

## Crime Victim Assistance Program



# Policy Manual



BC Ministry of Public Safety and Solicitor General  
Victim Services and Crime Prevention Branch

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This policy manual provides guidance to victim services personnel who have responsibility for administration of the Crime Victim Assistance Program.

The manual will also be of interest to victim service workers, police, and others who want to be better informed about the Crime Victim Assistance Program in order to assist the victims they serve.

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The Crime Victim Assistance Program gratefully acknowledges the primary sources used in developing this manual:

- BC's *Criminal Injury Compensation Program Policy Manual* and *Workers Compensation Board Rehabilitation Services and Claims Manual* were used in developing the content of the manual.
- The *Victims Compensation Program Policy and Procedures Manual* developed by Saskatchewan Justice Victim Services Program was used as a model for the structure of the manual.

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**Notice:**

This edition of the Crime Victim Assistance Program Policy Manual was completed on June 30, 2010. Revisions to the policy after this date will be recorded on the Record of Revisions page that follows.

The policy manual and any substantive revisions to it are approved by the Deputy Solicitor General, BC Ministry of Public Safety and Solicitor General.

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**RECORD OF REVISIONS**

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Counselling benefits are for victims, immediate family members, and witnesses.

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Income support benefits are for victims and immediate family members (spouses, children, and other immediate family members of deceased victims who meet the income support criteria).

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Crime scene cleaning benefits are for victims, immediate family members, and witnesses.

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## **SECTION A. ABOUT THE MANUAL**

**A-1. Introduction to the Manual**

**A-2. Organization of the Manual**

**A-3. How to Use the Manual**

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## SECTION A-1. INTRODUCTION TO THE MANUAL

Purpose of the Manual	1
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### Purpose of the Manual

The purpose of the manual is to provide a uniform framework to guide Crime Victim Assistance Program personnel in administering crime victim assistance claims. The manual sets out government policy for the Program, which includes interpretation of the Crime Victim Assistance Act and regulations.

The manual will also be of interest to victim service workers, police, and others who want to be better informed about the Crime Victim Assistance Program in order to assist the victims they serve.

### Purpose of Developing the Policy

This policy was developed to guide the decisions and actions of personnel with responsibility for administering the Crime Victim Assistance Program. The policy has several aims:

- to clarify the intent or meaning of provisions of the Crime Victim Assistance Act and regulations and provide guidance on their implementation;
- to integrate, and ensure consistency with, other legislation and government policy that has a bearing on the Crime Victim Assistance Program;
- to establish a consistent Crime Victim Assistance Program position on an issue in the absence of applicable legislation or policy.

This policy will be added to and revised as the Crime Victim Assistance Program evolves and the need for policy direction on specific issues becomes apparent.

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## SECTION A-2. ORGANIZATION OF THE MANUAL

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### Sections of the Manual

The type of information contained in sections B through E of the manual is summarized below, followed by information on links and page numbering.

Each section is divided into a number of separate documents. Refer to the contents document, **Contents of the Manual**, for the location of, and links to, each section of the manual.

#### Section B: Overview of the Crime Victim Assistance Program

The overview provides basic information on the Crime Victim Assistance Program, including information on:

- Victim Services and Crime Prevention Branch, which administers the Program;
- the establishment of the Crime Victim Assistance Program;
- its purpose, premises, and guiding principles;
- its legislative foundation, program policy, and the effect of policy;
- key eligibility criteria for claimants.

#### Section C: Key Administrative Processes

This section outlines the key processes involved in administering the Crime Victim Assistance Program, and provides the policy that guides these processes. Key processes include:

- response to inquiries (from prospective applicants or victim-serving organizations);
- registration of applications (initial review of applications and entry of information into the database);
- pre-adjudication process (collection of information needed for adjudication);

- interim benefits (provision of benefits before adjudication);
- adjudication (determination of basic eligibility; reduction or refusal of benefits; eligibility for specific benefits; and the adjudication decision);
- payment (receipt of invoices and issuance of cheques);
- reassessment (review of a claimant's eligibility, usually based on new information);
- reconsideration (review of a decision based on an alleged error);
- recovery of funds (from legal action or other avenues).

## **Section D: Specific Types of Benefits**

This section sets out policy and related information for each type of benefit, including:

- the purpose of providing the benefit;
- eligibility criteria;
- eligible/ineligible services or expenses;
- amount of the benefit (e.g., maximums allowable in terms of money, sessions, timeframe, etc.);
- in some cases, conditions to attach to the benefit.

## **Section E: Major Appendices**

In addition to appendices within some of the above sections of the manual, there are four major appendices:

1. **Glossary** (for definitions of terms);
2. **Crime Victim Assistance Act**;
3. **Crime Victim Assistance (General) Regulation**;
4. **Crime Victim Assistance (Income Support and Vocational Services or Expenses Benefits) Regulation**.

## **Links**

There are links between subsections of the manual and to web pages.

Each section of the manual has a contents page with links to the documents for its subsections. Each subsection document has the contents listed at the beginning with links to the headings within the document.

In addition, there are links to the online versions of the Crime Victim Assistance Act and regulations (usually in the inside margin), and to other web pages where applicable.

## Page Numbering

This manual is intended to be a “living” document that will be revised and updated as necessary. Each section (e.g., section C) and subsection (e.g., section C-6) starts on page 1, allowing updates to be inserted easily as new policy is developed.

An appendix within a subsection of the manual is identified by the subsection number and the appendix letter (e.g., section C-6(A) or appendix A to section C-6).

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• Meaning of “Should” versus “Must”	2
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### Putting the Policy into Context

**Section A** and **section B** of the manual provide introductory and contextual information for the policy contained in sections C and D, including guiding principles (see *Guiding Principles* in **section B-2**).

The legislative foundation for the policy and the effect of the policy on decision making are addressed in **section B-3**, *Introduction to Law and Policy*.

### Locating Policy for an Action or a Decision

As noted earlier, **section C** of the manual provides policy on key administrative processes, such as adjudication and reassessment. Section C is the place to look for policy to guide decisions on whether a claimant is an eligible victim, immediate family member, or witness under the Crime Victim Assistance Act.

**Section D** provides policy on specific types of benefits, such as counselling and income support. Section D is the place to look for policy to guide decisions on the types of benefits that should be awarded to an eligible claimant.

Reviewing the contents pages at the beginning of sections C and D, and each of their subsections, is a good starting point when looking for policy to guide an action or a decision. However, it is important to be aware that the policy in different parts of the manual is inter-related. For example, one of the adjudication sections (section C-6) includes policy on considering evidence, which is relevant to various types of actions and decisions on crime victim assistance claims.

## Understanding the Terminology

### Key Terms

Key terms such as applicant, benefit, claimant, director, Good Samaritan, immediate family member, injury, offence, victim, and witness have specific meanings in relation to crime victim assistance benefits. These terms and many others used in Crime Victim Assistance Program policy are defined in the *Glossary* at **section E-1**.

### Meaning of “Should” versus “Must”

The majority of policy provisions indicate what decisions or actions “should” be taken, which reflects policy requirements.

Where a provision indicates what actions or decisions “must” be taken, it is based on a legal requirement, including:

- statutory or regulatory requirements (primarily those of the Crime Victim Assistance Act and regulations<sup>1</sup>);
- principles of procedural fairness.

**Section B-3**, *Introduction to Law and Policy*, provides more information on the Crime Victim Assistance Program’s foundation of law and policy.

### Distinguishing Policy from Practice

Under some policy provisions, there is text in smaller typeface, which is called a “practice tip.” Practice tips provide additional rationale for the policy, greater details, or practical suggestions to assist in implementation of the policy.

<sup>1</sup> In accordance with section 41(2) of the Interpretation Act, a regulation made under the authority of an act has the force of law.

## **SECTION B. OVERVIEW OF THE CRIME VICTIM ASSISTANCE PROGRAM**

### **B-1. Introduction to the Ministry and Branch**

### **B-2. Introduction to the Crime Victim Assistance Program**

### **B-3. Introduction to Law and Policy\***

\*Includes, under "Effect of Policy," important information on how the policy in this manual is to guide decision making

### **B-4. Introduction to the Eligibility Criteria**

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## SECTION B-1. INTRODUCTION TO THE MINISTRY AND BRANCH

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### About the Ministry of Public Safety and Solicitor General

The Ministry of Public Safety and Solicitor General works to maintain and enhance public safety in every community across the province: working in partnership to help British Columbians stay safe.

The Ministry's portfolio includes: crime prevention; restorative justice; law enforcement; adult custody and community corrections; victim services and addressing violence against women; coroners service; road safety; emergency prevention, preparedness, response, and recovery; fire prevention, life safety, and property protection; and consumer protection policy, including oversight of the administration of consumer protection legislation by the Business Practices and Consumer Protection Authority and the Motor Vehicle Sales Authority. The Ministry is also responsible for the Insurance Corporation of British Columbia (ICBC).

### About Victim Services and Crime Prevention Branch

#### Overview

The mandate and responsibilities of Victim Services and Crime Prevention Branch are derived both from legislation—the *Victims of Crime Act* and the *Crime Victim Assistance Act*—and from priorities of the Government of BC.

As the centre of responsibility for victims' issues, violence against women, restorative justice, and crime prevention, the Branch:

- develops legislation, policies, and programs that support victims and their families impacted by crime;
- provides a restorative justice response to crime, violence, and victimization;

- enhances public safety by supporting province-wide and community-level crime prevention efforts.

Victim Services and Crime Prevention Branch provides direct services through the Crime Victim Assistance Program, the Victim Safety Unit, and Court-located Victim Support Programs. In addition, the Branch contracts with and provides funding to over 400 programs throughout BC, including police-based victim service programs; community-based victim service programs; outreach/multi-cultural outreach programs to women impacted by violence; Stopping the Violence counselling programs; counselling programs for child and youth witnesses of abuse; and VictimLINK (a toll-free 24-hour victim support line).

### **Vision and Mission**

The Branch's vision is that victims are supported and communities work together to prevent and respond to crime, violence, and victimization. Its mission is to promote the safety and well-being of communities and victims through comprehensive services, information, and support.

### **Values and Goals**

In carrying out its work, Victim Services and Crime Prevention Branch strives to be:

- responsive to the needs of victims and communities;
- respectful of diversity;
- resourceful in creating innovative and effective strategies that address the needs of victims and communities.

The Branch's goals are to:

- reduce the impacts of crime by providing support to victims and opportunities for healing;
- increase public safety by preventing crime, violence, and victimization.

## SECTION B-2. INTRODUCTION TO THE CRIME VICTIM ASSISTANCE PROGRAM

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### Establishment of the Program

BC's Crime Victim Assistance Program (CVAP) was established on June 30, 2002. The Program is administered by Victim Services and Crime Prevention Branch of the Ministry of Public Safety and Solicitor General.

The Crime Victim Assistance Program replaced the Criminal Injury Compensation Program that was administered by the Workers' Compensation Board of BC (now WorkSafeBC) for three decades. Responsibility for administering the Program was transferred to Victim Services and Crime Prevention Branch to strengthen direct government accountability for the provision of benefits to victims of crime, streamline administration of the Program, and ensure coordination of publicly funded services that provide assistance to victims of crime.

### Purpose and Premises

#### Purpose

The purpose of the Crime Victim Assistance Program is to assist victims, immediate family members, and witnesses in coping with the effects of violent crime by providing financial benefits to help offset their losses and assist in their recovery. (See **section B-4** of this manual, *Introduction to the Eligibility Criteria*, for a summary of the key eligibility criteria.)

