

Québec, March 25, 2013

Mr. Luc Ferland  
Chair of the Committee on Institutions  
Hôtel du Parlement  
1045 Rue des Parlementaires  
1<sup>st</sup> floor, Bureau 1.65  
Québec, Québec G1A 1A4

**Subject: Bill 22 – An Act to amend the Crime Victims Compensation Act**

Mr. Chairman,

The Québec Ombudsman studies all bills presented in the National Assembly. When considered necessary, the Québec Ombudsman intervenes under section 27.3 of its constituting Act, which confers the power to call to the attention of the chief executive officer of a public body or to the attention of the Government the necessity of such legislative, regulatory and administrative reforms deemed to be of public interest.

I have therefore studied Bill 22, An Act to amend the Crime Victims Compensation Act, tabled in the National Assembly on February 21, 2013 by the Minister of Justice. This bill appears to meet some of the needs expressed by the victims' close relations, especially after a death.

The Ombudsman subscribes to the Government's intention to improve the assistance granted to crime victims and their close relations, in the expectation of a complete review of the plan, as recommended by the Ombudsman since 2002<sup>1</sup>. I therefore consider that the increase in the lump sum indemnity paid to parents for the death of a dependent person and the amount payable for funeral expenses is appreciable and noteworthy, as is the introduction of a new measure granting payment of crime scene cleaning costs.

By the following comments, I would like to point out certain concerns and recommendations for you to address.

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<sup>1</sup> The Ombudsman's comments on the Crime Victims Compensation Act - Le contrecoup du crime à assumer par l'État (May 9, 2002), [Online]. [<http://www.protecteurducitoyen.qc.ca/dossiers-et-documentation/reactions-aux-projets-de-loi-et-de-reglement/reactions-aux-projets-de-loi-et-de-reglement-de-2002/9-mai-2002/index.html>]. The Ombudsman also presented recommendations to the working group mandated to review the Crime Victims Compensation Plan in February 2007.

## 1 Payment of crime scene cleaning costs<sup>2</sup>

The crime scene cleaning costs are not currently assumed by the Crime Victims Compensation Plan. The bill provides for their payment up to a maximum of \$3,200, when the victim dies in a private residence. This measure will allow the victims' close relations to avoid assuming these costs or having to clean the crime scene themselves, thus relieving them of a burden in addition to the heavy emotional cost of their human tragedy.

I note that only crimes that caused the victim's death are covered by this measure. However, the perpetration of other violent crimes, such as attempted murder, may also require surviving victims or their close relations to clean the crime scene or incur substantial expenses for this purpose. I also question the reasons for limiting the indemnity to situations where the crime was committed in a private residence. In my opinion, it would be unfair for the owner of a small business, such as a convenience store or a neighbourhood restaurant, to be unable to obtain compensation, when crime scene cleaning costs are not covered by the owner's insurance.

Thus, the conditions of eligibility for the indemnity for crime scene cleaning costs should be reconsidered so that they are the same for all victims and their close relations.

### Therefore, the Ombudsman recommends:

- R-1** That Section 3 of the bill be amended so that it does not restrict payment of crime scene cleaning costs solely to the case of death;
- R-2** That Section 3 of the bill be amended so that it does not limit payment of crime scene cleaning costs to a crime committed in a private residence.

## 2 Indemnity for resiliation of a residential lease<sup>3</sup>

The addition of this measure to the Act would allow victims of conjugal violence or "sexual aggression" to obtain payment of the amount they must pay the lessor for the resiliation of their residential lease. Thus, a victim who fulfills the conditions set out in Article 1974.1 of the Civil Code of Québec could obtain a payment of up to two months' rent, without exceeding a maximum amount of \$1,000 per month.

I should point out that payment of the costs for resiliation of a residential lease is not a new indemnity. Indeed, a formal policy, recorded in the Manuel des politiques de l'IVAC (Crime Victims Compensation Policy Manual) administered by the Direction de l'indemnisation des victimes d'actes criminels – and specifically designed to meet the real need recognized for victims to feel safe – already allows the payment of these costs.

