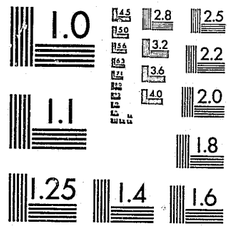

Department of Justice Canada
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CRIME VICTIMS

Working Paper No. 6

A THEORETICAL ASSESSMENT OF CRIMINAL INJURIES COMPENSATION IN CANADA: POLICY, PROGRAMS AND EVALUATION

Research and Statistics Section
Policy Planning and Development Branch

Canada

CRIME VICTIMS
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This review was carried out under a contract from the Department of Justice of Canada by Ross Hastings of the Department of Sociology of the University of Ottawa. It is intended as a working paper to provide information to individuals and organizations concerned with this topic and should be interpreted as Government of Canada policy.

This working paper is one of a series of papers on victims of crime published by the federal government as part of an initiative in the crime victims field.

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ABSTRACT

This report attempts to assess theoretically the rationales and the workings of criminal injuries compensation schemes in Canadian jurisdictions, and to suggest strategies for obtaining the information necessary for evaluating and improving these programs.

The report compares the humanitarian (charity) and the insurance (collective responsibility) rationales of criminal injuries compensation, and discusses the implications of each approach for the design and delivery of compensation schemes. The available data on the design and operation of the compensation schemes in Canada are presented and dicsussed. On the basis of this information, it is argued that the insurance based schemes (Quebec, Manitoba, and British Columbia) do a better job of responding to the financial needs of victims of criminal injury. Finally, an attempt is made to describe the types of evaluative research which might best contribute to the process of forming public policy in this area. The report concludes by arguing for the importance of integrating criminal injuries compensation within a comprehensive research based strategy on victim needs and on the types of social programs which can best contribute to satisfying these needs.

RESUME

Ce rapport tente d'évaluer théoriquement les philosophies de base et le fonctionnement de l'indemnisation des victimes d'actes criminels dans les diverses juridictions canadiennes, et de suggérer des stratégies pour obtenir l'information nécessaire à l'évaluation et l'amélioration de ces programmes.

Le rapport compare la justification humanitaire (charité) avec celle d'une responsabilité collective (assurance), et discute les implications de chaque approche pour la planification et la mise-en-marche de programmes d'indemnisation. Les données sur les programmes au Canada sont présentées et discutées. Sur la base de ces informations, il semblerait que les programmes fondés sur la justification de responsabilité collective (le Québec, le Manitoba, la Colombie Britannique) sont mieux en mesure de satisfaire aux besoins financiers des victimes d'actes criminels. Finalement, il y a une description de certains types de recherche qui pourraient contribuer à la formation d'une politique sociale dans ce secteur. Le rapport conclut en précisant l'importance d'intégrer la question d'indemnisation aux victimes à l'intérieur d'une stratégie fondée sur des recherches concernant les besoins des victimes et les types de programmes sociaux qui seraient les plus aptes à satisfaire ces besoins.

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INTRODUCTION

The purpose of this report is to theoretically assess Canadian programs for the compensation of victims of crime. There are eleven programs in Canada, covering all provinces and territories with the exception of the province of Prince Edward Island. Each is designed to compensate the innocent victims of crimes of violence, or individuals who are injured while attempting to assist in the prevention of a crime or the enforcement of the law. The report focus on three major questions:

1. Why were these programs established, and who were they designed to serve
2. How do they deliver the victim compensation service to their mandated public
3. How well do these programs work, and how might we go about improving them

Consequently, the report will be divided into three major section.

Part I will deal with the rationales underlying policy formation in the area of victim compensation. This section will involve a discussion of the emerging attention of the criminal justice system to the needs of victims of crime, and will focus specifically on the evolution of victim compensation policy and programs as one possible strategy for dealing with some of these needs. The point of this section is that an understanding of victim compensation requires a linking of the rationales of such programs to both the repertoire of criminal justice responses to crime, and the attempt by the state to

respond (through the criminal justice system) to the social and political climate of recent years.

Part II will attempt to describe and analyze the Canadian programs for compensation to victims of crime. This will involve a discussion of the available information on the legal design, and actual workings of these programs.

Part III will focus on the evaluation of victim compensation programs. There will be an attempt to delineate the informational requirements of such an evaluation, and to suggest some strategies for obtaining this information. At the present time, this would seem to be the critical stage in the process of plotting the future of victim compensation in Canada.

The point of this report is really quite straight-forward. Victim compensation cannot really advance until we have a clear sense of what exactly we are trying to accomplish through the mechanism of victim compensation, and of how well the current Canadian schemes are able to satisfy these goals. The past and future of victim compensation in Canada are imbedded in this debate. The only thing that is certain is that neither the analysis nor the evaluation of victim compensation can proceed until the place of the victim in our criminal justice system has been clearly articulated. At this stage, it seems that there are more questions than answers, and that the answers to these questions will only emerge out of debates that are both scientific and political in nature. The first step, though, is to get the questions right -- hopefully this report will contribute to this process.

THE FORMULATION OF POLICY:
THE VICTIM, THE STATE AND COMPENSATION

There has been recent and commendable movement on the part of victim-based interest groups, the criminal justice system and the general public to recognize both the needs of victims of crime and the desireability of state intervention as one possible mechanism for dealing with some of these needs. However, a by-product of the humanitarian rhetoric which has accompanied this movement is the impression that the plight of victims is one issue on which everyone can stand together. All seem to agree that victims both need and deserve our help, but the general issue of the rationale of intervention by the criminal justice system has more or less been left aside. Policy debates have for the most part focussed on the technical problem of how best to deliver that help, or on the political problem of the relative priority of the needs of victims in a period of fiscal crisis.

However, this consensus is only "skin deep". It serves to mask the real and important theoretical and political disagreements which underlie the debates over the needs of victims and the role of the criminal justice system in meeting some of these needs. We ignore these issues at our peril, for victim compensation cannot progress until some very basic decisions have been made.

This chapter, will serve to sort out some of these issues. The first section will attempt to specify the nature of the needs of victims, and account for the emergence of public and political interest

in meeting these needs. The argument will be that the response of the criminal justice system reflects both a recognition of the limitations of the traditional repertoire of policies and programs for dealing with the needs of victims of crime, and a practical response to certain political pressures exerted on the system in recent times. The next section will discuss the theoretical bases of the new initiatives in this area, and will focus on victim compensation as one specific strategy for dealing with victims of crime. This will involve a discussion of the rationales, benefits and possible risks of victim compensation programs. The final section will focus specifically on the stated rationales of victim compensation schemes in Canada, and will attempt to link these stated rationales to their theoretical base. The point of the chapter is to clarify what exactly victim compensation programs in Canada are trying to accomplish.

A. THE REDISCOVERY OF THE VICTIM

Many of the controversies surrounding the notion of criminal injuries compensation are common to the wider field of victim/witness assistance. The purpose of this section is to lay out some of this territory, and thus to provide a context for our discussion of victim compensation in general and of Canadian schemes in particular. The focus here will be on the problems and pressures which have motivated the public and the criminal justice system to turn their attention and allocate their resources to the needs of the victims and witnesses of crime.

1. The Needs of Victims of Crime:

This is perhaps the least contentious issue in the area of victim and witness assistance. There is almost no one who would deny the very real pain and suffering which can accompany victimization, or the very real costs which can be paid by those who are called upon to participate in the criminal justice process. While lists may differ a little from one author to the next, there is general agreement that victims and witnesses are vulnerable to four types of injury, and therefore experience four kinds of needs. These injuries and needs are:

1. Physical injury: a large number of victims will suffer physical injury. However, victims in Canada do have access to their provincial health insurance schemes for assistance in covering the physical and medical problems which might result from criminal victimization.[2] This is clearly the aspect of victim needs which the Canadian political system is best equiped to satisfy.
2. Emotional trauma: often the most significant and lasting injuries are the ones which cannot be seen. The reference here is usually to the fear and frustration which so often are the result of a violation of one's physical and emotional space. At worst, victims can so completely lose the sense of trust necessary for day-to-day life that they become immobilized. The classic examples of this kind of injury are the victims of rape and wife-battering, and elderly victims of robbery and assault. The basic problem in each of these cases is the loss of a sense of security in, and control of, one's social world. Many of the earliest initiatives in the area of

victim assistance were attempts to deal with this type of victimization (through rape crisis centers and interval houses, for example).[3]

3. Financial loss: criminal victimization may result in a financial burden for the victim, or for his or her dependents. The loss may range from the cost of replacing personal property to the more serious problem of loss of income or earning power. Victims of crime do of course have the option of pursuing a civil action, or the court may impose the requirement of restitution. However, as we shall see in a moment, neither of these options offers a very high probability that the losses of the victim will be adequately compensated.
4. Secondary injury: this refers to the exacerbation of the original victimization which is too often the result of the individual's contact with the criminal justice system. Rape victims and battered wives once again provide an example of victims whose injury is sustained and compounded by the treatment they receive at the hands of police officers, prosecutors, and lawyers. This is to say nothing of the costs in time and money to victims and witnesses in criminal proceedings, nor the very real possibility that they may feel intimidated or bewildered by the process, or threatened by those who stand to suffer as a result of their testimony. The result is a potential loss of faith in the system, and a refusal to participate in the criminal justice process. A number of victim/witness assistance programs have been

established in an attempt to deal with the problem of secondary injuries. Some of these are the initiative of the same type of groups who are most concerned with the emotional and physical needs of victims, others reflect the attempt of the criminal justice system to reduce the cost and increase the efficiency of the court process.

It is useful to list the needs of victims and witnesses in such a manner, if only to give ourselves a clearer sense of the problem we must try to solve. The growing public recognition of these needs certainly constitutes a dramatic step forward for the victims' movement. However, these needs have more or less always existed -- the novelty is the level of public consiousness, not the actual needs themselves. We must look elsewhere if we are to account fully for the increasing attention to the plight of victims and witnesses over the last few years.

2. Traditional Responses to Crime and Victims:

The public recognition of victim needs did not arise in a vacuum. It will be argued in the next section that much of this new attention reflects the practical need of the criminal justice system to respond to political pressures. However, before turning to that point, this section will focus on the traditional responses and sanctions the criminal justice system has adopted in attempting to deal with the problem of crime, and discuss the place of the victim within this framework. This will enable us to appreciate the problem for victims of crime, and should thus make our task of assessing the responses to this problem a little easier.

The simple fact is that the victim has been more or less ignored by the criminal justice system. The sense of the victim's needs, and of the desireability of some form of restitution to deal with these needs, which was so much a part of ancient law had been eroded in the gradual transition to a centralized criminal justice system and in the emergence of the notion that the social system (represented by the state) is the party injured by criminal behaviour.[5]

> "The sanction in criminal cases becomes justifiable on account of the offender's violation of someone else's rights -- rights that are publicly supported through the criminal law. Under present sentencing policy, however, it is not the damage to the victim's rights and interest that are recognized at the time of sentencing, but society's interests. Thus, in the interests of public protection, the offender's fine is payable to the Crown, or his liberty is forfeited to the state. As his losses tend to be swept aside by state interests in the criminal trial, the victim is left unsatisfied."
> (Law Reform Commission of Canada, 1974:5-6)

As a result, crime is transformed from a relationship between an offender and a victim, to an interaction between the offender and the state (a transformation which is most clearly expressed by the shift from tort law to criminal law). The primary concern of the state in this interaction is to assure the satisfaction of the needs of the social system. In practice, this has resulted in an almost exclusive focus on the offender: the mandate of the criminal justice system has been to punish or rehabilitate criminal offenders, and to deter or prevent criminal behavior. None of these tasks involves any significant degree of concern with the welfare of the individual victim of crime.

This argument is perhaps clearer if we refer to Chart I, which summarizes the traditional rationales for intervention by the criminal justice system and their intended consequences for the social system, the offender and the victim.