Within this context, "victim," "immediate family member," and "witness" have specific meanings as defined in the Crime Victim Assistance Act (see the *Glossary* at **section E-1** of this manual for definitions of terms).

- Benefits for victims include:
  - medical and dental services;
  - prescription drug expenses;
  - counselling;
  - protective measures;
  - replacement of damaged or destroyed eyeglasses, clothing, and disability aids;
  - childcare and homemaker services;
  - support for a child born because of a crime;
  - vocational services;
  - income support or lost earning capacity;
  - transportation and related expenses;
  - crime scene cleaning.

There are other benefits for victims who have sustained serious disabilities from the crime.

- Benefits for immediate family members include counselling, prescription drugs, transportation, and crime scene cleaning. In cases involving fatalities, benefits also include funeral expenses, bereavement leave, and other benefits to support spouses, children, and financially dependent family members.
- Benefits for witnesses include counselling, prescription drugs, transportation, and crime scene cleaning.

If services or expenses can be covered by some other source, such as a health insurance plan, the Crime Victim Assistance Program cannot cover them. Funding provided by other sources is deducted from benefits provided under the Crime Victim Assistance Act.

The Program cannot cover certain types of losses:

- compensation for pain and suffering;
- stolen or lost items or money;
- injury or loss from motor vehicle accidents;
- injury or loss from work-related incidents that are covered by workers compensation.

## **Premises**

Publicly funded financial assistance to victims of violent crime is based on a number of premises, including the following:

- Victims of violent crime and those close to them are unfairly subjected to injury and loss.
- Victims of violent crime and those close to them have limited recourse to financial reparation from offenders.

- The hardships created by violent crime should be shared by society as a whole.
- Easing the financial hardships created by violent crime will help victims and those close to them recover from the effects of crime.
- Recognizing, and being sensitive to, the hardships created by violent crime is important not only to victims and those close to them, but also to society as a whole.
- Assisting and protecting victims of crime who cooperate with the justice system will encourage greater public cooperation in the apprehension and prosecution of offenders.

## **Guiding Principles**

The following principles provide guidance to those responsible for administering the Crime Victim Assistance Program. These principles should be read in conjunction with the values and goals of Victim Services and Crime Prevention Branch (see *Values and Goals* in **section B-1** of this manual).

### **Assistance to Victims and Those Close to Them**

- The Crime Victim Assistance Program is intended, first, to assist victims of violent crime, second, to assist immediate family members of victims and, third, to assist other persons close to the victim who witness the crime.
- Victims, immediate family members, and witnesses are entitled to assistance—in accordance with the Crime Victim Assistance Act, regulations, and policy—to help them cope with the effects of violent crime.

### **Accessibility and Coordination of Information and Services**

- Crime Victim Assistance Program personnel, in collaboration with other victim services personnel, are responsible for making information on the Program widely available to community agencies and service providers that work with victims of crime and their families.
- Crime Victim Assistance Program personnel are responsible for ensuring that the information and services they provide are accessible to those they serve.
- Crime Victim Assistance Program personnel, in collaboration with other victim services personnel, are responsible for assisting claimants to access other resources that may be able to meet their needs.

## **Administrative Fairness**

- Claimants are entitled to information about their rights and responsibilities in relation to crime victim assistance benefits.
- Claimants are entitled to fair processes for obtaining benefits, including:
  - freedom from discrimination on any grounds;
  - protection of their personal information from use for purposes other than adjudicating their claim;
  - the right to provide information and have their evidence considered in decision making;
  - decision making that is impartial, consistent, and based on all relevant information available;
  - the right to be given the reasons for decisions affecting them;
  - the right to request a reassessment of their eligibility for benefits if new information becomes available;
  - the right to a reconsideration of their eligibility for benefits if they believe an error was made in a decision.

## **Promoting Recovery from Injury**

- Eligible claimants are entitled to assistance to try to regain the level of health and functioning they experienced prior to the injury. When this is not possible, claimants are entitled to assistance to manage the effects of their injury and attain the highest level of health and functioning that is reasonable under the circumstances.
- The safety, independence, and dignity of the claimant are primary considerations in promoting recovery.

## **Efficiency, Effectiveness, and Accountability**

- Timely disposition of applications for benefits and provision of benefits are vital to meeting the needs of victims, immediate family members, and witnesses.
- Crime Victim Assistance Program personnel are accountable for the use of public funds in providing benefits—for ensuring that benefits provided by the Program are appropriate in terms of the current legislative framework and claimants' needs, and that there is a smooth transition for claimants who were receiving benefits under the former act, the Criminal Injury Compensation Act.
- Accountability to the public requires that the Program:
  - reduce or deny benefits to claimants whose actions contributed to the crime;

- deny claims if claimants refuse to cooperate with law enforcement authorities, unless there are compelling reasons for their failure to cooperate.

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## SECTION B-3. INTRODUCTION TO LAW AND POLICY

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### Legislative Foundation of the Program

The legislative foundation of the Crime Victim Assistance Program includes the **Crime Victim Assistance Act**, **Crime Victim Assistance (General) Regulation**, and **Crime Victim Assistance (Income Support and Vocational Services or Expenses Benefits) Regulation**.

The Crime Victim Assistance Act came into force on June 30, 2002. The act outlines categories of benefits that may be provided to victims, immediate family members, and witnesses, as well as key requirements related to the application, adjudication, and review processes. It also provides the authority for making regulations.

The regulations “fill in” the framework of the act by setting out the parameters of each benefit category, such as:

- types of services or expenses that may be provided;
- circumstances in which they may be provided;
- conditions or limitations of providing the benefit.

### Other Legislation Affecting the Program

Other legislation governs or guides actions and decisions of Crime Victim Assistance Program personnel. For example:

- the Victims of Crime Act, which sets out the way victims of crime are to be treated by justice system personnel and the types of information they must be offered and must receive on request;
- the Criminal Code of Canada, which establishes the elements of offences prescribed under the Crime Victim Assistance Act;
- the Freedom of Information and Protection of Privacy Act, which affects the disclosure of information;

- the Child, Family and Community Service Act, which requires reporting of children in need of protection (see box below).

### Reporting a Child in Need of Protection

It is important that Crime Victim Assistance Program personnel be familiar with the duty to report a child in need of protection, which is set out in the Child, Family and Community Service Act. If program personnel have reason to believe that a child is in need of protection as defined in the act, they must promptly report the matter to a child welfare worker. They also bring the matter to the attention of Crime Victim Assistance Program management for support in making the report and to consider whether crime victim assistance protective measures are needed.

Sections 13 and 14 of the Child, Family and Community Service Act set out when protection is needed and the duty to report a child's need for protection. Note that a "child" is defined in the act as a person under 19 years of age.

The circumstances in which a child needs protection include—**among others**—where the child has been, or is likely to be, physically harmed, sexually abused, or sexually exploited:

- by the child's parent; or
- by another person and the child's parent is unwilling or unable to protect the child.

A booklet on reporting, *Responding to Child Welfare Concerns: Your Role in Knowing When and What to Report*, is available online at [www.mcf.gov.bc.ca/child\\_protection/pdf/child\\_welfare\\_your\\_role.pdf](http://www.mcf.gov.bc.ca/child_protection/pdf/child_welfare_your_role.pdf). Additional information is provided in *The B.C. Handbook for Action on Child Abuse and Neglect: For Service Providers*, available online at [www.mcf.gov.bc.ca/child\\_protection/pdf/handbook\\_action\\_child\\_abuse.pdf](http://www.mcf.gov.bc.ca/child_protection/pdf/handbook_action_child_abuse.pdf).

## Principles of Procedural Fairness

Procedural fairness is a cornerstone of administrative law. While a fair decision-making process cannot guarantee the most appropriate outcome, it increases the likelihood that the decision not only will be fair but also will be perceived as fair.

Key principles of procedural fairness, as applied in the context of crime victim assistance adjudications, include:

- notice to the claimant, before adjudication, if there appears to be evidence that will negatively affect his or her claim or insufficient evidence to support his or her claim;
- an opportunity for the claimant, before adjudication, to provide his or her position on the matter or additional information;
- an opportunity for the claimant, at any stage of the process, to obtain a copy of information on file pertaining to his or her claim, subject to the Freedom of Information and Protection of Privacy Act and to police policy governing disclosure of information provided by the police;
- consideration of all the evidence by the adjudicator;
- decision making by the adjudicator that is free from bias;

- provision of reasons for the decision to the claimant, in a written decision prepared by the adjudicator.

## **Program Policy**

The policy in this manual guides the administration of the Crime Victim Assistance Program. The policy incorporates and builds on provisions of the Crime Victim Assistance Act and regulations.

### **Effect of Policy**

1. In the event of a conflict between a policy provision in this manual and a provision of the Crime Victim Assistance Act or regulations, the provision of the act or regulation must be followed.

*In the event of a conflict between provisions of the Crime Victim Assistance Act and regulations, the act is paramount.*

2. The policy in this manual should be applied to the circumstances of each claim, bearing in mind that each claim is individually processed and decided on the basis of the particular facts and evidence and in accordance with the rules of procedural fairness.
3. If Crime Victim Assistance Program personnel believe that an exception to policy is warranted, they should advise program management. If there is no applicable policy regarding a particular situation, or program personnel believe that a change in policy would be desirable, the matter should be referred to program management for policy direction.
4. As new policy is developed, changes are not retroactive in application unless the Crime Victim Assistance Program makes the change retroactive by a specific policy decision.

*This might occur, for example, if the prior policy was based on an interpretation of the Crime Victim Assistance Act that is later determined to be incorrect.*

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## SECTION B-4. INTRODUCTION TO THE ELIGIBILITY CRITERIA

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### Key Eligibility Criteria

This section provides an overview of key eligibility criteria under the Crime Victim Assistance Act. Additional criteria, and policy on determining whether these eligibility criteria have been met, are provided in section C of this manual (see, in particular, **section C-6, Adjudication: Basic Eligibility**, and **section C-7, Adjudication: Reduction or Refusal of Benefits**). Eligibility criteria for specific types of benefits are provided in **section D** of this manual.

### Circumstances to Which the Act Does Not Apply

The Crime Victim Assistance Act does not apply to the following circumstances.

- CVAA**, section 2(a)(i).
  - Offences that occurred on or before July 1, 1972. All elements of the offence must be made out on the basis of acts or omissions after July 1, 1972, even where the acts or omissions occurred both before and after that date.
- CVAA**, section 2(a)(ii).
  - Injury or death that resulted from the operation of a motor vehicle, unless the offence involved assault using a motor vehicle (i.e., when a motor vehicle is used as a "weapon").
- CVAA**, section 2(b).
  - Injury or death that arose out of, or occurred in the course of, the person's employment, in circumstances where compensation under the Workers Compensation Act, the Government Employees Compensation Act (Canada), or a similar act in another jurisdiction is payable with respect to the death or injury.

## Types of Eligible Offences

Eligible offences include crimes of violence and Good Samaritan events that occurred in BC; specifically, where the victim was injured or killed as a direct result of:

- a prescribed offence; or,
- an event in which the victim was preserving or attempting to preserve the peace by either arresting a suspected offender or preventing the commission of a crime (i.e., a Good Samaritan event).

Prescribed offences are set out in schedule 1 of the Crime Victim Assistance (General) Regulation. In the event of changes to the list of prescribed offences, the offence must have been listed in the schedule at the time the offence occurred.

A person who is injured or killed as a result of an offence that is not a prescribed offence is not a victim within the meaning of the Crime Victim Assistance Act, unless that person falls within the category of "Good Samaritan."