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<sup>2</sup> Section 6.1 of the Crime Victims Compensation Act (CVAC, chapter I-6), introduced by Section 3 of the bill.

<sup>3</sup> Section 6.2 CVAC, introduced by Section 3 of the bill.

Despite certain eligibility conditions, we have recognized that this policy is applied without excessive administrative rigidity.

Although I welcome the integration of such an indemnity into the Act, this internal policy is more advantageous than the bill's provisions, because it allows the following when a connection is made to the perpetration of a crime:

- ▶ payment of up to three months' rent (two months provided in the bill);
- ▶ payment of the rent without any maximum limit (limited to \$1,000 per month in the bill);
- ▶ coverage of all victims eligible for the plan (the bill only covers victims of conjugal violence or sexual aggression);
- ▶ compensation of property-owning victims for certain costs incurred, if they must sell their residence (the bill does not provide for any indemnity for property owners).

I also must remind you that the bill refers to the conditions set out in Article 1974.1 of the Civil Code of Québec. This provision compels the victim to produce, at the time of the application, an attestation from a public servant or public officer designated by the Minister of Justice, recognizing a situation of violence or sexual aggression and showing that the resiliation of the lease would ensure the victim's safety.

Thus, in the event that this measure is adopted without amendment, its application and the application process would be more restrictive for the victims than the current policy of the Direction de l'indemnisation des victimes d'actes criminels.

I also understand that the maximum amount payable for the resiliation of a lease or the sale of a residence can be limited:

**Therefore, the Ombudsman recommends:**

- R-3** That Article 3 of the bill be amended to retain the simplicity of the current application process, the conditions of eligibility and the benefits provided in the administrative policy;
- R-4** That Article 3 of the bill be amended so that the indemnity for resiliation of a lease can be granted to all victims eligible for the compensation plan, and not only to victims of conjugal violence or sexual aggression.

### 3 The lump sum indemnity paid to the parents of a deceased dependent person<sup>4</sup>

The \$2,000 lump sum indemnity paid to the parents of a minor child who dies as a result of a crime would be increased to \$12,000. The bill thus provides that the father and the mother may obtain an indemnity of \$6,000 each, but that only one of these parents may be entitled to the total indemnity of \$12,000 in certain situations. In addition, the notion of "minor child" would be replaced by "dependent person", which would no longer limit the indemnity to children under 18 years of age.

This increase in the lump sum indemnity is appreciable. However, I question the conditions under which it is awarded in some specific circumstances.

- a) When one of the parents failed to submit the application within the time prescribed in the Act:

One parent might have the sole right to the entire lump sum indemnity of \$12,000. For this purpose, the parent will first have to apply for his/her \$6,000 share and then wait for the expiry of the time prescribed to apply for the other parent's share. However, according to the Crime Victims Compensation Act, this parent who failed to submit the application within the time prescribed could prove, even after this time expires, that he/she had not waived his/her rights and the benefits of the plan. This parent thus would be entitled to apply for his/her \$6,000 share, which already would have been paid to the first parent.

In such a situation, will the Plan refuse to pay this parent the indemnity on the pretext that the maximum indemnity of \$12,000 was already paid to the first parent? Will this \$6,000 be claimed from the parent who received the entire \$12,000 and, if so, who will have to proceed with this application and on what terms of repayment? Is the Government considering paying an additional amount of \$6,000, thus bringing the total indemnity to \$18,000?

Furthermore, considering that an application for benefits is confidential, can a parent be informed that the other parent filed or did not file his/her application by the expiry of the prescribed time? Will this parent be obliged to file a new application and take new steps?

**Therefore, the Ombudsman recommends:**

**R-5** That Section 4, para. 2 (2) of the bill be amended to clarify the situation of a parent who has already received the entire indemnity, when the other parent is permitted to file an application after the time prescribed.

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<sup>4</sup> Section 7 CVCA, replaced by Article 4 of the bill.