As the chart illustrates, there is not much concern for the victim. For the most part, the only benefits to the individual victim are those which are available to all members of society: the assumption seems to be that the assurance and protection of the common welfare is all the direct protection a victim really requires. This is especially true in the case of the first four purposes of sanctions. Retribution, isolation, deterrence and denunciation are all motivated by the desire to accomplish one or more of the following goals:

1. protect society
2. guarantee social control
3. affirm core values in order to assure social solidarity and cohesion
4. rehabilitate, and hopefully reintegrate the criminal offender.

The logic behind these four rationales is that the needs of the victim, as victim, can be adequately satisfied through the recourse to civil action. As we shall see in a moment, this is a great deal more true in theory than it is in practice.

Only in the case of restitution does the victim get explicit recognition:

> "...'Restitution' is a sanction permitting a payment of money or anything done by an offender for the purpose of making good the damage to the victim.
> ... the purpose is to restore, as far as possible the financial, physical or psychological loss ..."
> (Law reform Commission of Canada 1974:8).

CHART 1: PURPOSE AND INTENDED BENEFITS OF SANCTIONS

PURPOSE OF SANCTION	BENEFIT OF SANCTION: 1. FOR SOCIETY	2. FOR THE OFFENDER	3. FOR THE VICTIM
1. RETRIBUTION (PUNISHMENT)	Revenge (controlled)		
2. ISOLATION	Preventive Protection		
3. DETERRENCE			
(A) Specific	Reduce recidivism	Rehabilitation and reintegration	
(B) General	Reduce rate of crime		
4. DENUNCIATION	Affirm values and reward the law-abiding		
5. RESTITUTION	Affirm values, prevent crime, and assure cooperation of victim	forgiveness and reconciliation	Recognition and satisfaction of needs -- repair harm done

The intended benefits of the sanction of restitution can be summarized as follows:[6]

1. For society: Like any other sanction rationale, the purpose of restitution is to affirm and protect core social values. Moreover, it might contribute to social security and control by its potential for facilitating the prevention of crime and the rehabilitation of criminal offenders. In a utilitarian logic, this would be accomplished by increasing the costs, or decreasing the benefits, of criminal activity. There is also the benefit of savings derived from a reduction in the use of imprisonment as a sanction.
2. For the offender: The offender might benefit by being treated as a responsible human being who can recognize the harm done to both the collectivity (threat to social values) and to the victim, and who is willing and able to engage in a constructive and self-corrective attempt to make amends for the harm done. To the extent this is true, the offender should be more easily able to expiate guilt, and move towards reconcilation with the victim and reintegration into society.
3. For the victim: The obvious benefit to victims is the recognition of their claim to satisfaction, and the attempt to satisfy this claim by having the offender make reparations for the damage done.

In the abstract, then, it would seem that the criminal justice system has much to gain and little to lose by increasing the role of restitution in its responses to crime and victimization. Moreover, from the point of view of the victim, restitution is the approach which

is most likely to result in a recognition and satisfaction of the needs which emerge as a result of victimization.

However, it seems that in actual practice, neither the individual's right to have recourse to civil action, nor the criminal justice system's right to require the offender to make restitution to the victim, result in any significant resolution for the vast majority of victims. There are four major reasons why this is true:[7]

1. In general practice, restitution is justified on the basis of its contribution to the rehabilitation of the offender, rather than for its benefits to the victim.

> "It seems that the current popularity of restitution schemes reflects a conception of them as potentially useful tools for rehabilitating the offender, rather than as devices for restoring the victim." (Bunns, 1980:12)

As a result, the type and amount of restitution is assessed and evaluated on the basis of the requirements of the rehabilitation of the offender, rather than on the basis of the needs of the victim.

2. The courts have been reluctant to impose a sentence of restitution. This is especially true in Commonwealth countries where the status of restitution is ambiguous because of the distinction between criminal and civil proceedings. In Canada, this is compounded by the fact that criminal law falls under federal jurisdiction whereas civil law is a provincial domain. Because of this confusion, and because restitution orders are difficult to enforce and increase the

administrative workload of the court and probation system, there has been relatively little or no use of this approach.

3. The victim has little real probability of collecting. This is the major argument against the efficiency of either civil action or restitution for the victim. When one considers the relatively low percentage of crimes which result in the detection and conviction of the offender, and the relatively low probability that the offender will be willing or able to make full and adequate restitution, one can then appreciate how seldom a victim is realistically in a position to pursue civil action or to request restitution from the courts.[8] In this context, the tendency of victims to be apathetic about pursuing the possibility of either civil action or restitution seems based on a realistic assessment of their chances of success.

4. Finally, it should be remembered that both civil action and restitution only respond to the financial needs of the victim. The physical and emotional injuries which that individual may have experienced, and the problems associated with participation in a complex, expensive and intimidating judicial process cannot be dealt with directly by either restitution or civil action.

The only conclusion that one can draw is that restitution does in theory recognize the needs of the victim, but it does not do much in practice to respond to these needs.

Overall, then, the traditional repertoire of rationales and responses does little to recognize, and less to satisfy, the types of

needs and problems which are likely to be faced by victims of crime. However, as was the case in listing the injuries and needs of victims, the lack of responsiveness on the part of the criminal justice system is nothing new. The novelty lies rather in the recognition of the shortcoming, a recognition which is perhaps motivated as much by a need to respond to political pressures as by any sudden burst of insight or inspiration. The next section will attempt to identify some of the sources of this pressure, before we turn to a specific discussion of the rationales of victim compensation.

3. Political Pressures to Respond to the Needs of Victims:

It may be a truism to argue that debates over public policy are both scientific and political in nature. Nevertheless, an appreciation of this fact allows us to recognize that not all the interest groups working within the area of vicitm/witness assistance are necessarily engaging the debate on the same theoretical plane, nor will they be likely to share a notion of what would constitute an "ideal" response by the criminal justice system. In this context, a brief identification of the types of groups working in the area of victims will permit us to appreciate the diverging, and even contradictory, presures which may be brought to bear on the criminal justice system.

For our purposes, we can identify four such types of pressure groups:

1. Victim-based groups: this is the most obvious source of pressure on both the public and the criminal justice system. The best known examples of such groups are probably those which emerged out of the women's liberation movement in the

late 1960's, and who were responsible for establishing services for victims of rape and wife-battering. The major concerns of such groups is to reduce the costs of victimization by providing services and information to the victims of crime, and by working towards the prevention of future victimization (either through education of the public or intervention directed at establishing or changing state programs). These groups tend to have a fairly specific sense of what their needs are, and of how these needs can be satisfied.

2. The general public: the public's fear of crime and awareness of the personal probability of being victimized have resulted in a generalized pressure on the criminal justice system to "do something". The public perception seems to be that crime and violence are increasing, that the benefits of criminal activity to the offender are high, and that the certainty and severity of punishment of these offenders are low (Meiners, 1978:97-99). Not suprisingly, the public is likely to translate this perception into frustration with the criminal justice system. In this context, victim and witness assistance programs of all types are enormously popular with the public, even though in reality they may not be intended as anything more than "placebos" or "political palliatives"(Meiners, 1978:97-98) for the inability or unwillingness of the system to attack the deeper roots of the problems of crime and victimization.[10] While he focuses

only on victim compensation programs, Burns summarizes this argument well:

> "The idea is one whose time has come... schemes are enacted because society, perhaps encouraged by the media or politicians, sees them as desireable. They are desireable because no one knows when he or she might fall victim to a violent attack. The general perception that our streets are not safe leads to the conclusion that innocent persons can be victimized... Elimination of crime being impossible, compensation schemes are seen as alleviating its effects." (Burns 1980:142-142)

3. The producers of victim/witness assistance: like any other public assistance program, victim/witness assistance schemes have generated a number of indirect beneficiaries, all of whom have an interest in sustaining and enlarging their bureaucratic or service territory. This is not to deny the necessity and quality of much of the work being done in the field of victim/witness assistance. It is merely to acknowledge that the people who perform these services will obviously have a financial and emotional stake in seeing that their jobs are preserved. The potential problem is that the actual welfare of victims and witnesses may at times get lost in the heat of bureaucratic and political "trench warfare".

4. The criminal justice system: many victim/witness schemes are designed to decrease the costs and improve the efficiency of criminal justice proceedings. The argument here is simply that some consideration for the needs and concerns of these people is cost-efficient, since it is likely to result in better cooperation with police and court authorities.

These four types of groups are the main sources of the pressure on the criminal justice system to recognize and deal with the needs of victims and witnesses of crime. However, this discussion has only enabled us to identify the competing needs of these different types of groups. The specific concern for the plight of victims and witnesses, the public's desire that something be done about crime, the interest of the members of public and private agencies in maintaining and enlarging their territory, and the criminal justice system's interest in cheaper and more efficient proceedings all compete for attention: The obvious problem is the very real possibility that the plight of victims and witnesses will get lost in the shuffle. Perhaps the best guarantee against this is an ability to integrate and evaluate these competing demands within a larger model of the role and rationale of intervention by the criminal justice system in the area of victims. We turn to this next.

B. STATE INTERVENTION AND CRIME COMPENSATION

The previous section attempted to delineate the needs of victims and witnesses of crime, and tried to demonstrate that the traditional repertoire of criminal justice responses does not deal adequately with these needs. It also tried to demonstrate that there is considerable pressure on the system from a number of sources to try to do better. For the most part, the points that were made apply to the full range of the debates over the situation of victims and witnesses of crime. With this in mind, we will now turn our attention more specifically to the issue of criminal injuries compensation as a strategy for dealing with the needs of victims and for responding to certain political pressures.

The focus in this section will be on the rationales of victim compensation.

1. A Note on Theories of State Intervention:

The general focus on victims, and the recourse to compensation as a possible strategy, can be justified on the basis of what clearly are contradictory orientations to state intervention through social policy and programs. Any attempt to design and operationalize a victim/witness assistance program will reflect at least an implicit commitment to one of these positions, and for that reason it is worth locating the wider parameters of the competing rationales and administrative options available in attempting to establish such schemes.

For our purposes, the political continuum can be divided into the pluralist and the social-democratic models of the analysis of social order and of the role of state intervention in preserving and advancing that order.

The major focus of the pluralist approach is on the need to maintain and protect the normative consensus which is the foundation of the social contract (the social system). The pluralist approach tends to regard the state as composed of neutral and legitimate institutions which function to achieve the political compromises necessary to safeguard the social system and protect the common welfare of all its members. Thus, the state apparatus is seen as a neutral arbiter of social values and value conflict. It has no role to play in the exploitation of some groups for the benefit of others. Consensus, and

its formalization in social policy and programs, are usually analyzed as the relatively free emergents of open pluralist practices.

The pluralist model of welfare can be easily deduced from this conception of social order and the state. In essence, the primary justification for state intervention in the form of public welfare payments is the benefits which such a policy is likely to return to the system. The argument is generally that such a policy will reduce alienation and social conflict, and thus help maintain the necessary levels of social equilibrium within the overall system.

This is not to deny the humanitarian character of a great deal of pluralist welfare policy. Rather, the argument is simply that one must distinguish between the question of why the state might chose to assist some people, and the question of the basis on which specific categories of recipients will be selected. The answer to the first question is to be found in the short and long term benefits to the system of this type of intervention. The answer to the second question lies in the pluralist recognition of a natural justice requirement to alleviate the suffering of the "innocent" (those whose suffering cannot be morally justified). The state response may take the form of either ex gratia payments or social assistance to these individuals because it is felt they have a natural justice claim to our charity. Examples of this type of state intervention would be child welfare legislation, and initiatives in favour of rape victims or battered women. In each of these cases, the idea would be that these are "worthy" recipients of help, at least to the extent that they are innocent victims of their plight. The state is in a sense recognizing that, ideally, these types of events should not happen in a smoothly functioning social system,

and that consequently those who suffer should receive some help in overcoming the costs of these situations. This is the HUMANITARIAN model (justification) of state intervention -- its main focus is on the moral requirement of charity to worthy recipients.