To be a victim under the Good Samaritan provisions of the Crime Victim Assistance Act, the event does not need to involve a prescribed offence, but the person must have acted "lawfully." For policy and legislative provisions relevant to making this determination, see *Good Samaritan Event* in **section C-6** of this manual.

## Types of Eligible Applicants

The applicant must be a victim, an immediate family member, or a witness as defined in the Crime Victim Assistance Act, or someone entitled to apply on behalf of a victim, an immediate family member, or a witness.

A person applying as an immediate family member must have been an immediate family member at the time of the offence or event that resulted in the victim's injury or death.

While the offence or event must have occurred in BC, the applicant does not have to be a resident of this province.

## Types of Eligible Injury or Loss

The claimant must have experienced injury or loss as a result of the incident.

- To be eligible for benefits as a victim, the claimant must have been physically or psychologically injured.

**CVAA**, section 3(1)(a).

**CVA (General) Regulation**, schedule 1.

**CVAA**, section 3(1)(a)(ii).

**Criminal Code**, part XVI, section 494, and part I, sections 25-31.

**CVAA**, section 3(1).

**CVAA**, section 3(1)(a).

CVAA, section 3(1)(b).

- To be eligible for benefits as an immediate family member, the claimant must have experienced economic loss or psychological harm as a result of the victim's injury or death, or be a minor child of a deceased victim.

CVAA, section 3(1)(c).

- To be eligible for benefits as a witness, the claimant must have suffered psychological harm (specifically diagnosed as a recognized psychological or psychiatric condition) as a result of witnessing the victim's injury or death or the aftermath of the victim's death.

### Application Deadline

CVAA, section 3(2).

Applications must be received within one year from the date of the offence/event to which they relate, with the following exceptions.

CVAA, section 3(4).

- There is no time limit for applications from victims of sexual offences.

The exception for sexual offences applies only to victims, not to immediate family members or witnesses.

CVAA, section 3(3).

- The time limit for applications by minors (persons under 19 years of age) extends until the person has reached 20 years of age.

The exception for minors applies whether the minor is a victim, an immediate family member, or a witness.

Where the offence involves a series of related events occurring over a period of time (e.g., harassment), the application time period does not commence until the date of the final event in the series.

CVAA, section 3(5).

In circumstances where the application could not reasonably have been made within the specified time limit, the time limit may be extended (see *Late Applications* in **section C-4** of this manual).

### Party to the Offence

CVAA, section 9(1).

Any person who was a party to the offence cannot be provided benefits, whether that person is a victim, an immediate family member of the victim, or a witness in relation to the offence against the victim. Further, if the victim was a party to the prescribed offence, an immediate family member of the victim cannot be provided benefits (although a witness may be). The meaning of "party to offence" is the same as that used in the Criminal Code—see *Party to the Offence that Caused the Victim's Injury* in **section C-7** of this manual.

### Contribution to the Victim's Injury

CVAA, section 9(2)(b).

The Crime Victim Assistance Program may refuse to provide a benefit, or may reduce the amount of a benefit, if the conduct of the claimant—victim, immediate family member, or witness—directly or

indirectly contributed to the victim's injury or death. For more information, see *Contribution to the Victim's Injury* in **section C-7** of this manual.

### **"Flow-Through" from the Victim to Other Claimants**

Since immediate family members and witnesses are defined in relation to victims under the Crime Victim Assistance Act, the person applying as a victim needs to meet the basic eligibility criteria (e.g., the definition of a victim) in order for someone applying as an immediate family member or a witness to meet the basic eligibility criteria.

Where an injured victim has not applied to the Crime Victim Assistance Program, an immediate family member or a witness may still apply. For the immediate family member or witness to be considered for benefits, there would need to be sufficient information about the incident to determine that the victim would have met the basic eligibility criteria.

Where a victim meets the basic eligibility criteria, but benefits are denied or reduced because the victim contributed to his or her injury, benefits for an immediate family member of the victim, or a witness in relation to the offence against the victim, are denied or reduced accordingly. As noted above, if the victim was a party to the offence, benefits cannot be provided to an immediate family member but may be provided to a witness.



## **SECTION C. KEY ADMINISTRATIVE PROCESSES**

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## SECTION C-1. OVERVIEW OF ADMINISTRATIVE PROCESSES

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### Introduction

This section highlights key administrative processes of the Crime Victim Assistance Program. These processes involve various personnel—administrative assistants, claims coordinators, adjudicators, reconsideration adjudicators, and management—with different areas of responsibility. Effective administration of the Crime Victim Assistance Program is dependent on teamwork.

### Key Administrative Processes

#### Response to Inquiries

Personnel who respond to inquiries play a vital role in providing information about the Crime Victim Assistance Program and its application process, as well as contact information for related programs and services that may be of assistance. These personnel also ensure that detailed inquiries about claims are referred to the appropriate Crime Victim Assistance Program personnel for response.

#### Registration of Applications

Registration of applications is the first step in the process of administering crime victim assistance claims.

Administrative assistants review each application to ensure compliance with basic application requirements, register the application in the Crime Victim Assistance Program database, and assign the application to a claims coordinator who will manage the claim throughout the administrative process.

## **Pre-Adjudication Process**

The pre-adjudication process involves a detailed review of the application, and identification and collection of information necessary to support the claim.

Information from the police and health care providers is generally sought. Where appropriate, information may also be sought from employers, vocational rehabilitation providers, insurers or other benefits programs, witnesses, and others. The claims coordinator works closely with the claimant to ensure that available supporting information is obtained before the claim is forwarded for adjudication.

## **Interim Benefits**

Interim benefits are provided in limited circumstances where there is an urgent need for benefits but it is not possible to expedite adjudication of the claim.

An adjudicator reviews the file to determine whether the criteria for interim benefits have been met and, if so, what benefits should be provided. Providing benefits on an interim basis assists claimants who would otherwise experience hardship while awaiting the completion of the adjudication process.

## **Adjudication**

Adjudication is the focal point of the administrative processes. Its purpose is to determine whether a claimant meets the basic eligibility criteria for a victim, an immediate family member, or a witness under the Crime Victim Assistance Act, and, if so, what specific benefits the claimant is eligible for under the act, regulations, and policy.

After reviewing the information on file, the adjudicator prepares a written decision indicating whether or not the applicant is eligible for benefits. Where the claimant is eligible for benefits, the decision indicates what benefits are provided and whether any conditions are attached to the provision of benefits.

With every decision, the applicant is advised of the right to request a reassessment or reconsideration.

## **Payment**

The payment process supports payments for information gathering as well as benefits to claimants. Payments are divided into two types: administration costs (e.g., payments for information requests, such as preparation of medical reports) and benefits (e.g., payments for services provided to claimants, such as counselling).

Invoices and receipts are reviewed and payments are set up for processing by central payment services. A system of payment validation helps to ensure accuracy in this critical function.

### **Reassessment**

Reassessment is the process for reviewing a claim when new information becomes available that may affect the claimant's eligibility for benefits, such as new evidence or a change in the claimant's circumstances. This ensures that the provision of benefits continues to be based on the claimant's eligibility and need for benefits. A reassessment may be requested by the claimant or initiated by the Crime Victim Assistance Program. Where the reassessment is initiated by the Program, the claimant is advised that a reassessment will be completed.

The adjudicator reviews the new information, along with other relevant information on file, to determine if a change in the provision of benefits is warranted. A written reassessment decision is provided to the claimant, indicating the outcome of the reassessment and the reasons for it.

### **Reconsideration**

Reconsideration is the process for reviewing a decision when the claimant believes an error has been made in the decision.

A reconsideration adjudicator reviews the information on file at the time the decision was made, determines whether an error of law or fact was made, and, if an error was made, determines how it should be rectified. A written reconsideration decision is provided to the claimant, indicating the outcome of the reconsideration and the reasons for it.

### **Recovery of Funds**

The Crime Victim Assistance Program may seek recovery of funds provided as benefits when legal action is taken against those responsible for the injury or loss. Before receiving benefits, the claimant is asked to sign a Restitution and Civil Action Form so the Program may recover funds received through legal action by or on behalf of the claimant.

Recovery of funds may also be sought where the amount of a benefit paid to a claimant exceeds the amount for which the claimant was eligible, because of an administrative error or certain types of decisional error.

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## SECTION C-2. RESPONSE TO INQUIRIES

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### Purpose

Personnel who respond to inquiries are often the first point of contact with the Crime Victim Assistance Program for victims and others. These personnel play a vital role in providing information about the services available through the Crime Victim Assistance Program and related programs. The way in which they carry out this role may be seen as a reflection of how the Program, Branch, and Ministry treat victims and others affected by violent crime.

### General Provisions

1. The Crime Victim Assistance Program should be accessible by telephone, fax, mail, and e-mail.
2. Crime Victim Assistance Program personnel should respond promptly to telephone, written, and in-person inquiries.
3. All responses should be clear and easy to read or understand, using plain language. Responses in alternate formats (e.g., large print, audio recording) may be made available upon request.
4. All responses should be courteous, respectful, and, in particular, sensitive to the emotional trauma that victims, immediate family members, and witnesses may experience.
5. People making inquiries in person should be given the opportunity to do so in a private setting.

## Information on Applying for Benefits

6. When individuals make general inquiries about crime victim assistance benefits and how to obtain them, they should be given information on:
  - the application process, deadline, and deadline exceptions;
  - the ways in which they may obtain an application form;
  - how to get help filling in the application form if needed.

Application forms are available from the **Crime Victim Assistance Program website**, from victim service agencies in most communities, and by mail. Assistance in filling out the form can be obtained from Crime Victim Assistance Program personnel (in person at the Vancouver office or by phone) or from local victim services. It is usually preferable for claimants to get help from local victim services since victim services may also be able to assist them in other ways, for example, through crisis response services, provision of justice system information, safety planning, court orientation, emotional support throughout the justice process, and referrals to other community services.

7. When an inquiry relates to a minor (a person under 19 years of age) applying for benefits, the individual making the inquiry should be informed that minors do not need an adult to apply on their behalf—minors may apply independently if they wish to do so and are capable of doing so.

For more information, see **section C-3** of this manual, *Registration of Applications*.

8. When a person wishing to apply for benefits asks for an application form to be sent by mail, it should be mailed within one working day if possible. A copy of the appropriate Crime Victim Assistance Program Summary of Benefits (i.e., for victims, immediate family members, or witnesses) should be enclosed with the application form.
9. When a person wishing to apply for benefits expresses concern about missing the application deadline, that person should be advised that he or she may submit an application, along with an explanation for the delay, as the legislation provides for exceptions to the application deadline.

For more information on the application time limit, including the criteria and considerations for extending the time limit, refer to *Late Applications* in **section C-4** of this manual.

## Information on Victim Services and Other Services

10. When responding to a general inquiry from a person seeking victim assistance, Crime Victim Assistance Program personnel should offer to provide information on victim services or other



agencies in or near the person's community that may be able to provide support.

11. Prospective claimants should be informed that the Crime Victim Assistance Program does not provide benefits that are available to them under another program, and may deduct amounts provided by another program or from another source. Crime Victim Assistance Program personnel should offer to assist in identifying other relevant benefit programs and providing contact information for those programs.

**CVAA**, section 9(2)(a).

Benefits under the Crime Victim Assistance Act may be refused or reduced if a claimant does not apply for benefits from another source that he or she may be eligible for as a result of the injury or death.

## **Dissemination of Information on the Crime Victim Assistance Program**

12. Information on the Crime Victim Assistance Program, including how to contact the Program, should be widely disseminated to police, victim services, and other agencies that are likely to come into contact with victims.
13. When responding to an inquiry from an organization that works with victims, whether a general inquiry or an inquiry on behalf of a particular individual, Crime Victim Assistance Program personnel should ask if the organization would like Program materials for display or distribution.

