recourse to civil litigation.

But when social assistance or disability benefits are not an option, and when there is no insurer to look to for damages (or when litigation would be too risky, too expensive, too lengthy, and too riddled with coverage exclusions on account of the criminal act), the Board is the only source of financial aid for those seriously injured by violent crime, one of the greatest causes of pain and suffering imaginable.

While the argument exists that it is impossible to ever truly compensate a victim of violent crime, there is the compelling counter-argument that any compensation should at least "make sense" in today's economic climate. Put simply, \$25,000 as a lump sum and \$1,000 per month (which works out to \$230 per week), do not make sense.

In 1978, the Supreme Court of Canada established the cap for non-pecuniary general damages in *Andrews v. Grand & Toy Alberta Ltd.*<sup>2</sup> Writing for the Court, Justice Dickson stated at paragraph 92: "Of course, the figures must be viewed flexibly in future cases in recognition of the inevitable differences in injuries, the situation of the victim, and changing economic conditions."

Similarly, in *Whiten v. Pilot Insurance Co.*,<sup>3</sup> Justice Binnie wrote at paragraph 136: "One of the strengths of the jury system is that it keeps the law in touch with evolving realities, including financial realities."

If our courts progress to award compensation reflective of current financial realities, including adjusting caps for inflation, why has the Ontario government left the *Compensation for Victims of Crime Act* relatively untouched? Adjusted for inflation alone, the maximum award of \$25,000 established in 1986 would be almost doubled today, but still only \$47,787.

The relatively well-protected motor vehicle accident plaintiff has access to at least \$200,000 and typically \$1,000,000 for pecuniary and non-pecuniary damages. Certainly a victim of violent crime can have the same type of serious injuries, impairments, and long-term needs as any car accident victim. When one considers what an "award" of \$25,000 is intended to cover, the compensation, while appreciated, can still feel downright token for victims of crime.

The government of Ontario has for no discernible reason left the Criminal Injuries Compensation Board and victims of violent crime some 28 years behind the times. A major overhaul of the *Compensation for Victims of Crime Act* compensation scheme is long overdue. Seriously injured victims of violent crime deserve and should demand nothing less.

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## NOTES

<sup>1</sup> *Compensation for Victims of Crime Act*, R.S.O. 1990, c. C.24

<sup>2</sup> *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 SCR 229

<sup>3</sup> *Whiten v. Pilot Insurance Co.*, [2002] 1 SCR 595



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