The major focus of the social democratic approach is on the larger framework of structural arrangements which constitute the social order, and on the necessity to analytically locate the notion of the state (and state intervention) within the logic of that framework. The state occupies a determinate position within the material and social relations which characterize a society. The notion of the state as a neutral mediating mechanism is rejected in this approach. Rather, state institutions are seen either as the tools which dominant groups may use to protect and extend their interests, or as resources which subordinate groups may use in their attempts to overcome this domination.

This position is, at one and the same time, a critique of the pluralist approach and an alternative basis for state assistance. As a critique, the social democratic orientation would argue that the pluralist perspective serves to ideologically mask the nature of the competition between the groups and interests which compete for control of the state apparatus: in general terms their position would be that pluralist welfare actually operates to depoliticize and control the social conflict which threatens the interests of the dominant groups in our society. Thus, it is a specific and limited "good" which is served, not necessarily the common welfare of all. Welfare is seen as a cheap manner of helping to maintain that system.

The social democratic justification for state intervention in the form of welfare is based on the recognition that the benefits of certain forms of social arrangements are not necessarily universal: the general welfare is all too often purchased at considerable cost for certain members of our society. The rationale for welfare is that society has a collective responsibility to insure that these individuals do not have to unjustly carry a burden which should be spread out amongst all members of the society. Certain types and amounts of pain and suffering are viewed as predictable (and often inevitable) outcomes of the current social arrangements, independently of the efforts or intentions of the individuals who bear these costs. The social democrats argue for a politico-legal recognition of the collective responsibility this situation. Examples of this type of state intervention would be unemployment insurance and workers' compensation programs, the Canada Pension Plan, and no-fault automobile insurance schemes. In each of these cases, the idea is that we can scientifically predict the probability of a certain range of problems, and that consequently we ought to be prepared to alleviate the negative consequences of these situations. The state is recognizing that even in a smoothly functioning society, problems can and will occur. This is the INSURANCE model (justification) of state intervention -- its main focus is on the collective responsibility to alleviate the suffering of needy individuals.

This brings us to the problems of the rationales of criminal injuries compensation in general, and of the current Canadian compensation schemes in particular. These issues will be the focus of the remainder of this chapter.

2. The Rationales of Victim Compensation:

Compensation is the payment from public funds to victims in order to cover and alleviate losses resulting from criminal injuries (Law Reform Commission of Canada, 1974:5). The basic thrust of compensation schemes is primarily to respond to the financial losses suffered by victims of crime, though obviously they may also indirectly satisfy their physical and emotional needs to a certain degree. Our concern in this section is to discuss the competing rationales for this type of state intervention. It will be argued that the humanitarian (pluralist) model and the insurance (social-democratic) model are the two major competing rationales for criminal injuries compensation schemes.[12]

The humanitarian approach is concerned primarily with the needs of the social system rather than of individuals. It justifies state intervention in the form of welfare on the basis of the contribution such a practice can make to the system, and on the basis of the moral duty or normative requirement to be charitable to the innocent and worthy victims of criminal injury. This position is perhaps best represented in the work of the Law Reform Commission of Canada:

> "Compensation for victims of crime can be a valuable tool in supporting the purposes of the criminal law... the Commission is of the view that one of the purposes of the law is to protect core values ... A violation of these values in some cases may not only be an injury to individual rights, but an injury as well to the feeling of trust in society generally. Thus, the law ought... to restore the harm done to public trust and confidence... (Compensation) should not be lost sight of as another meaningful and visible demonstration of societal concerns that criminal wrongs be righted." (1974:17)

The argument is therefore that criminal injuries compensation has the same basis as any other activity of the criminal justice system: its primary function is to contribute to the health, stability and equilibrium of that system. The intended benefit of compensation is its potential for restoring the sense of trust which is fundamental to social cohesion and solidarity. Burns points out (1980:125-128) that this can only be accomplished to the extent that programs are known to the public, and perceived by the public as useful. He argues that the low levels of publicity, and the consequent lack of public awareness would seem to indicate that the programs, do not actually accomplish much in this regard. However, he seems to confuse rationales and consequences. A more cynical, though perhaps more accurate view is that the state selects compensation as a response to public pressure surrounding the problem of crime because it is cheaper than addressing the basic causes of criminal victimization:

> "There appears to be no substantive judicial or political move to lessen the costs of victimization by instituting actions that would reduce the number of crimes committed ... victim compensation is an attempt to lighten some of the immediate costs of victimization suffered by some victims." (Meiners, 1978:97)

The benefit in this case is to the state in particular, and not necessarily to the social system as a whole: compensation is simply a cheaper alternative than prevention, and yet one which may accomplish as much at the level of public perception.

At any rate, this still leaves the question of who should receive compensation. Within the humanitarian model, compensation is clearly

based on sympathy for the plight of innocent suffers: it is charity, not an insurance payment.

> "The moral duty justification is the most widely accepted by legislators. Here it is considered morally desireable that the state compensate victims of violent crimes. Such compensation does not have to be made, but should be made. Justifications on this basis may be expressed in many ways, but generaly include one of the telltale words 'sympathy', 'charity', 'welfare' or 'humanity'." (Burns, 1980:116)

The underlying notion is that the state should be "kind" to those who suffer because the criminal justice system is unable to guarantee the prevention of crime, or to assure that offenders will be brought forward to make restitution to their victims. Compensation schemes will thus be designed to fulfill the moral or normative duty of charity.

However, this orientation to compensation as charity has some significant practical consequences. To begin, there is a great deal of concern that the recipients of this largesse be "worthy". Humanitarian schemes are more concerned that only innocent victims of crime be compensated, and tend to argue that individuals who contributed to their victimization are morally less worthy of state assistance. Moreover, humanitarian schemes argue that there is a theoretical and moral basis for limiting this assistance to victims of violent crime, since it is crimes of violence which most threaten the core values of individual dignity and reciprocal trust (Law Reform Commission of Canada, 1974:20-22). Finally, it is the humanitarian model which is most likely to suggest the option of funding these schemes, at least in part, by fines or assessments paid by those who commit criminal

offenses. The logic seems to be that those who are collectively responsible for victimization (i.e., all criminal offenders) should bear the cost of reparations to innocent victims of crime. In this model, the innocent, whether victims or not, should not have to pay increased taxes so that the state can carry this burden.

The insurance approach is concerned with the needs of the individual members of society, and with the responsibility of social institutions to respond to these needs. It justifies state intervention in the form of welfare on the basis of the contribution such a practice can make to satisfying some of these needs. The intended benefit of compensation is to deal directly and expeditiously with some of the needs of victims of crime: it is based on a political decision to recognize the probability of certain types of crime being a predictable outcome of our current social arrangements, and a policy decision to collectively share the liability resulting from these arrangements. Compensation is simply a form of insurance against this liability.

It is proponents of the insurance approach who are the most likely to be impressed by arguments focusing on the relative inability of the poor to purchase insurance protection in the market place, or on the relatively greater probability of these individuals being victimized in the first place (e.g. Burns 1980:129). Compensation is a strategy for responding to this social reality, one which has a number of practical consequences. To begin, such an approach will be less concerned with the moral or utilitarian questions of the innocence or worthiness of the victim.[13] It will be more likely to focus on individual needs rather than on the moral validity of the claimant. Next, there will be

a recognition that the focus on crimes of violence which characterizes most compensation schemes is arbitrary, at least on the theoretical level. This decision to exclude property offenses instead reflects practical concerns, such as cost, which are important but which derive from a different frame of reference. The insurance model is also less likely to see any moral justification for funding these programs through levies on criminal offenders. Again, there may be practical reasons for this approach to generating revenue, but this model is more likely to turn to general tax sources as a basis of funding. Finally, there is no theoretical basis for administering compensation strictly within the criminal justice system.[14] Rather, since compensation is designed as an insurance program, the argument is that the cheapest and most efficient strategy is to graft such schemes to already existing programs such as workers' compensation boards. This also has the added benefit of being less humiliating than "charity" programs, and less costly and complex than civil procedures for the victim of crimes.

In the end, then, we have two vastly different rationales for victim compensation schemes, each of which has significant consequences for the design and delivery of these schemes. We will now turn to a brief discussion of the risks of criminal injuries compensation.

3. Potential Risks of Victim Compensation Schemes:

To this point, we have focused for the most part on the intended benefits of criminal injuries compensation, and have not dealt explicity with the potential risks of such schemes. The argument in this section is that even in the best possible scenario, where an efficient and effective program has been established, there are a

number of potential problem areas to be considered. Some of these problems are political, and deal with issues such as the cost and public awareness of compensation schemes, or with the built-in tendency for bureaucratic agencies to self-perpetuate. Others are theoretical predictions regarding the consequences of compensation, and focus on the impact of such schemes on the criminal, victims, and criminal justice policy.

On the practical level, there are two major concerns. The first is that the cost of such programs may force the state to increase taxes, and thus run the risk of alienating public opinion (European Committee on Crime Problems 1978:18). The argument is that the more expensive the program, the harder it will be to "sell" politically. Given the low current rates and levels of state funding for compensation schemes[15], this argument seems at best premature. At any rate, the purely financial argument will always be difficult to resolve, given the difficulty of assigning a value to most victim needs and the near impossibility of assessing the savings generated in the form of increased cooperation with the criminal justice system. The other practical concern is that compensation schemes may, like many other bureaucratic organizations, lose track of their original mandate in the attempt to guarantee their political survival or increase their domain. In a sense, this would be a case of putting more emphasis on the means, and of losing sight of the original goals: pressure to sustain and enlarge a program could be generated by the producers of such services (Meiners, 1978:45-65), more or less independently of the real needs of victims and of the best way of dealing with these needs.

At best, all one can do is be aware of the possible cross-currents of political pressures. This issue also points out the importance of working towards a scientific method of assessing and rank ordering both the needs of victims, and the optimum responses to these needs.

The other potential risks can all be more or less explicitly identified with the pluralist model of state intervention and its accompanying humanitarian (charity) model of welfare. Practitioners adopting these views tend to work within a utilitarian model of behavior: individuals are seen as choosing lines of action based on their rational economic assessment of the potential benefits and costs of any given act. Their argument is that compensation schemes may actually increase victimization because of the manner in which it effects this utilitarian calculus. The argument can be made on three levels:

1. The impact on society: the idea here is simply that any resources allocated to the remedy of the consequences of crime are necessarily deflected from the prevention of crime (European Committee on Crime Problems, 1978:17-18). The result of the failure to prevent will be an increase in the number of criminal offenses, largely because the possible risks of criminal behavior will be lowered for the offender.

   Given the current costs of compensation schemes, and current levels of public awareness of these schemes, this is not a compelling argument. Even if one accepts the premises of the utilitarian approach, it is difficult to see how current

levels of funding for compensation schemes could significantly affect the preventive efforts of the criminal justice system.

2. The impact on the offender: the idea here is that compensation will encourage criminal behaviour (European Committee on Crime Problems, 1978:17-18) and thus will more or less directly provide a subsidy for criminal activity (Meiners, 1978:65-82). This occurs because compensation schemes permit a potential offender to rationalize or neutralize the idea that the victim is actually harmed, and because the failure of the criminal justice system to pursue restitution programs relieves the criminal of any fear of having to "pay" for the consequences of the criminal act (also of the need to rehabilitate). While plausible within a utilitarian logic, this argument is not completely convincing: it assumes an objectively accurate level of awareness on the part of potential offenders of the probable risk of being caught and convicted, and of the probable costs to be paid in such an eventuality. Moreover, while the argument might possibly apply to property crimes, it is difficult to see how this rationalization could permit an offender to fully neutralize the consequences of a crime of violence against the person.