## **Referrals to Other Crime Victim Assistance Program Personnel**

14. All inquiries of a detailed or case-specific nature should be referred to the assigned claims coordinator for response.
15. Inquiries or requests for protective measures that indicate a person is in immediate danger should be referred immediately to program management. Crime Victim Assistance Program personnel should determine whether the person has contacted police or has developed a safety plan. Persons with concerns about imminent danger should always be referred to the police and to local victim services or a transition/safe house.

See **section D-7** of this manual, *Protective Measures, Services, or Expenses*, for more information.

16. All subpoenas for file material, and all requests for disclosure of the file or release of information under the Freedom of Information and Protection of Privacy Act, should be referred to program management for response.

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## SECTION C-3. REGISTRATION OF APPLICATIONS

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### Purpose

The first key process in administering crime victim assistance claims involves an effective system of initial review and registration of applications. This is to ensure that each application:

- is complete and signed, and complies with the application requirements of the Crime Victim Assistance Act and regulations;
- is registered in the Crime Victim Assistance Program database;
- is assigned to a claims coordinator who will manage the claim throughout the administrative process.

### Manner of Application

**CVA (General) Regulation,**  
section 6.

1. An application for benefits must be in writing, using a Crime Victim Assistance Program application form.
2. If a claimant submits the wrong version of a Crime Victim Assistance Program application form, the application should be accepted if it meets the basic application requirements.

There are three versions of the Crime Victim Assistance Program application form—for persons applying as victims, immediate family members, and witnesses. (Criteria for these claimant categories are set out in **section C-6** of this manual, *Adjudication: Basic Eligibility*.)

See *Registration* below for policy on registering an application for a different category of claimant.

3. An original application form is generally required before an application can be processed. In cases where it is desirable to begin processing an application immediately, such as a claim for urgent protective measures or involving circumstances of

extreme hardship, an application submitted by fax may be accepted with the original to follow. In such cases, claimants should be advised to submit their application by mail as well.

## Initial Review of the Application

4. Each application for benefits should initially be reviewed to determine if:
  - the application is complete (see *Mandatory Information* below);
  - the application has the required signatures (see *Signatures Required* below);
  - the application has been made within the timeframe set out in the Crime Victim Assistance Act (see *Timeframe for Application* below);
  - the claimant has made a previous claim in relation to the same incident;
  - the claimant has made a previous claim in relation to a different incident;
  - the claimant is one of a number of claimants in relation to the same incident.

## Mandatory Information

5. The following information is required to register an application:
  - name of the claimant;
  - birth date of the claimant;
  - type of crime;
  - date of the crime;
  - location of the crime.

An application form that is missing mandatory information may have to be returned to the applicant. Before returning an application for this reason, Crime Victim Assistance Program personnel should try to obtain the missing information from the applicant by telephone.

## Signatures Required

6. An application form that is unsigned must be returned to the claimant for signature.

The form must have an original signature in two places: authorization (section 7, 9, or 6 depending on whether it is a victim, an immediate family member, or a witness application

form) and declaration (section 8, 10, or 7). Both sections must also be dated.

The authorization section authorizes the Crime Victim Assistance Program to notify specified authorities (e.g., doctor, police, employer) that an application for benefits has been submitted, and authorizes the specified authorities to release information about the claimant to the Crime Victim Assistance Program for the purpose of adjudicating the claim.

The declaration section is a declaration that the information provided in the application is true and correct.

7. An application that has been signed with an "X" or other mark, instead of a signature, should be countersigned by an adult who indicates that the claimant understands and agrees with the contents of the application.
8. An application may be made, and the application form signed, by a minor.

In BC, a "minor" is a person under the age of 19. The Crime Victim Assistance Program recognizes that many minors have the capacity to make an application and a right to privacy in doing so. The Program encourages applicants who are minors to identify a supportive adult to assist them, and involves the Public Guardian and Trustee of BC in representing minors' interests where appropriate.

CVAA, section 3(1)(d).

9. An application may be made, and the application form signed, on behalf of a claimant by:
  - a legal representative;
  - an immediate family member if the claimant does not have a legal representative and is physically or mentally incapable of making the application.

Examples of circumstances where the claimant may be incapable of making the application include: where the claimant is a young child, is unconscious, has a severe head injury, or is incapacitated by a mental disorder.

10. When an application is made on behalf of a claimant, the authorization section of the application form (providing consent to the release of information about the claimant) must be signed by a person with legal standing.

When the claimant is a child who is incapable of providing consent to the release of information, the parent or guardian may sign the authorization section on the child's behalf.

When the claimant is an adult who is incapable of providing consent, the person applying on the claimant's behalf must have legal authority to sign the authorization section on the claimant's behalf. If not, that person is advised of the difficulty this presents to the Crime Victim Assistance Program in obtaining the necessary information upon which to adjudicate the claim. Sometimes a family member is able to obtain the necessary information, such as medical or employment reports,

directly from the source and can provide this information to the Program to facilitate the adjudication.

11. When a person signs the application form on behalf of the claimant, that person should provide his or her full name and mailing address and indicate his or her relationship to the claimant.

## Timeframe for Application

12. Where it appears that an application has not been submitted within the timeframe set out in the Crime Victim Assistance Act, this should be noted when the application is registered (see next provision).

The general rule is that applications must be received within one year of the date of the incident that caused the injury or death, with the following exceptions:

- there is no time limit for applications by victims of sexual offences (see the definition of “sexual offence” in the *Glossary* at **section E-1** of this manual);
- the time limit for applications by minors extends until one year after the person has reached 19 years of age.

The time limit may be extended if it is determined that the claimant could not reasonably have made the application by the deadline. For detailed policy related to the application deadline, see *Late Applications* in **section C-4** of this manual.

**CVAA**, sections 3(2) to 3(4).

**CVAA**, section 3(5).

## Registration

13. All applications for benefits should be registered (unless unsigned or missing vital information—see *Mandatory Information and Signatures Required* above).

When an application is registered, a claim number is assigned and a claim file is set up.

14. If a claimant used the wrong version of a Crime Victim Assistance Program application form, the application should be registered in the appropriate claimant category (i.e., victim, immediate family member, or witness) noting the discrepancy.

After the application is registered and assigned to a claims coordinator, the claims coordinator can obtain any additional information needed from the claimant.

15. If a claimant meets the basic criteria for more than one category of claimant (i.e., victim, immediate family member, or witness), the claim should be registered and processed in the manner that is most advantageous to the claimant. That may mean registering the claimant in a different category than that of the application submitted, or in more than one claimant category. Any additional

information required to register the claimant in an alternative or additional category should be sought from the claimant.

Based on the type and level of benefits available, it is generally most advantageous for a claimant to apply as a victim, followed by an immediate family member, and then a witness. However, sometimes it is advantageous for a claimant to be registered as both a victim and an immediate family member to access different benefits. (The benefits for victims and immediate family members include, and surpass, the benefits for witnesses, so it would usually not be advantageous to the claimant to be registered as a witness as well as a victim and/or an immediate family member.)

## **Assignment to a Claims Coordinator**

16. All registered applications should be assigned to a claims coordinator.

If the claimant has another active claim with the Crime Victim Assistance Program, or had one previously, the application should be assigned to the claims coordinator assigned to the other claim, if possible.

When claimants with more than one active claim are assisted by the same claims coordinator, this avoids duplication of efforts and contacts. Even if a previous claim is not active, it helps if the same claims coordinator manages all claims as rapport with the claimant has been established.

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## SECTION C-4. PRE-ADJUDICATION PROCESS

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### Purpose

The purpose of the pre-adjudication process is to collect, review, and organize information necessary for the adjudication of claims, and thereby streamline the adjudication process.

At the outset, the assigned claims coordinator reviews the application in detail to determine:

- whether it was made within the application deadline, and, if not, the reason(s) why it was late;
- whether the circumstances outlined in the application appear to fall within the scope of the Crime Victim Assistance Act;
- whether the application should be expedited;
- what information should be collected to support the claim.

An overarching aim of the pre-adjudication process is for the claims coordinator to develop rapport with the claimant. This is important for clarifying the specifics of the claim, identifying and obtaining information to support the claim, and ensuring a positive experience for the claimant.

## Acknowledgement of the Application

1. The claims coordinator should inform the claimant that the application has been registered, and provide the claimant with the claim number and information on the process. An exception is where the circumstances of the incident do not fall within the scope of the Crime Victim Assistance Act; in which case, the policy on *Incidents Outside the Scope of the Act* (below) applies.

Claimants are entitled to have their claims processed in a timely manner, to know what to expect in the adjudication process, and to be able to check on the status of their claim.

## Applications Requiring Special Processing

### Late Applications

2. The general rule is that applications are late if they are not received within one year of the date of the incident that caused the injury or death, with the following exceptions:
  - there is no time limit for applications by victims of sexual offences;  
[See the definition of "sexual offence" in the Glossary at section E-1 of this manual.](#)
  - the time limit for applications by minors extends until one year after the person has reached 19 years of age;
  - the time limit may be extended if it is determined that the claimant could not reasonably have made the application within the one-year time period or, in the case of a minor, by the time the claimant turned 20.

To have a claim for benefits considered, claimants are responsible for making an application within the time limits set out in the Crime Victim Assistance Act or demonstrating why they could not reasonably have done so. Note that the act allows 14 days (beyond the one-year time limit) for delivery by mail.

3. In cases where the offence concerns a series of related criminal events that occurred over a period of time (e.g., harassment), the limitation period does not begin until the date of the final event in the series.

Note that the policy on retroactive benefits provides that benefits should not be provided retroactively for a period of more than one year from the date of the application, regardless of the date of the offence (or the date a series of related criminal events began). For more information, see *Retroactive Benefits* in [section C-9](#) of this manual.

4. For late applications, the claimant should be asked to provide, in writing, the reason(s) why the application could not reasonably have been made within the application time period. An exception

[CVAA](#), section 3(2).

[CVAA](#), section 3(4).

[CVAA](#), section 3(3).

[CVAA](#), section 3(5).

[CVAA](#), section 24.

is where the circumstances of the incident do not fall within the scope of the Crime Victim Assistance Act; in which case, the policy on *Incidents Outside the Scope of the Act* (below) applies.

Where the nature of the incident clearly falls outside the statutory authority of the Crime Victim Assistance Program, there is no purpose in requesting additional information from the claimant on the time limit issue.

5. Upon receipt of the claimant's reason(s) for making a late application, the file should be forwarded for expedited adjudication on the time limit issue.
6. In deciding whether to extend the application time limit, the following factors should be considered:
  - the reason(s) for the delay;
  - the length of the delay;
  - the nature of the injury;
  - if and when the incident was reported to police;
  - if and when victim services were involved;
  - if and when the victim sought medical treatment.
7. The application time limit may be extended if there is evidence that the application *could not reasonably have been made* earlier because, for example, the claimant:
  - was incapacitated by serious injury, illness, or disability;
  - had significant fears of having his or her whereabouts discovered and experiencing retaliation from the perpetrator or the perpetrator's associates;
  - did not fully appreciate the effects of the injury because all or some of the effects of the injury had a delayed onset or worsened over time;
  - did not anticipate financial needs or loss because the expenditures had not yet been required or had been covered by another source;
  - in cases involving requests for protective measures, did not fully appreciate the need for such measures because the level of risk increased over time or in relation to a particular event (such as the offender's release from a correctional institution);
  - was awaiting completion of adjudication of a claim made to another program (e.g., WorkSafeBC, ICBC), or a civil action against the perpetrator for damages, in relation to the same injury;
  - was unaware of the existence of crime victim assistance benefits because the claimant is from a jurisdiction that does

CVAA, section 3(5).

not have victim services and he or she had not been informed of such services in BC.