- b) When a parent is deprived of parental authority:

Although the bill provides that a parent may benefit from the entire \$12,000 indemnity if the other parent is deprived of parental authority, it is silent regarding abandonment situations. In comparison, the Automobile Insurance Act expressly provides that not only deprivation of parental authority, but also abandonment, deprives the parent of payment of the indemnity. I believe this is an important nuance, because proof of abandonment is simpler and less formalistic, contrary to deprivation of parental authority, which must be ordered by the courts.

**Therefore, the Ombudsman recommends:**

**R-6 That** Section 4, para. 2 (3) of the bill be amended so that the notion of abandonment, like deprivation of parental authority, may allow a parent to receive the entire lump sum indemnity.

- c) When both parents have abandoned the child, are deprived of parental authority or have predeceased the child:

No alternative is provided to mitigate these situations. Thus, a person acting in place of the father or mother would not be entitled to any indemnity. Moreover, I consider it debatable that parents who have abandoned their child are permitted to receive the indemnity to the detriment of a person who, in fact, is acting in place of the father or mother.

**Therefore, the Ombudsman recommends:**

**R-7 That** Article 4 of the bill be amended to provide that a person acting in place of the father or mother of a deceased dependent person be entitled to payment of the lump sum indemnity when both parents have abandoned the child, are deprived of parental authority or have predeceased the dependent person.

#### **4 The time prescribed to make an application for benefits<sup>5</sup>**

The Crime Victims Compensation Act states that any application for benefits must be made within one year of the occurrence of the material damage or the injury suffered by the victim, or of his death. If the victim fails to file an application within the prescribed time, he is presumed to have renounced the right to avail himself of the benefits of the compensation plan. The bill would increase this prescription to two years.

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<sup>5</sup> Section 11 CVCA, amended by Section 5 of the bill.

Despite this increase, I consider that a prescription of two years is still too restrictive, if one accounts for the special situation and the major challenges experienced by some of the individuals who must make an application for benefits. More specifically, victims of conjugal violence and sexual aggression often need time before they reveal what happened to them, since they are not psychologically prepared to speak out, or are simply trying to forget their experiences.

**Therefore, the Ombudsman recommends:**

**R-8** That Article 5 of the bill be amended so that the time to make an application for benefits is three years from the occurrence of the harm and, in the case of a death benefit, from the date of death.

I consider that this new time limit would allow harmonization with other comparable time limits in matters of prescription, in particular, the three-year period prescribed in the Civil Code of Québec to exercise a personal right (Art. 2925) and in the Automobile Insurance Act (s. 11). The report of the Groupe de travail sur la révision du régime d'indemnisation des victimes d'actes criminels<sup>6</sup> (Working group on the review of the Crime Victims Compensation Plan) recommended this kind of amendment.

In conclusion, I salute this bill, which improves the Crime Victims Compensation Plan. However, I consider that certain amendments should be made to respond more fairly to the victims' needs.

Best regards,

The Québec Ombudsperson

[original signed by]

Raymonde Saint-Germain

- c.c. Mr. Bertrand St-Arnaud, Minister Justice  
Mr. Stéphane Bédard, Government House Leader  
Mr. Robert Dutil, Official Opposition House Leader  
Mr. Gérard Deltell, House Leader of the Second Opposition Group  
Ms. Nathalie G. Drouin, Deputy Minister of Justice  
Mr. Michel Després, President and Chief Executive Officer of the Commission de la santé et de la sécurité du travail  
Ms. Anik Laplante, Secretary of the Committee on Institutions

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<sup>6</sup> *L'indemnisation des personnes victimes d'actes criminels - une question de solidarité et d'équité* (June 2008), chaired by M<sup>e</sup> Madeleine Lemieux, [Online].  
[[http://www.justice.gouv.qc.ca/Francais/publications/rapports/rapp\\_Lemieux.htm](http://www.justice.gouv.qc.ca/Francais/publications/rapports/rapp_Lemieux.htm)].