3. The impact on potential victims: the argument here is that, to the extent that people know they will be compensated for their losses, they are less likely to take the necessary steps to prevent or discourage victimization (Meiners, 1978:65-82). Again, this is an argument which might apply to property

crimes. However, it requires one to assume that money is the only consideration in the decision on how to deal with the probable benefits of preventive behaviour, and somewhat naively ignores physical and emotional trauma, and the consequences of participation in the criminal justice system.

The social-democratic approach would tend to be skeptical of the theoretical plausibility of the prediction that compensation schemes will lead to an increase in rates of victimization. Their position would be that the utilitarian approach vastly oversimplifies the complexities of human behavior. To accept the utilitarian argument, one would have to prove that:

1. compensation schemes significantly affect the levels of preventive activity;
2. the awareness of offenders of these programs encourages them to take risks, and justifies a reduced concern for the victim; and
3. the absence of financial compensation is the only reason a potential victim would be motivated to take preventive measures.

At the present time, there is no substantial support for any of these contentions. Consequently, advocates of the insurance approach to victim compensation would likely argue that the potential risks identified by the proponents of the utilitarian model of behavior do not present a significant or plausible basis for rejecting the compensation strategy. For the most part, social-democrats are more likely to argue that the greatest potential risk is that these programs

are "too little, and too late" to be of much assistance in alleviating the real needs of victims of crime.

C. THE RATIONALES OF VICTIM COMPENSATION SCHEMES IN CANADA

There is relatively little explicit concern in the literature on victim compensation schemes with the question of the rationales of such a strategy, Both the needs of victims and the appropriateness of compensation as a response have been more-or-less taken-for-granted. Debates have generally focused on the issues of program design and delivery, rather than on the more abstract and theoretical question of the rationales of state intervention in the form of criminal injuries compensation.

1. The Stated Rationales of the Provincial Schemes:

With the exceptions of Manitoba and Quebec, most of the criminal injuries compensation schemes in Canadian provinces or territories seem to be based on the humanitarian model of state intervention. In his discussion of these schemes, Burns argues that:

> "The only tenable rational for a Canadian compensation scheme is that it is seen as representing a form of state charity or social welfare based at least in part on the moral duty to aid innocent sufferers of an egregious event that might befall any of us." (Burns, 1980:140)[16]

He later goes on to argue:

> "... since the public's enthusiasm for these schemes stems from feelings of identity and sympathy the schemes necessarily have a charitable aspect. If it is true that society's fear of victimization lies at the heart of the compensation schemes, then they are unique and their creation does not necessarily point the way to ever-expanding schemes of state accident insurance on the New Zealand model." (Burns, 1980:143)

The rationale for all Canadian schemes (with the exception of Manitoba and Quebec) derives from the pluralist/humanitarian model of state intervention in the form of welfare as being justified by the normative moral requirement for concern for one's fellow citizen.

However, the Manitoba and Quebec schemes do provide an interesting contrast. Both of these jurisdictions administer their compensation scheme through the provincial workers' compensation board, reflecting an attempt to integrate the compensation strategy within a wider and more comprehensive insurance scheme (Statistics Canada, 1980:20; see also Burns, 1980:135-137). British Columbia also uses this administrative format, but its rationale is unclear since it compensates as if damages were awarded in civil court, rather than as if the victim were injured in a work related accident (Statistics Canada, 1980:10-20).

At any rate, and contrary to Burns' argument that there is a "lack of Canadian activity in the area of general social insurance schemes (1980:132), both Manitoba and Quebec (and perhaps British Columbia) fit in quite well with the logic and design of initiatives such as Workers' Compensation, Medicare, the Canada Pension Plan and old-age security, and no-fault auto-insurance. In each case, the government is attempting to alleviate the personal burden of pain and suffering which is the result of the predictable probability of certain rates of victimization. In this light, Burns' almost exclusive focus on the humanitarian rationale as a basis for Canadian schemes, and his

contention that such programs are unlikely to expand into comprehensive insurance schemes, is difficult to justify. The debate over the "proper" rationale for criminal injuries compensation schemes would seem to be far from over.

2. Federal Government Policy:

The federal government does not seem to have a clearly articulated rationale for endorsing victim compensation schemes. For reasons of constitutional jurisdiction, the federal government did not participate in the compensation field before 1970. For the most part, its activities since that time has been in the areas of funding and program design.

> "... the federal government agreed to provide limited funding for provincially administered compensation plans. This move by the federal government was to be directed towards promoting 'sound programs across Canada', that is, encouraging all provinces to participate and ensuring some degree of uniformity in the legislation and practice of compensating victims." (Brookbank, 1980:12)[16]

In this context, the federal government has focused mostly on the problems of trying to determine adequate levels of federal funding, encourage provinces to increase public awareness and program accessibility, improve the size of individual awards, and encourage the direct involvement of the offender in restitution (e.g. Farrell, 1975). While these are necessary and important issues, there seems to have been a tendency to lose sight of the larger policy issues which underlie each of these questions.

It could also be argued that, until the federal government has explicitly formulated its own position on the rationale of victim

compensation schemes, it runs a double risk. First, there will be a tendency for negotiations with the provinces over this issue to be somewhat aimless and disorganized -- this is especially true to the extent that the participants in these discussions may not be fully aware of the degree to which their frames of reference are at odds. I have already indicated that there are competing bases for justifying current Canadian criminal injuries compensation schemes. The humanitarian and insurance rationales result in markedly different approaches to program design and delivery, and thus make it impossible to argue that the federal participation can be limited to strictly technical or practical considerations. The federal government must decide what exactly it wishes to accomplish through the recourse to criminal injuries compensation.

Second, the absence of a clear and explicit policy on criminal injuries compensation, and for that matter on the overall needs and requirements of victims and witnesses of crime, leaves the government open to the accusation that its response is merely an attempt to soothe public pressure by means of a relatively popular but inexpensive program. An already cynical public may be only too ready to accuse the government of trying to mask the symptoms of crime by means of a placebo, a perception which can only serve to deepen the public's fear of victimization and fuel their conviction that the criminal justice system has lost control of the problem of crime.

A clearly articulated position on compensation, and on its relation to the larger issues of crime and victimization would serve both to counteract this perception and to educate the public.

D. CONCLUSION

This chapter has focused on the needs of victims of criminal injuries, and on the practical and theoretical rationales for responding to these needs. The central argument has been that it is imperative that we clearly and explicitly formulate and publicize the rationale for compensation as a strategy for meeting the needs of victims of crime. Until this has been done, it is unlikely that compensation programs will develop and improve to any significant degree.

Moreover, this would seem to be an ideal time to undertake this task. As we shall see in the next chapter, a considerable amount of information is available on the compensation schemes in Canadian provinces and territories. As a result, the policy debate can be carried on at a level well above that of abstract conceptualizations or uniformed common-sense. We know a great deal, and we are also in a position to design and execute evaluations of these programs in such a way as to fill in the gaps in our current knowledge.

II

THE ANALYSIS OF PROGRAMS: CRIMINAL INJURIES COMPENSATION IN CANADA

A considerable amount of information on both the design and the consequences of criminal injuries compensation schemes in Canada is already available. The most systematic and comparative presentations of this material are to be found in the work of Burns (1980) and Statistics Canada (1980), and in the annual reports published by several of the provinces who have enacted criminal injuries compensation legislation. This chapter will attempt to describe the major features of these programs (section A), and to highlight the key data on the workings of the various schemes (section B). This will hopefully give us a good sense of what is known about criminal injuries compensation in Canada, and should thus facilitate the evaluative task of assessing the content and form of the research which remains to be done.

A. THE CONTENT OF COMPENSATION SCHEMES IN CANADA

This section will focus on the content of the criminal injuries compensation schemes enacted in Canadian jurisdictions.[17] It will be concerned specifically with four questions: formal application procedures, the specification of both worthy and unworthy claimants, and the description of types and amounts of compensable damages. In

each case, the emphasis will be on the legal requirements and regulations contained in the various Acts.

1. Application

In all jurisdictions application may be made by or on behalf of the victim or, if the victim has been killed, by or on behalf of the surviving dependents. In most jurisdictions application may also be made by the person responsible for the maintenance of the victim. The applicant applies to the relevant board or court[18] in the jurisdiction either where the act causing the injury occurred or where the injury itself arose.[19] The time limit for application is one year in every jurisdiction except Quebec (six months) and Manitoba (two years).[20] The first question to be addressed, therefore, is who are the relevant applicants or claimants under the various compensation schemes?

2. Claimants

(a) The Primary Victims:

The concept of victim is related to certain offences in the Criminal Code in all the provinces and territories except Ontario which does not specify a schedule of offences in its legislation.[21] The schedule of offences varies little from jurisdiction to jurisdiction.[22] In fact, there are no significant differences in the definitions of 'victims' between the jurisdictions.[23]

Although the wording varies slightly in regard to the required relationship between the victim's injury or death and the act or omission which consitutes the offence[24], there are no

important practical or operational differences between jurisdictions.[25]

(b) Persons Responsible for the Maintenance of the Victim:

Application may also be made by persons responsible for the maintenance of the victim in all the jurisdictions except British Columbia and Quebec.[26]

(c) Surviving Dependents:

As a general rule, a dependent is a spouse, child, or other relative of the victim who is wholly or partly dependent on the victim who had died as a result of a crime. The definitions vary from jurisdiction to jurisdiction but there are no significant differences as to who is included in the category.[27] Some variations occur in regard to the concept of common law spouse[28] and to the availability of compensation to non-relative dependents[29], but none of such importance as to disturb the general rule. There are variations in the types of damages which can awarded dependents as opposed to other classes of claimants, but these are discussed below in section 4, Compensable Damages.

(d) Good Samaritans:

Good Samaritans come within a special category of claimant who can be compensated for injuries which occurred in the course or attempting to enforce or assist in the enforcement of the law.[30] The specific enforcement or preventive actions which are covered under this concept of victim within each jurisdiction are not germane to the issue at hand; however, it should be noted that all the jurisdictions include in such actions arresting or

attempting to arrest someone, and all jurisdictions except Alberta and Saskatchewan compensate if the injuries arose while preventing a crime.[31]

The importance of receiving an award on the basis of being a Good Samaritan is that in all the jurisdictions but Newfoundland, Saskatchewan, and British Columbia, this class of claimant is entitled to compensation for injuries and damages which is not available to other types of victims.[32] Although the differences can be significant in terms of compensation, they are not particularly important to us here due to the fact that Good Samaritans constitute only a very small percentage of all victim-claimants.[33]

3. Unworthy Claimants

(a) General Provisions

Every jurisdiction except Quebec has in its legislation a general provision which permits the appropriate authority to consider all relevant circumstances in determining whether or not compensation will be awarded.[34] In Newfoundland, New Brunswick, Ontario, Saskatchewan, Alberta, British Columbia, and the Yukon such circumstances are also relevant in determining the amount of the award.[35] In Quebec, Manitoba, and the North West Territories such factors cannot be considered in determining the amount of the award once the victim is found to be eligible.

(b) Contributory Behavior

The fact that the victim has contributed to his or her own injuries is an express factor in all jurisdictions. Compensation can be denied completely on this basis, with Quebec and British

Columbia requiring a finding of gross fault on the part of the victim to deny an award. Also, in all jurisdictions except Quebec, Manitoba, and the North West Territories, contributory behaviour can be a factor in reducing the amount of the award even though the claimant has initially been found eligible.[36]

(c) Failure to Report Offence to the Police

Some jurisdictions specify one of the relevant circumstances as the failure to report the incident to the police. Newfoundland, New Brunswick, Ontario, Manitoba, and Saskatchewan deny compensation where the criminal act has not been reported within a reasonable period of time or, as in Ontario, 'promptly'.[37] There is no authority given in the legislation to reduce an award on the basis of a failure to report, though the Ontario Board has interpreted the relevant section as empowering such action. In Quebec, Alberta, British Columbia, the Yukon, and the North West Territories the victim is often required to have reported the act to the police as a matter of policy.[38]

(d) Providing Reasonable Assistance to the Police

In addition to the reporting requirements, Ontario and Manitoba require that the victim give reasonable assistance to the police in their investigation of the offence.[39] It is only a policy consideration in the other jurisdictions.[40]

(e) Miscellaneous Provisions

There are various provisions in the governing statutes which affect either the granting of an award to a claimant or the reduction of an award. These provisions are not imporant within the overall scheme of compensation and need not be considered

here.[41] The only provision which is of note is the New Brunswick stipulation that if the victim's injury or death was the result of the criminal actions of a dependent family member who was living with the victim at the time of the incident, then no award should be made.[42]

(f) Concluding Remarks

In regard to the notions of 'unworthiness' expressed either in the legislation or in the policies of the authorities, it is interesting to note that the considerations are those largely of a moral rather than a financial nature. The boards or courts are not confining themselves to the needs of the individual claimant, but instead are assessing eligibility on factors totally extraneous to those needs.