In deciding whether any of these factors warrant an extension, the adjudicator should consider if it is reasonable to expect that a person in the same circumstances as the claimant could have applied within the time periods set out in the Crime Victim Assistance Act.

8. When a decision is made not to extend the application time limit, a written decision must be provided to the claimant.

**CVAA**, sections 11(1) and 13(1)(a)(ii).

A decision not to extend the application time limit is open to reconsideration, and thus a written decision must be provided to the claimant. For more information, see *Notifying the Claimant of the Decision* in **section C-9** of this manual.

### Incidents Outside the Scope of the Act

9. When the claims coordinator believes that the circumstances of the incident fall outside the scope of the Crime Victim Assistance Act, the claims coordinator should refer the file to an adjudicator.

Some obvious incidents that fall outside the scope of the act include: an offence that occurred outside BC; an offence that occurred before 1972; an injury caused by a motor vehicle accident; an offence that is clearly not a prescribed offence (e.g., theft of a bicycle).

**CVAA**, sections 2(a) and 3(1);  
**CVA (General) Regulation**,  
schedule 1.

10. The adjudicator should contact the claimant to explain why the application falls outside the scope of the Crime Victim Assistance Act, and ask if the claimant would agree to withdraw his or her application.

Where the application does not meet the basic act requirements, the claimant is best served if he or she is informed of this as soon as possible. The claimant is asked to withdraw the application as adjudication of the claim is neither beneficial to the claimant nor an effective use of public resources.

11. If the claimant agrees to withdraw the application, a letter should be sent to the claimant confirming this.
12. If the claimant does not agree to withdraw the application, the file should be forwarded for adjudication.

### Applications to Expedite

13. Claims should be referred for expedited adjudication, and/or consideration of interim benefits, where:
  - protective measures are needed;
  - crime scene cleaning is needed;
  - there is a child victim;
  - there is a recent (non-historical) sexual assault;

- there is a fatality;
- the claimant is severely traumatized;
- there is an urgent need for benefits (urgent medical, dental, or financial needs);
- a reassessment has been requested and the claimant needs to continue to receive services without interruption.

### **Applications Withdrawn at the Claimant's Request**

14. If an application appears to fall within the scope of the Crime Victim Assistance Act but the claimant wishes to withdraw it, the claimant should be notified, in writing, that the application will be withdrawn at the claimant's request. The claimant should be advised of the application time limit in the event that he or she wishes to have the claim re-opened.

Claimants may wish to withdraw their applications for various reasons. For example, a claimant seeking a particular type of compensation (e.g., pain and suffering) may wish to withdraw his or her application upon discovering that such compensation is not provided under the Crime Victim Assistance Act. It may be important to discuss the reasons for withdrawal with the claimant, to help ensure that the claimant is making a well-informed decision.

15. If a claimant who withdrew an application subsequently wishes to have the application considered, the claimant should be advised to write to the Crime Victim Assistance Program asking for the claim to be re-opened and providing identifying information (name, date of birth, address, claim number, date of incident, and, if applicable, police file number).

A claimant may have made a hasty decision in withdrawing the application, before he or she has fully realized the need for benefits. The provision for re-opening an application is intended to assist such claimants.

16. If a claimant whose application is being re-opened requests an extension of the application time limit, the policy and process on such extensions should be followed.

*See Late Applications above.*

## **Information Gathering**

### **Identifying Information to Obtain**

Information needed to determine the claimant's eligibility for benefits is initially identified based on circumstances outlined in the application. As information pertaining to a claim is collected and reviewed, the need for additional information may become apparent. The claimant is often a key source of information—identifying or providing information to support his or her claim.

17. The claims coordinator should thoroughly review the file to determine what supporting information needs to be collected. The claims coordinator should consider what information is necessary to determine the claimant's eligibility:

- as a victim, an immediate family member, or a witness;
- for specific benefits the claimant has requested;
- for any other benefits.

Criteria for each of the claimant categories are set out in **section C-6** of this manual, *Adjudication: Basic Eligibility*.

The benefits requested by the claimant may not include all benefits for which the claimant is eligible. Therefore, it is important to consider the whole range of potential benefits in collecting information relevant to the claim.

Types of benefits that victims, immediate family members, and witnesses may apply for are outlined in **section C-8** of this manual, *Adjudication: Eligibility for Specific Benefits*. **Section D** provides more detail on a benefit-by-benefit basis.

18. The claimant is responsible for advising the Crime Victim Assistance Program of any information that may be relevant to his or her eligibility for benefits, and Program personnel are responsible for assisting the claimant in determining what information is relevant. Both the claimant and the Program have the responsibility to make reasonable efforts to obtain information regarding the claim. (See also *Standard and Burden of Proof* in **section C-6** of this manual regarding the burden of proof in crime victim assistance claims.)

The Program has primary responsibility for obtaining: police information; hospital and other medical/health information; dental information; information from an employer; information about funding from other sources.

The claimant has responsibility for providing: the police incident or file number (if available); names of people who witnessed the incident or to whom the claimant disclosed the incident; names of practitioners seen in relation to the injury; any receipts for services or expenses incurred as result of the injury; information about any other losses as a result of the injury; information about benefits or other sources of funding applied for or received; assistance in obtaining information that the Crime Victim Assistance Program has difficulty obtaining.

19. In seeking information related to a claim, the claims coordinator should do so with sensitivity to the personal nature of the information being sought, and with as little intrusion into the claimant's privacy as possible. When there are concerns about seeking extremely personal information, the claimant should be involved in determining the appropriate course of action.
20. The claims coordinator should review each piece of information as it comes in to determine if follow-up is needed.

## Information from the Police

Information from the police is collected to make determinations about the nature and circumstances of the offence that caused the injury or death.

21. If the offence has been reported to the police, Crime Victim Assistance Program personnel should request information from the police. Where the police have concerns about releasing the information, they should be referred to the adjudicator or program management.

**CVAA**, section 6(1)(f). For the definition of “police,” see the *Glossary* at **section E-1** of this manual.

Information from the police is very important to the determination of whether a person qualifies as a victim under the Crime Victim Assistance Act. Police forces are required, under the act, to provide copies of, or access to, a police report or Report to Crown Counsel related to the prescribed offence or event that caused the death or injury of the victim.

22. If there is no police report, the claims coordinator should try to obtain other sources of information on the offence, such as statements from witnesses identified by the claimant. The claimant must be advised that, without a police report, it may be difficult to obtain sufficient evidence to support the claim.

Witness statements may include statements from persons to whom the claimant disclosed the offence or practitioners who saw the claimant after the offence (e.g., doctor, counsellor).

**CVAA**, section 9(3)(a).

23. Where a person applying as a victim did not report the offence to police, Crime Victim Assistance Program personnel should bear in mind that there may be a compelling reason for not reporting and that a police report is not always required. The claims coordinator should use sensitivity in exploring why the claimant did not report the offence to police. If there is no compelling reason, the claimant must be advised that benefits could be denied for not reporting the offence.

See *Failure to Cooperate with Law Enforcement Authorities* in **section C-7** of this manual for additional policy on this issue, including compelling reasons for not reporting.

**CVAA**, section 9(3)(b).

24. If there is information indicating that the claimant has not cooperated with law enforcement authorities in the investigation, apprehension, or prosecution of the person responsible for the victim’s injury or death, the claimant must be advised of this and given an opportunity to respond. The claimant must also be advised that benefits could be denied without such cooperation. This provision applies whether the person has applied as a victim, an immediate family member, or a witness.

Law enforcement authorities include police, Crown counsel, and other authorities with responsibility for apprehension, investigation, or prosecution in relation to federal or provincial laws.

See *Failure to Cooperate with Law Enforcement Authorities* in **section C-7** of this manual for additional policy on this issue, including compelling reasons for not cooperating.

25. If there is information indicating that the claimant directly or indirectly contributed to the victim's injury or death, the claimant must be advised of this and given an opportunity to respond. The claimant must also be advised that benefits could be denied or reduced on the basis of such contribution. This provision applies whether the person has applied as a victim, an immediate family member, or a witness.

**CVAA**, section 9(2)(b).

See *Contribution to the Victim's Injury* in **section C-7** of this manual for additional policy on this issue.

### **Medical, Dental, and Other Health-Related Information**

Medical, dental, and other health-related information is collected to make determinations regarding the cause and nature of injuries, as well as the claimant's eligibility for various types of health-related benefits (e.g., medical services or expenses, dental services or expenses, prescription drug expenses, disability aids, etc.). See **section D** of this manual for policy on specific types of benefits.

26. The claims coordinator should obtain relevant medical, dental, and other health-related information where necessary to determine the claimant's eligibility for benefits.

The authorization section of the application provides the claimant's consent for the doctor, dentist, optometrist, chiropractor, or other health care professional who treated the claimant's injuries to provide medical reports or other information about the claimant's injuries, treatment, or other information relevant to the application.

The Crime Victim Assistance Act requires medical practitioners, health professionals, experts, or other persons to provide information on request. Emphasizing that the request is for information related to the injury caused by the offence helps to ensure that the claimant's privacy will be protected by not accessing personal information that is unrelated to the claim.

**CVAA**, section 6(1)(d).

27. Health-related information that pre-dates the offence should generally not be requested.
28. Where there is evidence that a pre-existing or subsequent injury or condition may affect the claimant's eligibility for benefits, information on that injury or condition may be obtained. The claimant must be notified before seeking information on a pre-existing or subsequent injury or condition. If the claimant objects, the information must not be sought and the claimant must be advised that this could affect his or her eligibility for benefits.
29. When information on a claimant's pre-existing or subsequent injury or condition is requested from a practitioner, the



practitioner should be advised why the information is required to determine the claimant's eligibility for benefits.

### Employment Information

Employment information is collected to determine eligibility for income support and bereavement leave benefits, and, in some cases, for lost earning capacity and vocational services benefits (see **section D** of this manual for policy on these benefits). In addition, information from the claimant's employer is sought to determine what benefits are provided through the employer.

30. If a person applying as a victim has indicated that he or she missed work and lost wages as a result of the injury from the offence, the claims coordinator should seek information to verify the loss.

31. If the claimant was working for an employer, the claims coordinator should seek verification from the employer of loss of earnings and any related benefits provided by the employer.

The authorization section of the application provides the claimant's consent for the employer to release information on the claimant's employment, earnings, benefits, or other information relevant to the application.

CVAA, section 6.

The Crime Victim Assistance Act requires persons to provide authorized information on request.

32. If the claimant was self-employed, the claims coordinator should seek information from the claimant to verify that he or she earned money from the self-employment and experienced a loss of earnings because of the offence.

### Other Types of Information

33. The claims coordinator should obtain other types of information—from the claimant, service providers, or others—where such information is necessary to determine the claimant's eligibility for crime victim assistance benefits.

Police, medical/dental, and employment information are not the only types of supporting information that may be obtained. Information on the suitability of various types of services and expenses may be obtained to determine eligibility for benefits such as protective measures, home or vehicle modifications, transportation expenses, crime scene cleaning, and others.

34. If the claimant is receiving a benefit or an amount from another source, and it is provided for a similar purpose as a crime victim assistance benefit for which the claimant may be eligible, the claims coordinator should obtain information from the other source on the benefit or amount provided.

The authorization section of the application form provides the claimant's consent for benefit programs and insurers to release information relevant to the application. The Crime Victim Assistance Act requires persons to provide authorized information on request.

**CVAA**, section 6.

When awarding a benefit, the Crime Victim Assistance Program must deduct benefits or amounts the claimant has received, or is eligible to receive, from another source for a similar purpose.

**CVAA**, section 9(4)(c).

## **Advising the Claimant about Information on File**

35. When all known information has been collected, the claims coordinator should advise the claimant that this information will be forwarded to the adjudicator, and give the claimant an opportunity to identify or provide additional information that may be relevant to the claimant's eligibility for benefits. An exception is where the claim is being expedited, in which case the claim should go directly to adjudication.

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## SECTION C-5. INTERIM BENEFITS

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Notifying the Claimant about Interim Benefits	2
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### Purpose

The purpose of providing benefits on an interim basis is to assist claimants who will experience hardship while awaiting the completion of the adjudication process. Interim benefits are provided in limited circumstances to allow for more immediate access to benefits, such as counselling benefits, when there is an urgent need for them.

See also the first adjudication section of this manual, [section C-6](#), for policy on the effect of interim benefits on the adjudication decision.

### Criteria for Providing Interim Benefits

CVAA, section 7.

1. A benefit, or part of a benefit, may be provided on an interim basis if the adjudicator is satisfied that the following three criteria are met:
  - the claimant is making reasonable efforts to ensure that anything required under section 6(1) of the Crime Victim Assistance Act is provided;
  - the claimant is likely to be awarded the benefit;
  - the claimant will suffer hardship if there is a delay in providing all or part of the benefit.

See the definitions of “interim benefit” and “hardship” in the *Glossary* at [section E-1](#) of this manual.

Section 6(1) of the Crime Victim Assistance Act addresses various processes for obtaining information required for adjudication. The first criterion above will be met where the claimant is fully cooperating with the Crime Victim Assistance Program—for example, by providing consent to obtain information, identifying or providing information, or undergoing a medical or other examination necessary to adjudicate the claim.

2. Interim benefits should be provided if all the criteria in section 7(1) of the Crime Victim Assistance Act are met *and* there is

insufficient information to adjudicate the claim in part or in full. Where there is sufficient information to determine the claimant's basic eligibility (as a victim, an immediate family member, or a witness) as well as eligibility for the urgently needed benefit, the claim should be adjudicated rather than providing the benefit on an interim basis.

If the claimant may be eligible for other benefits but the information to make this determination has not yet been received, the claimant's eligibility for those benefits can be determined through the reassessment process when the information becomes available.

3. Provision of interim benefits should not be considered where:
  - the application was submitted late and a decision has not yet been made concerning extension of the application deadline;
  - there is evidence that the claimant failed to cooperate with law enforcement authorities, or contributed to the circumstances in which the injury or death occurred, to the extent that benefits will likely be reduced or denied.
4. Provision of a benefit on an interim basis must comply with crime victim assistance regulations regarding provision of the benefit. It should also comply with applicable Crime Victim Assistance Program policy on the benefit set out in **section D** of this manual.

CVAA, section 7(1).

## Attaching Conditions or Limitations to Interim Benefits

5. A benefit provided on an interim basis may be subject to conditions or limitations that the adjudicator considers appropriate. Because there is less accountability inherent in the process of providing interim benefits, the appropriateness of attaching conditions or limitations to an interim benefit should be considered.

CVAA, section 7(1).

See *Conditions or Limitations of Benefits* in **section C-9** of this manual for general factors to consider when attaching conditions or limitations to benefits. In addition, see the policy in **section D** for conditions to attach to specific types of benefits.

## Notifying the Claimant about Interim Benefits

6. Where interim benefits will be provided, the adjudicator should provide the claimant with a written decision that includes the following:
  - the purpose and meaning of interim benefits;
  - how the interim benefit to be provided meets the criteria in section 7(1) of the Crime Victim Assistance Act;

- the nature and amount of the interim benefit and what conditions, if any, are attached to provision of the benefit;
- the implications of providing the interim benefit in terms of adjudication of the claim.

**Section C-6** of this manual, *Adjudication: Basic Eligibility*, provides policy on the effect of interim benefits on adjudication. If the claim is approved, interim benefits that have been provided are deducted from the benefits awarded. If the claim is denied, the provision of interim benefits ceases but recovery of the cost of benefits provided is not generally sought.

## **No Right to Request Reconsideration**

**CVAA**, section 7(3).

7. A decision regarding the provision of an interim benefit is not open to reconsideration.

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## SECTION C-6. ADJUDICATION: BASIC ELIGIBILITY

Purpose	2
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## Purpose

Adjudication is the focal point of the administrative processes. Its purpose is to determine a claimant's basic eligibility as a victim, an immediate family member, or a witness (as defined in the Crime Victim Assistance Act), as well as the claimant's eligibility for specific types of benefits.

This section of the manual focuses on the first part of the adjudication process: determining basic eligibility. Three other sections also address the adjudication process:

- C-7. Adjudication: Reduction or Refusal of Benefits;
- C-8. Adjudication: Eligibility for Specific Benefits;
- C-9. Adjudication: Decision.

In addition, sections D-1 through D-20 provide detailed policy on specific types of benefits.

## Determination of Basic Eligibility

1. Subject to the limitations and conditions provided in the act, regulations, and policy, Program personnel should work to ensure that benefits are provided to all claimants who meet the eligibility requirements.

The primary mandate of the Crime Victim Assistance Program is to provide financial benefits to victims, immediate family members, and witnesses as a means of offsetting their losses and assisting in their recovery from the effects of violent crime.

2. Before considering the claimant's eligibility for specific types of benefits, the adjudicator should determine if the claimant is an eligible victim, immediate family member, or witness as defined in the Crime Victim Assistance Act.

There are two main steps to the adjudication process:

- 1<sup>st</sup> Determine a claimant's basic eligibility as a victim, an immediate family member, or a witness.
- 2<sup>nd</sup> For a claimant whose basic eligibility is established, determine the claimant's eligibility for particular types of benefits.

In some cases, there will be another step: determine whether the provision of benefits should be reduced or refused. For example, where there is evidence that the claimant is receiving benefits in relation to the injury from another source, or that the claimant contributed to the offence or did not cooperate with law enforcement authorities. For more information, see **section C-7** of this manual, *Adjudication: Reduction or Refusal of Benefits*.

In some cases, a claimant may be eligible in more than one claimant category (e.g., as a victim and as an immediate family member). For information on awarding benefits in these cases, see **section C-8** of this manual, *Adjudication: Eligibility for Specific Benefits*.



## Basic Eligibility Issues for Claimants Applying as Victims

### Type of Incident

**CVAA**, section 3(1)(a); **CVA (General) Regulation**, schedule 1.

3. The claimant's injury or death must have been the direct result of:
  - a prescribed offence; or
  - an event in which the claimant made efforts to arrest a person for a criminal offence or to prevent an offence or suspected offence (i.e., a Good Samaritan event).

For more information, see *Type of Prescribed Offence(s)* and *Good Samaritan Event* below.

### Date of Offence/Event

**CVAA**, section 2(a)(i).

4. The offence or event must have occurred after July 1, 1972. All elements of the offence must be made out based on acts or omissions after July 1, 1972, even where the acts or omissions occurred both before and after this date.

### Location of Offence/Event

**CVAA**, section 3(1)(a).

5. The offence or event must have occurred in BC, but the claimant does not have to be a resident of this province. A resident of BC who was a victim of crime in another jurisdiction is not eligible; that person should be referred to the program in the jurisdiction where the offence occurred.

Programs in other provinces/territories and states may provide assistance to residents of BC who were victimized in their jurisdictions.

For links to Canadian programs, go to:

[www.justice.gc.ca/eng/pi/pcvi-cpcv/fun-fin.html](http://www.justice.gc.ca/eng/pi/pcvi-cpcv/fun-fin.html).

For links to programs outside Canada, go to:

[www.ojp.usdoj.gov/ovc/publications/infores/intdir2005](http://www.ojp.usdoj.gov/ovc/publications/infores/intdir2005).

### Type of Prescribed Offence(s)

**CVA (General) Regulation**, schedule 1.

6. The adjudicator should determine whether the incident involved a prescribed offence and, if so, what specific offence(s). This determination should be based on evidence regarding the nature of the incident and whether the elements of a prescribed offence are present.

Prescribed offences are crimes that involve violence, harm, threats, or risk of harm to persons. Refer to the Criminal Code of Canada where necessary to determine the elements of the offence(s) in question (online at: [laws.justice.gc.ca/en/C-46](http://laws.justice.gc.ca/en/C-46)).

7. In the event of changes to the list of prescribed offences, the offence must have been listed in the schedule to the regulation at the time the act or omission that constituted the offence

occurred. Benefits will be paid only for injuries that can be attributed to the acts or omissions that occurred during that time.

8. Whether or not a perpetrator has been identified should not, in itself, affect the determination that a prescribed offence occurred.
9. Criminal charges do not need to be recommended by police or laid by Crown counsel for a determination to be made that a prescribed offence occurred.

CVAA, section 5(1).

If specific criminal charges are indicated, this does not automatically determine the type of offence for the purpose of a crime victim assistance claim—the adjudicator considers this information and determines what prescribed offence was involved.

For example, Crown counsel may lay a charge of break and enter, which is not a prescribed offence, but the adjudicator may determine that the incident involved forcible entry, which is a prescribed offence.

Criminal prosecutions do not have the same purpose or standard of proof as crime victim assistance adjudications. Charging decisions in criminal prosecutions are based not only on the elements of offences but also on the likelihood of conviction and whether prosecution is in the public interest. For information on the standard of proof in crime victim assistance adjudications, see *Standard and Burden of Proof* below. See also *Effect of a Criminal Conviction* below.

10. If all elements of a prescribed offence were present except that the perpetrator was legally incapable of forming the necessary criminal intent, then the Crime Victim Assistance Act deems the intent to exist.

CVAA, section 5(2).

The Criminal Code addresses legal incapacity by age and mental disorder as follows:

Section 13: No person shall be convicted of an offence in respect of an act or omission on his part while that person was under the age of twelve years.

Section 16(1): No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.

11. While the “deemed intent” provision of the Crime Victim Assistance Act applies to offences perpetrated by children under 12, it is not meant to criminalize behaviour that normally occurs between children.

Normal childhood behaviour includes minor altercations or aggressive actions as well as sexual play or exploration. Criminal behaviour among children may be indicated where: there is a significant age difference between the perpetrator and victim; the perpetrator uses power or force; the behaviour is intrusive and age-inappropriate; and the behaviour has a negative impact on the victim.

## Good Samaritan Event

CVAA, section 3(1)(a)(ii).

12. Under the Crime Victim Assistance Act, Good Samaritan events may include the following:
  - arresting, or attempting to arrest, a person for a criminal offence;
  - assisting, or attempting to assist, a peace officer in arresting a person for a criminal offence;
  - preventing, or attempting to prevent, an offence or a suspected offence under the Criminal Code;
  - assisting, or attempting to assist, a peace officer to prevent an offence or a suspected offence under the Criminal Code.
13. The adjudicator should ensure that the following criteria are met before making a determination that there was a Good Samaritan event:
  - the claimant's actions were lawful;
  - it was reasonable for the claimant to believe that a criminal offence was about to be committed, was in progress, or had been committed (the offence does not have to be a prescribed offence under the Crime Victim Assistance Act);
  - the claimant's actions put himself or herself at risk of harm;
  - the claimant's reason for taking these actions was to help prevent or stop a crime or apprehend a perpetrator;
  - the claimant's actions were not motivated by revenge or a desire for retaliation.
14. The adjudicator should refer to the Criminal Code in determining whether the claimant was acting lawfully, including:
  - section 494, which provides the authority for an arrest without a warrant by any person;
  - sections 25 to 31, which describe the limits of authority for persons administering and enforcing the law, including private citizens.