4. Compensable Damages

(a) Non-pecuniary Losses:

The non-pecuniary losses which concern us are those for pain and suffering. Significant differences exist between jurisdictions in regard to them, and to who may receive compensation for such. In Newfoundland, Ontario, and the Yukon pain and suffering is expressly listed as compensable in the legislation.[43] These three jurisdictions allow for the compensation of the victim. Moreover, the wording of the legislation seems to allow for the compensating of the dead victim's surviving dependents and of those responsible for the victim's maintenance.[44] In practice, however, the authorities compensate only the victim under this head of damage.[45] In

addition, New Brunswick and Saskatchewan expressly allow for the compensation of only the victim for pain and suffering.[46]

Two other jurisdictions, Alberta and Manitoba, make awards for pain and suffering only to Good Samaritans.[47] The North West Territories is alone in granting compensation only in respect of "humilation, sadness, and embarrassment caused by disfigurement."[48] Quebec does not allow for compensation on the basis of pain and suffering.[49]

In British Columbia, awards made for non-pecuriary losses include two additional headings (beside pain and suffering) not found in any other Canadian jurisdiction: loss of the amenities of life and loss of the expectation of life.[50] The three heads of recovery are not found in the legislation but rather have been established by the policy of the Board which was guided by the fact that these heads are all recoverable at common law.[51] Also, such awards are available only to the victim, not to dependents.

In conclusion, there seems no justification for refusing to recognize pain and suffering as a legitimate head of recovery. Arguments that such a head is too difficult to calculate or too expensive do not address the fact that the victim has suffered a real loss which is not being compensated. Indeed, it is difficult to understand why criminal compensation schemes cannot place victims on at least the same footing as those who can afford to seek redress in the civil courts.

(b) Pecuniary Losses:

All the jurisdictions except Quebec and British Columbia have generally followed the suggested list of heads of pecuniary losses to be compensated put forward by the Uniformity Commissioners.[52] However, in practice both the Quebec and British Columbia boards award compensation on virtually same basis.[53] These heads are as follows[54]:

(a) expenses actually and reasonably incurred or to be incurred as a result of the victim's injury or death;

(b) pecuniary loss or damages incurred by the victim as a result of total or partial disability affecting the victim's capacity to work;

(c) pecuniary loss or damages incurred by dependents as a result of the victim's death;

(d) maintenance of a child born as a result of rape;

(e) other pecuniary loss or damages resulting from the victim's injury and any expense that, in the opinion of the Board, it is reasonable to incur.

The first head is usually interpreted as meaning the medical expenses incurred by the victim.[55] The second head is seen as loss of wages by the victim, except in Manitoba where, due to the wording of the Act, dependents can also apply for what the dead victim would be deemed to have been owed. The next head of recovery depends upon the claimant being a dependent.[57] The

dependent generally receives compensation for the loss of expected wages.[58]

Maintenance for a child born as a result of rape is expressly authorized in the legislation of Newfoundland, Quebec, Ontario, Manitoba, Alberta, the Yukon, and the North West Territories.[59] It is allowed on policy grounds in British Columbia, and in New Brunswick and Saskatchewan it is quite probable that such an award could be made under the first head or, in Saskatchewan, under the residual head.[60]

The last head, the residual provision, is used for a variety of purposes, from providing for funeral expenses in some cases to compensating for the loss of damaged clothing or eyeglasses in others.[61] Property damage, however, is not ordinarily compensated.[62] This failure to compensate property lost or damaged is an anomaly in schemes allegedly designed to compensate victims for their losses and is difficult to justify theoretically.

(c) Maximums:

Newfoundland, New Brunswick, Ontario, British Columbia and the Yukon have established maximum limits for compensation to victims of criminal injuries. Saskatchewan and Alberta have no such limits, while Manitoba and Quebec use the workers' compensation board schedule of awards.[63]

(d) Minimums:

In all provinces, other than Ontario, there is a minimum below which no compensation is paid (Statistics Canada, 1980:20). This amount is generally about $100 to $150.

B. THE DATA ON COMPENSATION SCHEMES IN CANADA

This section will attempt to summarize what is known about the workings of criminal injuries compensation schemes in Canada. It will be concerned specifically with three issues: the characteristics of the awards given, the main reasons claims are rejected, and the funding of compensation programs. This should serve to give us a good sense of the strengths and limitations of the information which is currently available, and thus help us to set an agenda for future research and evaluation priorities.

1. Awards:

(a) Applications:

The data reveal a steady and relatively significant increase in the overall number of applications received between 1973 and 1978 (see Statistics Canada, 1980:28). The largest increases were recorded in British Columbia (218%), Ontario (217%), Manitoba (191%) and Alberta (182%). Since then, the most significant increases in the number of applications have been in British Columbia (978 in 1980) and Quebec (1143 in 1980); with Alberta, Manitoba and Ontario showing no significant variations in their overall pattern of number of requests for compensation (details can be found in tables 1 to 5 of the appendix).

(b) Awards:

There were 2392 compensation awards in 1977-1978, down slightly from 2454 the previous year (Statistics Canada, 1980:39-40). As indicated in Chart 2 (below), there have been

fluctuations in the number of compensation awards granted over the last few years, but only Ontario has shown a continuous and significant increase in the number of such awards.

(c) Average size of awards:

Unfortunately, it is very difficult to prevent full and systematic data on the size of average awards in the different constituencies. It seems clear that the three provinces which administer their schemes through a workers' compensation board (British Columbia, Manitoba and Quebec) also have the highest per capita cost figures for their programs (see section II.B.3 for details). This suggests that these provinces also make the highest average awards, a suggestion which is born out by the data presented in Chart 3 (below). Quebec far and away makes the most generous awards, while British Columbia and Manitoba pay out significantly more than Ontario and Alberta. This allows us to hypothesize that insurance based programs are much more responsive to the financial needs of victims than are those motivated by humanitarian concerns.[66] It also points to the advisability of generating a more complete analysis of this issue, and of its implications for future criminal injuries compensation policy.

(d) Characteristics of recipients:

There is a remarkable amount of consistency in the distribution of awards by the category of criminal offence. For the period 1975-76 to 1977-78, assault (not indecent, 54%), robbery (12%), murder (12%) and attempted murder (9%) accounted for the vast majority of awards (Statistics Canada, 1980:27). A relatively small percentage of awards (less than 3%) were paid for

CHART 2: NUMBER OF COMPENSATION AWARDS, 1977 - 1981

(SELECTED PROVINCES)

	1977 - 1978[1]	1978 - 1979[2]	1979 - 1980[2]	1980 - 1981[2]
British Columbia:	391	512	418	
Alberta:	211		295	276
Manitoba:	119	89	79	119
Ontario:	563	713	843	918
Quebec:	1039			1037

1. Statistics Canada (1980:39-40).

2. Compiled from annual reports of the Criminal Injuries Compensation Act of the provinces indicated. See tables 1 to 5 in the Appendix for further details.

injury or death arising from attempts to prevent crime or to assist a police officer (Statistics Canada, 1980:29). There is no clear evidence on the proportion of eligible victims of criminal injury who apply for compensation.

The only more detailed descriptive analyses of recipients have been done in Quebec (Statistics Canada, 1980:29-34; Quebec, 1981:10). In general recipients are more likely to be (Quebec, 1981:10; and Baril, et al., 1982:17-21):

1. Male (67%) rather than female (33%);
2. between 19 to 45 years old (65%);
3. single (45%) or married (35%) rather than divorced/separated (16%) or widowed (4%); and
4. from the lower income earning groups, with 50.7% earning less than $12,000 annually, and another 26.6% earning between $12,000 and $18,000 annually (Baril, et al., 1982:21).

It is difficult to know exactly what to make of this data, other than that it supports the common view that the young and economically disadvantaged are more likely to be victimized, and consequently that an insurance based form of state compensation may be necessary to meet their needs.

2. Rejections:

The data indicate a slight decrease in the percentage of application refused between 1975-76 (15.6%), 1976-77 (13.5%) and 1977-78 (11.7%), even though overall aplications were increasing during this period (Statistics Canada, 1980:31 and 40). Only Manitoba and Quebec provide a breakdown of the reasons for rejecting an application. In Manitoba (1981:5-6), the major

CHART 3: AVERAGE SIZE OF AWARDS, 1978 - 1981

(SELECTED PROVINCES)

	1978 - 1979	1979 - 1980	1980 - 1981
British Columbia:		$3256[2]	$2689[3]
Alberta:		$1836	$1720
Manitoba:	$4295	$5334	$3769
Ontario:	$2452	$2575	$2651
Quebec:			$6138[3]

1. Source: Annual Reports on the Criminal Injuries Compensation Act of the provinces indicated. See tables 1 to 5 in the appendix for further details. Monetary values are rounded to the nearest dollar, and are obtained by dividing the total number of awards into the total amount of compensation paid in a given year.

2. For 1979.

3. For 1980.

reasons were the lack of evidence of a scheduled crime (42%), the fact that the request was less than the minimum of $150.00 (22%), and evidence that the victim contributed to the offence (18%) or failed to report the offence and/or assist in the criminal justice process (14%). In Quebec (1981:9), the major reasons were gross fault on the part of the victim (26%), the victim's eligibility for workers' compensation (22%), prescription (21%), or lack of proof (19%). Overall, there is little in this data that is of significance for program policy or delivery.

3. Funding:

(a) The costs of compensation schemes:

There was a dramatic increase in the total cost of criminal injuries compensation schemes, from $4.4 million in 1975-76, to $6.2 million in 1976-77 (Statistics Canada, 1980:44-45). There was a further increase to $6.6 million in 1977-78 (Statistics Canada, 1980:44-45), an amount which actually represents a net loss when adjusted for inflation.[67] The only significant variations in this pattern are a fairly large increase in Manitoba (18%), and the decreases in Newfoundland, New Brunswick and the Northwest Territories, all of whose programs are very small (Statistics Canada, 1980:44-45).

The data presented in Chart 4 (below) indicate an uneven development since that time. Only Quebec shows a dramatic increase in funding, with Ontario's increase allowing it to more or less match inflation. The disturbing tendency in this date is the drop in funding in Manitoba, Alberta and British Columbia. It would be interesting to know whether this represents a change in

the commitment of these constituencies to criminal injuries compensation, or a variation in the pattern of applications and awards in a given year. It would be useful to have more complete and systematic data on this issue.

An interesting measure of the commitment to criminal injuries compensation in different constituencies can be found by comparing the per capita cost of established schemes. Chart 5 (below) presents data on the per capita cost for all schemes from 1975-76 to 1977-78. At a peak of .29¢ per capita in 1977-78 it is difficult to argue that there is strong general support for this initiative. Waller puts this context when he compares this with 1978 Canadian and American data which indicate $55-75 were spent per capita on policing, $10-12 on courts and $22-25 on corrections (Waller, 1981:17).

There are significant per capita variations in the different jurisdictions, with the Northwest Territories, British Columbia, Quebec and Manitoba being the constituencies which are above the average.[68] It is noteworthy that the last three are also the provinces whose schemes are administered through the workers' compensation board.