The text of these sections of the Criminal Code is provided in **appendix A to section C-6** of this manual.

## Effect of a Criminal Conviction

CVAA, section 5(4).

15. Proof that a person has been convicted of an offence in relation to the victim's injury or death, and that no appeal is available, is conclusive evidence of the offence. This also applies where a perpetrator is discharged under section 730 of the Criminal Code or found not criminally responsible of an offence because of mental disorder.

## **Injury as a Direct Result of an Offence/Event**

16. The adjudicator should determine whether the claimant was injured as defined in the Crime Victim Assistance Act.

**CVAA**, section 1(1).

"Injury" means bodily harm, including psychological harm, or pregnancy. "Psychological harm" means a psychological condition that interferes with the health or comfort of a person, and is more than merely transient or trifling in nature.

See also the provisions under *Medical Evidence* below.

17. To be eligible as a victim of crime, the claimant's injury must have been the direct result of a prescribed offence or Good Samaritan event.

**CVAA**, section 3(1)(a).

This does not mean that the offence/event has to be the sole or predominant cause of the injury to the claimant, but it has to have "causative significance" to the injury. The offence/event has to have more than a tenuous or trivial connection to the injury—there has to be evidence of a direct, logical link between the two.

Example: a person who is being treated for heart disease has a heart attack when that person is threatened by an armed assailant. Without the pre-existing heart disease, the likelihood of the victim having a heart attack in these circumstances is low. Nonetheless, the likelihood that the occurrence of the heart attack in these circumstances was related to the offence is high.

## **Motor Vehicle Injury Exclusion**

18. The Crime Victim Assistance Act does not apply where the injury results from the operation of a motor vehicle, other than assault using a motor vehicle. If a claim involves an injury related to the operation of a motor vehicle, the adjudicator should determine whether the motor vehicle was used as a "weapon" against the claimant.

**CVAA**, section 2(a)(ii).

The fact that the operation of the motor vehicle involved a prescribed offence (e.g., criminal negligence causing bodily harm) or Good Samaritan event is not relevant unless the vehicle was used as a weapon.

19. If the operation of the motor vehicle did not constitute assault using a motor vehicle, the claim should not automatically be denied. The adjudicator should review the circumstances of the incident to determine whether there was injury from a prescribed offence or an event not related to the operation of the motor vehicle.

For example, the motor vehicle injury exclusion would not apply to a "road rage" incident where the perpetrator got out of his or her vehicle and attacked the victim. That incident would fall within the scope of the Crime Victim Assistance Act.

Some claims are eligible for benefits from both the Insurance Corporation of BC and the Crime Victim Assistance Program. In these

cases, the Program deducts benefits provided for the same or a similar purpose, as required by section 9(4)(c) of the Crime Victim Assistance Act.

### **Employment Injury Exclusion**

CVAA, section 2(b).

20. The Crime Victim Assistance Act does not apply to an injury that arose out of, and occurred in the course of, the claimant's employment if compensation under the Workers Compensation Act, the Government Employees Compensation Act (Canada), or a similar act in another jurisdiction is payable with respect to the injury.

Generally, "arose out of" focuses on the cause of injury and "occurred in the course of" focuses on its time and place.

21. Before denying a claim because of the employment injury exclusion, the adjudicator should ensure that all the criteria in section 2(b) of the Crime Victim Assistance Act are met.

The employment injury exclusion does not apply when:

- an injury arose out of the claimant's employment but did not occur in the course of that employment (e.g., a verbal conflict over a work matter that resulted in a subsequent physical assault, but the assault was committed outside working hours and away from the workplace);
- an injury occurred in the course of the claimant's employment but did not arise out of that employment (e.g., an assault in the workplace that resulted from a personal dispute between the claimant and another person, a dispute that was unconnected to the claimant's employment);
- no compensation in relation to the injury is payable under the Workers Compensation Act, the Government Employees Compensation Act (Canada), or a similar act in another jurisdiction.

22. If the claimant is likely to be eligible for benefits through WorkSafeBC in relation to the injury, the claimant should be advised to apply to WorkSafeBC.

Claimants who are self-employed (e.g., taxi drivers, store owners) are not likely to be eligible for benefits through WorkSafeBC unless they have obtained optional coverage.

23. If the claimant refuses to apply, or has not applied, to WorkSafeBC despite being advised to, the adjudicator should determine whether WorkSafeBC benefits would likely have been payable had the claimant applied. If so, the Crime Victim Assistance Act is not applicable to the injury.

In making this determination, the adjudicator should consider eligibility criteria identified by WorkSafeBC.

For information on how WorkSafeBC determines whether an injury arose out of and occurred in the course of employment, and other

eligibility issues, see its Rehabilitative Services and Claims Manual, online at [www.worksafebc.com](http://www.worksafebc.com).

24. If the claimant has applied to WorkSafeBC for benefits in relation to the injury, and WorkSafeBC has determined that benefits are payable, the Crime Victim Assistance Act is not applicable to the injury.

## Basic Eligibility Issues for Claimants Applying as Immediate Family Members

### All Immediate Family Members

25. The adjudicator must be satisfied that there is a victim who meets the basic eligibility criteria in order to find that a claimant applying as an immediate family member is eligible.

"Immediate family member" is defined in the Crime Victim Assistance Act in relation to a "victim." If a person who applied as a victim does not meet the basic eligibility criteria, then immediate family members of that person cannot be eligible. For example, if a victim application is denied because the offence was related to employment and benefits are payable through WorkSafeBC, immediate family members are not eligible for benefits through the Crime Victim Assistance Program.

**CVAA**, section 1(1).

Where an injured victim has not applied to the Program, an immediate family member may still apply. For the immediate family member to be eligible, there would need to be sufficient information about the incident to determine that the victim would have met the basic eligibility criteria under the Crime Victim Assistance Act.

See also **section C-7** of this manual, *Reduction or Refusal of Benefits*, which addresses the effect of contributory and other behaviour on the part of a victim (or an immediate family member) on the immediate family member's eligibility for benefits.

26. A claimant applying as an immediate family member must fall within the definition of immediate family member in the Crime Victim Assistance Act. This includes a spouse, child, sibling, step sibling, half sibling, or parent of the victim and, if financially dependent on the victim, a grandparent or grandchild of the victim.

**CVAA**, section 1.

Note that the act recognizes persons who "stood in the place of" a child or parent of the victim. See the provisions under *Child of the Victim* and *Parent of the Victim* below.

27. Crime Victim Assistance Program personnel may have to obtain information to verify the claimant's relationship with the victim.

Under the Crime Victim Assistance Act, information may be requested from the applicant and other sources for the purpose of determining the applicant's eligibility for benefits.

**CVAA**, section 6.

The authorization section of the application form provides the claimant's consent to the release of certain types of information relevant to the application.

See also specific verification issues in relation to different categories of immediate family members, below.

**CVAA**, sections 3(1)(b)(i) and 3(1)(b)(ii).

28. To be eligible for benefits, an immediate family member must:

- have experienced economic loss or psychological harm as a result of the injury or death of the victim; or
- be a minor child of a deceased victim.

**CVAA**, section 1(1).

“Psychological harm” means a psychological condition that interferes with the health or comfort of a person, and is more than merely transient or trifling in nature.

A minor child of a deceased victim automatically meets the basic eligibility criteria for an immediate family member. Economic loss or psychological harm does not need to be demonstrated in these cases.

29. It can be assumed that an immediate family member experienced psychological harm from the injury or death of the victim.

30. Where a victim has been killed, the immediate family member may need to provide verification of the death.

### **Spouse of the Victim**

**CVAA**, sections 1(1)(a)(i).

31. A “spouse” of the victim includes a person who, *at the time of the offence*, was:

- married to the victim; or
- living and cohabiting with the victim in a marriage-like relationship.

Note:

- Spouses include persons of the same gender who were living and cohabiting in a marriage-like relationship.
- There is no minimum time period that a person must have lived and cohabitated with the victim to qualify as a spouse; however, there are minimum time periods for specific benefits such as income support, vocational services, homemaker services, and childcare services. For more information on spousal relationships and eligibility for benefits, see the tables in **section D-1** of this manual, *Specific Types of Benefits: Overview*.

**CVAA**, section 1(2).

32. The definition of spouse also includes a person recognized by the director as a spouse of the victim because, *at the time of the victim’s death or injury*, that person was:

- qualified as a spouse of the victim under an enactment of BC or Canada to apply for maintenance or support from the victim; or
- entitled to maintenance, support, or alimony from the victim under an order or agreement enforceable under such an enactment.



The Family Relations Act (BC) and the Divorce Act (Canada) are the key enactments for this purpose—refer to these acts for specific provisions where applicable. Claimants who were no longer married to the victim or living with the victim in a marriage-like relationship (e.g., divorced spouses and former common-law spouses) cannot be recognized as spouses under the Crime Victim Assistance Act unless they are qualified to apply for, or entitled to, spousal support under such enactments.

### Child of the Victim

33. A “child” of the victim includes a person who, *at the time of the offence*, was: **CVAA**, section 1(1)(a)(ii).

- a biological or an adopted child of the victim;
- a biological child of the victim born after the death of the victim;
- a step child of the victim; or
- a child to whom the victim stands in the place of a parent, or an adult to whom the victim stood in the place of a parent when the adult was a child (these situations are referred to as “stood in the place of a child of the victim”).

34. In determining whether a claimant stood in the place of a child of the victim, the adjudicator should consider the nature of the relationship at the time of the offence, and whether the victim essentially “replaced” a parent that was no longer in the claimant’s life or no longer in a parental role in relation to the claimant. More specifically, the following factors should be considered:

- the duration of the relationship and frequency of contact;
- whether the victim financially supported the claimant (depending on ability to pay), particularly during childhood;
- whether the victim emotionally supported the claimant;
- whether the relationship was biological or through marriage;
- whether the victim represented to the claimant, the family, the world, either explicitly or implicitly, that he or she was responsible as a parent to the claimant;
- the nature or existence of the claimant’s relationship with his or her biological or adoptive parent(s).

35. Where the victim is a foster parent, the above factors apply when considering whether a foster child stood in the place of a child of the victim. While the nature of the relationship should be examined on a case-by-case basis, a foster child should generally not be considered a “child” of the victim (under the Crime Victim Assistance Act) if the child’s biological or adoptive parents were involved in the child’s life and reintegration of the child with his or her parents was intended.



CVAA, section 1(2).

36. The definition of child also includes a person recognized by the director as a child of the victim because that person, *at the time of the victim's death or injury*, was:

- qualified as a child of the victim under an enactment of BC or Canada to apply for maintenance or support from the victim; or
- entitled to maintenance or support from the victim under an order or agreement enforceable under such an enactment.

The Family Relations Act (BC) and the Divorce Act (Canada) are the key enactments for this purpose--refer to these acts for specific provisions where applicable.

### Parent of the Victim

CVAA, section 1(1)(a)(iii).

37. A "parent" of the victim includes a person who, *at the time of the offence*, was:

- a biological or an adoptive parent of the victim;
- a step parent of the victim; or
- standing in the place of a parent of the victim (whether the victim was a child or an adult).