(b) The federal contribution:

The federal government initiated cost-sharing agreements in January 1973, and by January 1976 all Canadian schemes were participating in these agreements.[69] The terms of the cost-sharing provision were amended as of April 1, 1977. The major features of this new agreement are (Statistics Canada, 1980:12-14):

CHART 4: COSTS OF CANADIANS COMPENSATION SCHEMES[1]

	1978 - 1979	1979 - 1980	1980 - 1981
British Columbia:		$1,984,401[2]	$1,873,626[3]
Alberta:		624,662	553,231
Manitoba:	425,216	522,576	499,236
Ontario:	2,149,485	2,636,689	2,985,344
Quebec:	2,844,977	4,239,138	7,064,325

1. Source: Annual reports of the Criminal Injuries Compensation Act of the provinces indicated. See tables 1 - 5 in the Appendix for further details. Monetary values are rounded to the nearest dollar.
2. For 1979.
3. For 1980.

CHART 5: PER CAPITA COSTS OF COMPENSATION SCHEMES

	COST[1]	COST PER CAPITA (¢)[2]	COST PER CAPITA (¢) FOR POPULATION 18-64[1]	COST (¢) PER MEMBER OF LABOUR[1]
1975 - 76:	$4,412,067	.20	.34	.46
1976 - 77:	$6,221,600	.28	.47	.63
1977 - 78:	$6,560,156	.29	.49	.65

(1) Source: Text table X in Statistics Canada (1980:36).

(2) Source: Statistics Canada (1980:34).

1. The federal government will contribute the larger of ten cents per capita or $50,000, but not in excess of 50% of the total compensation paid.
2. Jurisdictions may claim according to the old formula of the lesser of five cents per capita or 90% of the compensation awarded if it is to their advantage to do so. Newfoundland and New Brunswick made use of this provision in 1977-78.
3. The federal government will compensate the Yukon and the Northwest Territories for 75% of the compensation awarded, subject to certain maximum amounts for individual awards.

The data for 1977-78 (Statistics Canada, 1980:46-47)[70] indicate that Ontario, Saskatchewan and Alberta received grants from the federal government to cover half the cost of the compensation awards made during that year. British Columbia (21.2%), Quebec (22.6%) and Manitoba (27.9%) received a much lower share of their awards from the federal government.

These data suggest that criminal injuries compensation schemes based on the humanitarian rationale are much more "responsive" to initiatives on the part of the federal government. In every case, these schemes seem to directly reflect the amount of money the jurisdiction can recover from Ottawa. The three provinces who administer their schemes through the insurance based workers'

compensation framework seem to be both more generous, and less dependent on federal contribution limits. The higher benefits to victims in these constituences would seem to be obvious. At any rate, it is unfortunate that more complete and systematic data are not available on this issue. I would note in passing that, since 1978, the only province that indicates the amount and percentage of federal contributions in its annual reports is British Columbia (1980; 1981).

(c) Administrative costs:

Constituencies initiating a criminal injuries compensation scheme have to face the decision of whether to "attach" the scheme to an already existing program (such as a workers' compensation board), or to create an entirely new administrative agency. The obvious problem which the latter option is the high initiation cost of such an approach, and the fact that this type of approach is seldom effective in areas where there are relatively few compensation requests (Carrow, 1980:72-76).

Unfortunately, the information we would need to make such a comparison is not easily available. Burns (1980:212-216) presents data which indicate the proportion of administrative costs to compensation paid up to 1977-78 in British Columbia (20.5%), Alberta (18%), Saskatchewan (20.2%), Ontario (29.4%) and Quebec (8%). More recent data is available in the annual reports of certain provinces, and indicate that administrative costs have remained fairly consistent since then within each consistency. These data indicate that:

1. Quebec's ratio was 9.9% in 1980 (Quebec, 1981)
2. Ontario's ratio was 22.6 in fiscal 1980-81 (Ontario, 1981)

3. Alberta's ratio was 16.5 in fiscal 1980-81 (Alberta, 1981).
4. British Columbia's ratio was 18% in 1980 (British Columbia, 1981).

The outstanding element is the extraordinarily low rate of administrative costs in Quebec. It is not clear that all of this efficiency can be attributed to the fact that the Quebec program is administered through a workers' compensation board, since the British Columbia ratio is in line with that of the other schemes. However, the Quebec experience certainly deserves further study. Moreover, Manitoba (1979; 1980; and 1981) estimates its administrative costs as being about 10% of their budget. If one assumes that this estimate is relatively accurate, then it suggests that the workers' compensation board format is the cheapest, and that British Columbia rather than Quebec is the anomaly.

C. CONCLUSION

This chapter has focused on a description of the criminal injuries compensation schemes in Canadian constituencies, and has attempted to summarize and highlight the available data on the operation of these schemes. The central point has been that a considerable amount of information is at hand, but there are still considerable gaps in our knowledge. The next chapter will attempt to specify the key questions which remain to be answered, and to suggest some strategies for generating answers to these questions.

III

STRATEGIES FOR EVALUATION: SHAPING THE FUTURE OF VICTIM COMPENSATION

Like almost any other publically funded program, criminal injuries compensation schemes will continue to survive and develop only to the extent that the public and the state are convinced that these schemes are necessary, useful and relatively cost efficient. So far, the concern and commitment of victim advocates have been influential in raising the general consciousness of the needs of victims and of the necessity of some form of organized response to these needs (see section I.A). However, for the most part, it would seem to be too early to become complacent about the degree to which the value of a victims' initiative is firmly established, especially since this is the type of program which is particularly vulnerable to the "cutback logic" of our current period of fiscal crisis.

The argument in this chapter is that, in the minds of many, the needs of victims, and the value of criminal injuries compensation as a strategy for responding to these needs still remain to be proved. People are sympathetic, but not convinced. Accordingly, the key to the future of the victims' movement lies in well conceived and executed evaluation research.

Much that has been said in the previous two chapters points to this conclusion. Chapter I described the competing theoretical rationales for state interventionin the form of victim compensation, and argued for the desireability of a clearly formulated government

policy position on this question. We need an integrated and research based policy on the needs of victims and on the role of the state in meeting these needs. Chapter II summarized the available information on criminal injuries compensation schemes in Canada, and pointed to some of the gaps in our knowledge in this area. We need more complete information on the way these schemes work in actual practice. These two issues of general policy and actual practice are the areas in which evaluation research can make a timely and significant contribution.

A. POLICY: THE VICTIM AND THE STATE

This section will focus on the general questions of the needs of victims of crime, and of the appropriate forms of response to these needs. These broader questions necessary frame and limit any discussion of the specific strategy of criminal injuries compensation. I would argue that two general issues must be clarified.

1. The relative priority of the needs of victims of crime: A great deal of information is available on this question,[71] but most of it refers to the victims of a specific type of crime. The need here is for a systematic review and integration of this material. This would allow us to more adequately assess whether all victims are "the same", or whether different types of victims have relatively different needs. It might allow to scientifically establish a relative priority of needs for different types of victims, and would thus be instrumental in guiding and shaping policy formation.

2. The relative priority of types of victim assistance: This, in a sense, is the mirror image of the previous question. The need here is for a systematic assessment of the actual benefits and costs of

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different types of victim assistance programs. Presumably, no one program is likely to be able to meet all the needs of all victims: given the reality of limited resources, this type of research might at least allow us to identify the types of programs which are most successful in responding to the relative priority of needs of different types of victims. It would also allow us to identify the gaps in our current services to victims, and thus aid in clarifying policy priorities.

Ideally, these types of research would result in a clear and consistent model of both the relative priority of victims' needs and of the actual benefits of different programs. Unfortunately, there is no reason to believe that the "real world" will be either very clear or very consistent. It is this ambiguity, and often contradiction, which makes this kind of general research on victim needs and programs so important. It is obvious that limited resources will translate into limited intervention -- it should be equally obvious that it is important to intervene where we are most needed, and in the manner which allows us to do the most good.

Until we can scientifically assess the current cross-match of needs and programs, it will be difficult to know exactly what we hope to accomplish through any one specific program or strategy. Moreover, it is almost impossible to meaningfully evaluate a program until we know exactly what it was intended to accomplish. In the absence of an integrated policy on victims of crime, this seems to be the case of the criminal injuries compensation strategies currently in place.

B. ACTUAL PRACTICE: COMPENSATION SCHEMES IN CANADA

This section will discuss the types of evaluation research which are required if we are to make a complete and comprehensive assessment of the actual operations and future requirements of criminal injuries compensation schemes in Canada. Such research should focus on at least five major issues.[72]

1. The number and size of awards: there is an excellent description of the number of applications and awards granted by the various schemes up to 1977-78 in the Statistics Canada report (1980). The only need here is to bring this information up to date.

Of more fundamental concern is the question of the number and size of awards made by schemes based on different rationales. It would be helpful if the schemes could be classified in terms of whether they are based on a humanitarian or an insurance rationale, and then compared on the basis of the number of awards given and the average size of such awards. This would presumably give us a much clearer idea of the type of scheme which best meets the financial needs of victims, and thus influence the direction of policy-making.

2. Publicity and public awareness: as a result of the reality of limited resources for social programs, there is a tension between the desire to make compensation schemes better known and more accessible to the public, and the fear of the various jurisdictions that their program costs would skyrocket. In this context, it would be interesting to have two types of information. First, it would be useful to know the degree to which the public is currently aware of the availability of victim compensation schemes.[73] We need to know

whether the relatively low rate of applications (out of all possible victims) reflects ignorance of the availability of the schemes, apathy, or perhaps dissatisfaction with the way the schemes are perceived to work. Obviously, each alternative has different implications for the steps which need to be taken. Second, it would also be useful to know the relative emphasis placed on publicity by schemes based on differing rationales. This could be measured in terms of both direct dollar investment in public awareness, and in terms of the labor invested in integrating criminal injuries compensation into the mainstream of the criminal justice process.

3. Funding and administration: The obvious concern here is with the overall costs of compensation schemes, especially in light of the fact of the recent drops in overall budgets for these programs in certain jurisdictions (see appendix). The first thing we need to know is whether fluctuations in funding are a reflection of a change in the priority given to compensation or the result of a chance variation in the crime rate (number and types of applications) in a given period. In addition, we require more information on administrative formats and their budgetary consequences, especially in light of the remarkable success of the Quebec scheme in keeping its costs down. Both of these issues should affect the federal government's future participation in cost-sharing agreements.

4. The utility of compensation schemes: it will be difficult to argue for increasing, or even maintaining, current levels of funding in the absence of some proof that compensation benefits either the victim or the criminal justice system. The mere calculation of the current relative levels of financing for compensation and for other criminal justice system activities should easily convince those who argue that

compensation detracts attention from efforts to prevent crime, or to control and rehabilitate offenders.[74] This would probably be reinforced if it could be shown that compensation schemes, alone or in tandem with other initiatives in the victims area, actually improve victim cooperation in the criminal process. In essence, this involves comparing the relative success (prosecutions and convictions) and the relative cost-efficiency of jurisdictions which have such schemes with those which do not.

In addition, we still have no proof of the extent to which compensation actually benefits victims of crime. Obviously, it is nicer to be compensated than it is to be ignored. However, we could be much surer of where we stood if we have some form of longtitudinal comparison of victims who receive compensation (or other forms of assistance) with those who do not. This would clarify both the real needs of different types of victims, and the real impact of different types of assistance in meeting these needs.

5. The decision-making process: we have some indications of the reasons why applications are rejected, but all this really means is that each rejection is coded in terms of the requirements of the law in question. It would be extremely useful to have a better understanding of the actual exercise of discretion by members of criminal injuries compensation boards. This would require some combination of interview and/or participant observation research designed to get at the actual factors which influence the decision making process. Ideally, such research should compare boards established on the basis of different rationales. In addition, it would be interesting to know whether the intervention of lawyers as victim advocates makes any difference in the probability of receiving an award or in the size of award granted

(by different types of boards), as well as the proportion of compensation which is paid out in lawyers' fees. This type of data would probably require a modification in the way compensation boards presently keep records.

Most of this section has focused on the problem of the types of evaluation research which might advance the cause of policy-making in the area of criminal injuries compensation. Before concluding, however, I would argue that there are two areas in which we are currently well served. On the one hand, it has been shown (section II.A) that there are few significant differences in the consequences of the legal design of the various compensation schemes in Canada. Burns (1980) already has written a thorough and comprehensive analysis of this issue, and little is to be gained by investing further research time and money in this area. On the other hand, there would seem to be little to gain by pursuing the question of whether the schedule of compensable crimes should be enlarged. As indicated earlier, the vast majority of awards are made for very few crimes (section II.B.1.d), and there is no real indication that any major category of crimes of violence is being ignored. Moreover, while there is no theoretical basis for excluding crimes of property from compensation, there is also little reason for assuming that the practical objections to this strategy can be overcome at this time. We must prove the existence of significant and unmet needs of victims in this area if we wish either the public or the criminal justice system to seriously consider this option.

C. CONCLUSION

This chapter has attempted to clarify the priorities for evaluation research in the areas of victim compensation. The point has been that there are some fairly considerable gaps in our policy and our knowledge in the area of criminal injuries compensation. Fortunately, most of these gaps can be filled relatively easily. To begin, a great deal of the information we need could be generated by merely improving current record keeping procedures. This could be done by requiring jurisdictions to furnish annual reports which include a minimum of certain types of information.[76] An alternative would be to request Statistics Canada to slightly expand their current report on criminal injuries compensation (1980), and to begin issuing this report on a periodic basis. For the rest, the information needed should be obtainable through a fairly small number of short to medium sized research projects (many of which could be done in-house).

In sum, it would seem that while there is a considerable amount we still need to know, there is relatively little that should stand in the way of our obtaining that information. An integrated policy on victims and on criminal injuries compensation is well within our reach.

CONCLUSION

This report has attempted to assess theoretically the rationales and the workings of criminal injuries compensation schemes in Canada, and to suggest how we might obtain the information we need to help us evaluate and improve these programs.

The unifying theme of the report is the focus on the debate between the humanitarian (charity) and the insurance (collective responsibility) rationales for victim compensation (and for that matter, for the full range of initiatives in the area of assistance to the victims and witnesses of crime). These competing rationales have significant consequences for the design and delivery of compensation schemes. The data from the experience of Canadian programs suggest that the insurance based schemes (Quebec, Manitoba and British Columbia) do a better job of responding to the financial needs of victims of criminal injury. Much remains to be learned, but the available evidence points federal government policy in the direction of the insurance rationale.

Finally, an attempt was made to argue for the critical importance of integrating criminal injuries compensation within a comprehensive research-based policy on the needs of victims of crime, and on the best way of satisfying these needs. Victim compensation is neither the full, or even necessarily the best answer to these needs. At present, all we can really say is that it does a small number of people a little bit of good -- but probably too few people are being helped and not enough assistance is being given to really make a dent in the suffering caused by crime in Canada. Victim compensation is an idea that promises more than it has so far been able to deliver.

APPENDIX

TABLE 1: BRITISH COLUMBIA, 1979 - 1980

	1979[1]	1980[2]	TOTAL[2]
APPLICATIONS:	931	978	4,381
Carried forward	254	184	
New	677	794	
DISPOSITIONS:			
Awards granted	512	418	
Awards denied	154	206	
Withdraw/Abandon	81	150	
Carried forward	184	204	
AWARDS:			
Lump sum	491 ($1,357,684)	407 $1,169,659)	
Periodic	21 ($309,624)	11 $372,463)	
COST OF PROGRAM:	$1,984,401	$1,873,626	$8,680,673
Awards	$1,667,308	$1,542,122	
(Federal share of awards)	$253,020 (15.2%)	$256,690 (16.6%)	
Administration (% of total)	$317,093 (16%)	$331,504 (18%)	

1. British Columbia, 1980.

2. British Columbia, 1981.

TABLE 2: ALBERTA, 1979 - 1981

	APRIL 1, 1979 - MARCH 31, 1980[1]	APRIL 1, 1980 - MARCH 31, 1981[2]
APPLICATIONS:	217	204
DISPOSITIONS:	331	297
Awards granted	295	276
Awards denied	36	21
AWARDS:		
Final awards	189($274,299.58)	169($197,423.13)
Interim	25($194,666.07)	31($187,798.62)
Monthly interim	47($52,601.75)	42($72,981.89)
Supplemental	34($19,996.24)	34($22,604.91)
COST OF PROGRAM:	624,661.73	553,231.65
Awards	$541,563.64	$474,808.55
Fees/disbursements to Board members (% of total)	$83,098.09 (15.3%)	$78,423.10 (16.5%)

1. Alberta, 1980.

2. Alberta, 1981.

TABLE 3: MANITOBA, 1978 - 1981

	FOR FISCAL YEAR ENDING MARCH 31,			
	1979[1]	1980[2]	1981[3]	TOTAL
APPLICATIONS:	201	223	261	1,416
Carried forward	58	62	79	
New	143	161	182	
DISPOSITIONS:				
Awards granted	89	79	119	793
Awards denied	36	37	50	
Withdraw/Abandon	19	27	71	
Carried forward	57	80	21	
COST OF PROGRAM (NET):	$425,216	$522,576	$499,236	$3,134,372
Awards	382,295	421,386	448,509	
(+)Administration	43,443	105,974	52,799	
(-)Revenue (from interest + restitution)	522	4,784	2,072	

1. Manitoba, 1979.
2. Manitoba, 1980.
3. Manitoba, 1981.

TABLE 4: ONTARIO, 1978 - 1981

	FOR FISCAL YEAR ENDING MARCH 31,		
	1979[1]	1980[2]	TOTAL[2]
APPLICATIONS:	1,219	1,190	1,274
DISPOSITIONS:			
Awards granted	713	843	918
Awards denied	47	75	125
AWARDS:			
Lump sum	675 ($1,397,994.00)	757 ($1,736,551.32)	845 ($1,957,309.86)
Interim/Periodic/ Supplementary	38 ($350,490.75)	86 ($434,137.59)	73 ($447,034.06)
COST OF PROGRAM:	2,149,484.75	2,636,688.91	2,985,343.92
Awards	1,748,484.75	2,170,688.91	2,434,343.92
(Federal share of awards)	844,380.0[2]	849,980.00[3]	---
Administration (% of total)	401,000.00 (18.7%)	466,000.00 (17.7%)	551,000.00 (22.6%)

1. Ontario, 1979
2. Ontario, 1980
3. Ontario, 1981

TABLE 5: QUEBEC, 1978 - 1980

	1978	1979	1980	TOTAL
APPLICATIONS:[1]	784	786	1,143	
DISPOSITIONS:[1]	296	837	1,405	
Accepted			1,037	
Denied			313	
Withdraw/Abandon			55	
COST OF PROGRAM[2]:	$2,8444,977	$4,239,138	$7,064,325	$24,138,911
Awards	2,600,131	3,914,454	6,365,462	22,014,239
Administration (% of total)	245,846 (8.6%)	324,684 (7.7%)	698,863 (9.9%)	2,124,672 (8.8%)

1. Quebec, 1980: 3 and 7.

2. Quebec, 1980: 39 (rounded to nearest dollar).

FOOTNOTES

1. This list summarizes the views of the Canadian Council on Social Development (1981), Meiners (1978: 1-6), Norquay and Weiler (1981), Young (1981) and Weiler (1981) on the range of injuries and needs of victims and witnesses. Obviously criminal injuries compensation is limited to financial injuries and needs.

2. See Statistics Canada (1980: 24) for a fuller discussion. In general, all medical, hospital and rehabilitation expenses are paid directly by provincial medical and hospital insurance schemes (the exception is Quebec, where the Commission des accidents du travail reimburses the provincial health authorities). Victims are usually referred to other government agencies for rehabilitational help, though Quebec, Manitoba and British Columbia make workers' compensation facilities available to victims on the same basis as for those injured at work.

3. See Norquay and Weiler (1981: 34-41 and 47-54) for a discussion of Canadian programs aimed at helping victims cope with the crisis of victimization.

4. See Norquay and Weiler (1981: 64-67) for a discussion of the Edmonton Witness Central Unit and its attempt to deal with this problem.

5. See Burns (1981: 1-18) and Meiners (1978: 7-9) for a further discussion of the tendency of the criminal justice system to ignore the victim of crime.

6. Extended discussions of the intended benefits of restitution are available in Burns (1980: 3-8) and the Law Reform Commission of Canada (1974: 5-15).

7. See Burns (1980: 9-30), the European Committee on Crime Problems (1978: 13-16), the Law Reform Commission of Canada (1974: 8-15) and Meiners (1978: 3-5) for a further discussion of these items.

8. The Law Reform Commission of Canada argues (1974: 13) that, since a majority of offenders who are fined received relatively low fines, and are generally able to pay these fines, it is reasonable to assume that these offenders could and would pay restitution. This, however, begs the question of whether a small fine is the equivalent of "full and adequate" financial restitution.

9. See Burns (1980: 141-143) for a discussion of the public perception of the probability of victimization.

10. In his survey of victim compensation programs, Meiners (1978: 9-44) points out that a large number of these were developed and established at least in part as palliatives for the increase in crime and the relative inefficiency of civil action or restitution, or to blunt opposition to liberal reforms in the

areas of capital punishment and the treatment of offenders. The programs in Ontario and New York were direct responses to brutal murders (Burns, 1981: 124), and the resulting public outcry.

11. Meiners (1978: 45-64) argues that victim compensation has at least the potential to benefit lawyers (creates employment), police officers and firefighters (increases their benefits), and the US Department of Justice (expands its responsibility and resources).

12. I have not explicitly retained the notion of "legal duty" as a rationale for criminal injuries compensation. I agree with Burns (1980: 99-116) and others (for e.g., the European Committee on Crime Problems, 1978: 17-19); the Law Reform Commission of Canada, 1974; and Meiners, 1978: 3-5) that the state cannot meaningfully be said to have a legal duty to provide such compensation. One must be careful not to confuse a duty with the legal right to compensation which is granted to certain categories of victims by the fact that a compensation scheme is established. Such a right is a consequence of the scheme rather that a rationale for it. Burns concludes that (1980: 116):

> "It seems that in Canada, at least, no province will in the foreseeable future admit that its compensation scheme was created to fulfill a legal duty on the part of the province."

Most of the arguments used to justify the legal duty notion actually reflect a commitment to either the humanitarian or the insurance models of state intervention.

13. New Zealand's Accident Compensation Act, for example, makes no distinction between victims of crime and other types of victims.

14. The Law Reform Commission of Canada argues that compensation should remain within the criminal justice system, as this is essential to "further the purposes of the criminal law" (1974: 20). This is fully consistent with their humanitarian concern to guarantee the well-being of the social system, though it fails to adequately consider the social costs of this approach.

15. A total of $6,560,156 of compensation to victims of crime was paid in Canada in 1977-1978. This represents an outlay of $.29 per capita (see Statistics Canada, 1980: 34-38 for further information).

16. Brookbank (1981: 3-55) provides an excellent discussion of the history of federal government participation in the area of criminal injuries compensation. Readers wishing to pursue this question should consult this work. Statistics Canada (1980: 13-14) provides a description of the basic terms of federal-provincial cost-sharing agreements.

17. References to Canadian criminal injuries compensation schemes are to the following enacted legislation:

Alberta	SA 1970 c75
British Columbia	SBC 1972 c17
Manitoba	SM 1970 c56
New Brunswick	SNB 1971 c10
Newfoundland	SNfld 1968 No 26
Northwest Territories	Revised ordinances of 1976 c C-23
Ontario	SO 1971 c51
Quebec	SQ 1971 c18
Saskatchewan	SS 1967 c84
Yukon Territory	Consolidated ordinances of 1976 c C-10.1

See also Statistics Canada (1980: 9-12) for a discussion and listing of criminal injuries compensation schemes, in terms of their effective date of proclamation, the effective date of the federal-provincial cost-sharing agreement, and the method of administration (adjudication and payment) of claims in each province.

18. In New Brunswick one applies to the Clerk of the Court of Queen's Bench, in the Yukon to the Clerk of the Supreme Court of the Yukon, and in the Northwest Territories to the Clerk of the Supreme Court of the Northwest Territories. In all the other jurisdictions, one applies to the appropriate administrative agencies.

19. There is little practical difference in using the act or the injury as the reference point. For a brief discussion of the issue see Burns (1980: 37).

20. Statistics Canada (1980: 17).

21. Ontario Act, s.5(a). In practice the Ontario Board follows the schedule of offences in other provinces; see Burns (1980: 35).

22. For a list of schedule offences, see Statistics Canada (1980: 15). See also Burns (1980: 31-32) for a breakdown by province or territory.

23. For an excellent discussion of the issue see Burns (1980: 31-44).

24. See the table comparing the wording of the different Acts in Burns (1980: 44-66).

26. Newfoundland Act, s.13(1)(e); New Brunswick Act, s.4(2)(a) and (3)(b); Ontario Act, s.5(e); Manitoba Act, s.6(1)(d); Saskatchewan Act, s.8(1)(e); Alberta Act, s.1(d)(ii); Yukon Ordinance, s.3(1)(e); and Northwest Territories Ordinance, s.3(1)(e). In the Quebec Act, s.7 provides for an indemnity to the parents of a child killed as a result of a crime.

27. A fuller discussion of the various legal definitions can be found in Burns.

28. Statistics Canada (1980: 17). There seems to be no real purpose for the restrictions and exclusions which apply in some of the jurisdictions.

29. Supra note 27.

30. Statistics Canada (1980: 13).

31. See the discussion in Burns (1980: 264-269) and his Table of Activities Which Make the Actor a Good Samaritan on p.265.

32. For a full discussion of the issue see Burns (1980: 270-272). The particular maximum limits for Good Samaritan claimants are also given in Burns (1980: 305).

33. Burns (1980: 274).

34. Newfoundland Act, s.4(1); New Brunswick Act, s.16(1); Ontario Act, s.17(1); Manitoba Act, s.11(1); Saskatchewan Act, s.9(a); British Columbia Act, s.4(1); Yukon Territory Ordinance, s.5(2); Alberta Act, s.12(1); and Northwest Territories Ordinance, s.20(1).. For a discussion of the circumstances which the authorities have considered as relevant, see Burns (1980: 352-369). It should also be noted that if the victim is judged unworthy, then his or her dependents will be denied compensation; see Burns (1980: 369-370).

35. Ibid., with the eception of Yukon Territory Ordinance, s.6(1).

36. Burns (1980: 345-6).

37. Newfoundland Act, s.15(1)(b); New Brunswick Act, s.15(1)(b); Ontario Act, s.17(1)(a); Manitoba Act, s.6(2)(b); and Saskatchewan Act, s.10(b).

38. Burns (1980: 346).

39. Ontario Act, s.17(1)(a) and Manitoba Act, s.6(2)(b). See also Burns (1980: 348) and Statistics Canada (1980: 19).

40. Statistics Canada (1980: 19).

41. For a short discussion on these provisions see Burns (1980: 348).

42. New Brunswick Act, s.15(1)(c).

43. Newfoundland Act, s.16(e); Ontario Act, s.7(1)(d); and Yukon Territory Ordinance, s.4(1)(e).

44. Burns (1980: 169).

45. See Burns (1980: 169-172).

46. New Brunswick Act, s.17(1)(d) and Saskatchewan Act, s.11(e).

47. Manitoba Act, s.12(1) and Alberta Act, s.13(1).

48. Northwest Territories Ordinance, s.5(1)(f).

49. See Burns (1980: 177-179).

50. Burns (1980: 180-182).

51. Ibid.

52. Burns (1980: 221).

53. Burns (1980: 256-7, 263-4).

54. Burns (1980: 222). New Brunswick does not have the residual provision (e) in its legislation.

55. Burns (1980:226).

56. The Manitoba Act contains a schedule of payments which are not related to the victim's actual salary.

57. See supra section II.A.2(C).

58. Burns (1980: 244-5).

59. Newfoundland Act, s.16(d); Quebec Act, s.5; Ontario Act, s.7(1)(e); Manitoba Act, s.12(1)(d); Alberta Act, s.13(1)(d); Yukon Territory Ordinance, s.4(1)(d); and Northwest Territories Ordinance, s.5(1)(d).

60. Burns (1980: 246-7).

61. See Burns (1980: 251-4).

62. Burns (1980: 252-30. See also the section on "Good Samaritans", supra.

63. See Statistics Canada (1980: 21) where "Text Table V: Maximum Amounts Payable as Criminal Injuries Compensation, by Province, 1979" provides a complete description of this question. British Columbia has recently raised its maximum award to $25,000 and now indexes pensions to the cost of living (British Columbia 1980: 3).

64. The most systematic and easily accessible information on criminal injuries compensation schemes in Canada is to be found in the Statistics Canada report on Criminal Injuries Compensation (1980). Unfortunately, the data in this report only cover the period ending March 31, 1978 (the 1977-1978 fiscal year). Nevertheless, I have relied heavily on this report, and have tried to supplement this data by referring to the annual reports published by several provinces since that time. For the sake of simplicity, this data is summarized in tabular form (see Appendix, Tables 1-5).

65. More recent data from Manitoba (1981: 3) and from Quebec (1981: 8) are consistent with the Statistics Canada conclusion. An evaluation of the Quebec scheme (Baril, et.al., 1982: 24-29) also supports this view).

66. Carrow (1980: 72-76) suggests that this may be due to the ability of labor lobbies to pressure workers' compensation boards for more generous levels of benefits.

67. "Table 4: Criminal Injuries Compensation Analyzed in Relation to Total Population, for Provinces, 1975-76 to 1977-78" gives the full details of this information (Statistics Canada, 1980: 44-45).

68. See Statistics Canada, (1980: 44-45) for details.

69. See Statistics Canada, (1980: 13) for details on the effective dates of all cost-sharing agreements.

70. See Statistics Canada, (1980: 46-47) for full details on federal contributions.

71. For example, see Waller and Okihiro (1978) re victims of burglary, and Clark and Lewis (1977) re victims of rape.

72. A good discussion of some of the issues surrounding the evaluation of criminal injuries compensation schemes can be found in Brookbank (1981: 56-111). Brookbank was able to include reference to Justice Department files which I do no discuss in this report.

73. The Department of Justice is currently engaged in research which may help provide an answer to this question.

74. In 1977-78, expenditures on compensation accounted for .2% of the total expenditures of the criminal justice system (Solicitor General, 1979: 20).

75. One possible suggestion in this regard is to establish a fixed fee for lawyers who appear before compensation boards. A better alternative, however, would be to design the process so that the average citizen could participate and benefit fully, without requiring legal assistance. This would assure that a larger proportion of compensation funds actually goes to the victims of crime.

76. I fully agree with Brookbank's (1981; 95) suggestion that all provinces be required to file annual reports.

REFERENCES

Alberta: Crimes Compensation Board
1980 The Crimes Compensation Board Summary.
Edmonton: The Crimes Compensation Board.
1981 The Crimes Compensation Board Summary.
Edmonton: The Crimes Compensation Board.

Baril, Micheline, Suzanne Laflamme Cusson, Sylvie Beauchemin et Hélène Simon.
1982 La clientèle du service d'indemnisation des victimes d'actes criminels: rapport intérimaire.

Becker, Calvin
1976 The Victim and the Criminal Process.
Ottawa: Law Reform Commission of Canada (Background Paper).

Bertrand, Jean-Marc
1981 "Summary on the Compensation of Crime Victims in Quebec (Canada)." Paper presented to the 7th Annual Conference of the National Organization for Victim Assistance/First Conference of Canadians Interested in Victim Assistance.
Toronto: October 15.

British Columbia: Workers' Compensation Board
1980 The 8th Annual Report of the Criminal Injuries Compensation Act.
Victoria: Attorney General.
1981 The 9th Annual Report of the Criminal Injuries Compensation Act.
Victoria: Attorney General.

Brookbank
1981 Canadian Criminal Injuries Compensation: An Analysis of the Federal Role.
Ottawa: Justice - draft for internal discussion.

Burns, Peter
1980 Criminal Injuries Compensation.
Vancouver: Butterworth.

Canadian Council on Social Development
1981 Rights and Services for Crime Victims. Ottawa: CCSD.

Carrow, Deborah M.
1980 Crime Victime Compensation: Program Model.
Washington: National Institute of Justice.

Clark, Lorenne, and Debra Lewis
1977 Rape: The Price of Coercive Sexuality.
Toronto: The Women's Press.

European Committee on Crime Problems
1978 Compensation of Victims of Crime.
Strasbourg: Council of Europe.

Farrell, D.M.
1975 "Memo re Compensation for Victims of Crime"
Ottawa: Justice (September 15).

Law Reform Commission of Canada
1974 Working Paper No.3: The Principles of Sentencing and Dispositions.
Ottawa: Information Canada.
1974 Working Paper No.5: Restitution and Compensation.
Ottawa: Information Canada.
1975 Working Paper No.11: Imprisonment and Release.
Ottawa: Information Canada.

Manitoba: The Criminal Injuries Compensation Board
1979 Report of the Criminal Injuries Compensation Board.
Winnipeg: The Workers' Compensation Board.
1980 Report of the Criminal Injuries Compensation Board.
Winnipeg: The Workers' Compensation Board.
1981 Report of the Criminal Injuries Compensation Board.
Winnipeg: The Workers' Compensation Board.

Marchand, Philip
1982 "Crime Victims: A Forgotten Minority Speaks Up."
Chatelaine (February): 59 and 78-92.

Meiners, Roger E.
1978 Victim Compensation: Economic, Legal and Political Aspects.
Toronto: D.C. Heath.

Norquay, Geoff, and Richard Weiler
1981 Services to Victims and Witnesses of Crime in Canada.
Ottawa: Solicitor General (Cat. No. JS22-60/1981E).

Ontario: Criminal Injuries Compensation Board
1979 The Tenth Report of the Ontario Criminal Injuries Compensation Board.
Toronto: Criminal Injuries Compensation Board.
1980 The Eleventh Report of the Ontario Criminal Injuries Compensation Board.
Toronto: Criminal Injuries Compensation Board.
1981 The Twelvth Report of the Ontario Criminal Injuries Compensation Board.
Toronto: Criminal Injuries Compensation Board.

Ottawa Citizen
1981 "Editorial: More Help for Crime Victims."
(November 23, p.8.

Québec: Service de l'indemnisation des victimes d'actes criminels
1981 Quatrième rapport, 1980: Indemnisation des victimes d'actes criminels.
Québec: Commission de la santé et de la sécurité du travail du Québec.

Solicitor General
1979 Selected Trends in Canadian Criminal Justice.
Ottawa: Research Division, Solicitor General.

Statistics Canada
1980 Criminal Injuries Compensation.
Ottawa: Minister of Supply and Services (Cat. No. 86-502).

Waller, Irvin
1981 "La criminalité au Canada et au Etâts Unis: Tendances et explications comparatives, 1964-1978."
Criminologie IXV(1).

Waller, Irvin, and N. Okihiro
1978 Burglary: The Victim and the Public.
Toronto: University of Toronto Press.

Weiler, Richard, and Associates
1981 National Workshop on Services to Crime Victims: Report of the Proceedings.
Ottawa: Solicitor General (Cat. No. JS22-59/1981E).

Young, Marlene
1981 "Overview of Current Issues in the Victim's Movement."
National Organization for Victim Assistance Newsletter 4(7): 1-15.

END