38. In determining whether a claimant stood in the place of a parent of the victim, the adjudicator should consider the nature of the relationship at the time of the offence, and whether the claimant essentially "replaced" a parent who was no longer in the victim's life or in a parental role in relation to the victim. More specifically, the following factors should be considered:

- the duration of the relationship and frequency of contact;
- whether the claimant financially supported the victim (depending on ability to pay), particularly during childhood;
- whether the claimant emotionally supported the victim;
- whether the relationship was biological or through marriage;
- whether the claimant represented to the victim, the family, the world, either explicitly or implicitly, that he or she was responsible as a parent to the victim;
- the nature or existence of the victim's relationship with the absent parent.

39. Where the victim is a foster child, the above factors apply when considering whether a foster parent stood in the place of a parent of the victim. While the nature of the relationship should be examined on a case-by-case basis, a foster parent should generally not be considered a "parent" of the victim (under the Crime Victim Assistance Act) if the child's biological or adoptive

parents were involved in the child's life and reintegration of the child with his or her parents was intended.

### Sibling of the Victim

40. The sibling category includes a person who, *at the time of the offence*, was:

CVAA, section 1(1)(a).

- a biological or an adoptive sibling of the victim;
- a half sibling of the victim;
- a step sibling of the victim; or
- in a sibling-like relationship with the victim.

41. The following factors should be considered in determining whether the claimant was in a sibling-like relationship with the victim at the time of the offence:

- whether the claimant and victim lived in the same family home or otherwise functioned as part of the same family unit;
- the nature of the relationship, including its duration and the frequency of contact;
- whether the claimant represented to the victim, the family, the world, either explicitly or implicitly, that he or she was in the role of a sibling to the victim.

Examples of sibling-like relationships include foster children and orphaned children who have been raised by families with other children, and who have been like siblings to those children for a significant period of time.

### Grandparent or Grandchild of the Victim

42. A "grandparent" or "grandchild" includes a person who, *at the time of the offence*, was:

CVAA, section 1(1)(b).

- a biological, an adoptive, or a step grandparent or grandchild of the victim; and
- financially dependent on the victim.

An exception to the financially dependent criterion is where a grandparent stood in the place of a parent to the victim and thus falls within the definition of parent (see *Parent of the Victim* above).

"Financially dependent" means that the family member was being financially supported by the victim—that the victim was paying full or partial financial maintenance or support for the family member. This will usually mean that the victim was providing regular or periodic financial contributions (e.g., monthly or semi-annually), which the family member expected to receive and came to depend on. Financial maintenance/support does not include gifts that are traditionally given on holidays, birthdays, or other special occasions.

## Basic Eligibility Issues for Claimants Applying as Witnesses

43. The adjudicator must be satisfied that there is a victim who meets the basic eligibility criteria in order to find that a claimant applying as a witness is eligible.

CVAA, section 1(1).

"Witness" is defined in the Crime Victim Assistance Act in relation to a "victim." If a person who applied as a victim does not meet the basic eligibility criteria, then a witness in relation to the same incident cannot be eligible.

Where an injured victim has not applied to the Program, a witness may still apply. For the witness to be eligible, there would need to be sufficient information about the incident to determine that the victim would have met the basic eligibility criteria under the Crime Victim Assistance Act.

See also **section C-7** of this manual, *Reduction or Refusal of Benefits*, which addresses the effect of contributory and other behaviour on the part of a victim (or a witness) on the witness's eligibility for benefits.

CVAA, sections 1(1) and 3(1)(c).

44. To be eligible for benefits, a claimant applying as a witness must:

- have a strong emotional attachment to the victim (but not necessarily be related to the victim);
- have witnessed in close proximity a prescribed offence that caused a life-threatening injury to, or the death of, the victim, or the immediate aftermath of a prescribed offence that caused the death of the victim;
  - in circumstances that were sufficient to alarm, shock, and frighten a reasonable person with that emotional attachment to the victim; and
- suffer psychological harm that is diagnosed, by a registered psychologist or a medical practitioner, as a recognized psychological or psychiatric condition and that, in the opinion of the person who makes the diagnosis, is a result of being a witness to the offence.

The nature of the offence is the first issue to examine (note that the witness eligibility criteria do not include Good Samaritan events, only prescribed offences). If the offence was not a prescribed offence that caused life-threatening injury or death, the claimant will not meet the criteria for a witness. Therefore, it will not be necessary to seek or analyse evidence regarding the nature of the relationship between the claimant and victim, the proximity or other circumstances of witnessing the offence or its aftermath, or the psychological harm experienced by the claimant.

45. To determine that a claimant has or had a "strong emotional attachment" to the victim, the adjudicator should be satisfied that the claimant was in some form of ongoing, mutual, emotional relationship with the victim, such as an intimate relationship or a close friendship. A neighbour or co-worker may be found to have

a strong emotional attachment to the victim, but this finding should not be based on living or working proximity alone—the nature of the relationship is the determining factor.

Claimants who have a strong emotional attachment to the victim may include relatives of the victim; however, the witness category is not intended to include immediate family members, as their claims should be processed as immediate family member claims.

46. Witnessing a prescribed offence “in close proximity” means to have first-hand awareness (e.g., through sight or hearing) of the offence as it is being committed. Witnessing “the immediate aftermath” of a fatal offence generally means coming upon the scene of the offence just after it occurred, and may or may not involve coming upon the body of the victim.
47. It can be assumed that the circumstances of witnessing a life-threatening or fatal offence, or the aftermath of a fatal offence, were sufficient to alarm, shock, and frighten a reasonable person with the same attachment to the victim.

## **Expediting Adjudication**

48. Adjudication of the claim should be expedited where:
  - protective measures are needed;
  - crime scene cleaning is needed;
  - there is a child victim;
  - there is a recent (non-historical) sexual assault;
  - there is a fatality;
  - the claimant is severely traumatized;
  - there is an urgent need for benefits (urgent medical, dental, or financial need);
  - a reassessment has been requested and the claimant needs to continue to receive services without interruption.

## **Postponing Adjudication**

49. The Crime Victim Assistance Act provides that the director may postpone a decision with respect to an application for benefits until:
  - the claimant has applied for an amount or a service from a source other than the Crime Victim Assistance Program for which the claimant may be eligible as a result of the injury or death of the victim;

**CVAA**, sections 4(8) and 5(3).

- the rights of the claimant in relation to an application referred to above are determined and no appeal or further appeal is available from that determination;
- criminal proceedings (including available appeals) are concluded.

50. Since it is important to make decisions in a timely manner, postponement of adjudication decisions should be considered only in situations where this is clearly necessary for the effectiveness and fairness of the decision-making process or the administration of justice.

51. When the claimant has applied, and appears to be eligible, for benefits or compensation from another major source (e.g., WorkSafeBC, ICBC), adjudication should generally not be postponed.

If the claimant is subsequently deemed not eligible for benefits or compensation from the other source, the claimant may request a reassessment of his or her eligibility for benefits under the Crime Victim Assistance Act based on this new information.

See also the provisions above on the *Motor Vehicle Injury Exclusion* and *Employment Injury Exclusion* under the Crime Victim Assistance Act.

52. Postponing adjudication of a claim because of criminal or civil proceedings should be considered only when:

- it is anticipated that important and relevant evidence will be available after the criminal or civil proceedings that is not available prior to the proceedings; or
- information in a Crime Victim Assistance Program decision might prejudice an ongoing police investigation or criminal or civil proceedings.

53. Adjudication of a claim should not be postponed for anticipated evidence of the claimant's contribution to the victim's injury where:

- there is sufficient evidence to find that the claimant is an eligible victim, immediate family member, or witness;
- the existing evidence of contributory behaviour is sufficient to make a reasonable assessment of the reduction in benefits because of contribution; and
- even if the anticipated evidence confirms contribution by the claimant, the reduction in benefits is unlikely to be assessed at 100%.

Where the claimant is, more likely than not, eligible for some benefits, it is appropriate to adjudicate the claim based on a reasonable assessment of the reduction in benefits because of contribution (e.g., 50%). Once evidence is obtained from the criminal or civil proceedings,

a reassessment can be conducted to adjust the level of benefits if warranted.

See **section C-7** of this manual, *Adjudication: Reduction or Refusal of Benefits*, for information on assessing contribution.

54. When in doubt about postponing adjudication because of criminal proceedings, the adjudicator should consult with police or Crown counsel to determine if it is in the best interests of the administration of justice to await the conclusion of the criminal proceedings before adjudicating the claim.
55. When adjudication of a claim will be postponed, the claimant should be notified, in writing, of the postponement and the reasons for it.

## Treating Two or More Offences as One

56. The Crime Victim Assistance Act enables two or more prescribed offences to be treated as one offence if they are related, connected, or of a similar nature and involve the same persons, whether the offences are the subject of one application or several applications for benefits. Prescribed offences that meet these criteria should be considered one offence unless there are compelling reasons to treat them as separate offences.

CVAA, section 3(6).

Treating several related offences as one is appropriate since benefits are based on the claimant's injury/loss and accompanying needs, rather than on the specific types of offences committed. Only one application needs to be completed and processed, which is advantageous to both the claimant and the Crime Victim Assistance Program.

57. Prescribed offences should be considered related, connected, or of a similar nature where:
  - they are best described as part of one "incident," such as when offences occur simultaneously or very closely in time, or one offence is committed for the purpose of another (e.g., kidnapping, forcible confinement, and sexual assault);
  - the separate acts committed by the perpetrator are really elements of a prescribed offence (e.g., several acts of harassment that make up the offence of criminal harassment);
  - the offences occur closely in time and are part of a pattern of violence by the perpetrator against the victim (e.g., repeated acts of relationship violence).
58. Where offences involve the same perpetrator and victim but are clearly distinct offences that have occurred over a span of time, they should be treated as separate offences if this would be advantageous to the claimant (i.e., result in more benefits).

## Standard and Burden of Proof

59. The standard of proof required in adjudicating claims is the civil standard: “on a balance of probabilities,” which means the same as “more likely than not.”

“On a balance of probabilities” is a lesser standard than “beyond a reasonable doubt,” which is required in criminal cases. For example, it is possible for a person to be found a victim of crime in a Crime Victim Assistance Program adjudication even though the perpetrator was acquitted of criminal charges related to the incident.

CVAA, section 6(3).

While the Crime Victim Assistance Act does not explicitly state that the civil standard of proof is to be used, this is implied in its information and verification provisions. The director may consider any evidence that the director believes would be of assistance, whether or not it would be admissible as evidence in a court of law, which abrogates the necessity of proof beyond a reasonable doubt.

60. The civil standard of proof is applied to all aspects of basic eligibility for crime victim assistance benefits.

For example:

- Is it more likely than not that the victim was injured, in accordance with how injury and psychological harm are defined in the Crime Victim Assistance Act?
- Is it more likely than not that the injury was caused by a prescribed offence—that the elements of a prescribed offence were present?
- If the evidence points to two conflicting versions of what happened, is one explanation more likely than the other based on the evidence?

61. Where conflicting evidence on an issue affecting the claimant’s eligibility comes before the adjudicator, the adjudicator should consider and weigh the evidence and, where indicated, seek additional evidence.

The adjudicator is not expected to try to identify every possible version of events and explore how well the evidence supports it. Rather, where conflicting evidence is provided, and there appears to be additional, relevant evidence available, the adjudicator is to make reasonable efforts to obtain such evidence.

62. The claimant is responsible for advising the Crime Victim Assistance Program of any information that may be relevant to his or her eligibility for benefits, and Program personnel are responsible for assisting the claimant in determining what information is relevant. Both the claimant and the Program also have the responsibility to make reasonable efforts to obtain information regarding the claim. See **section C-4** of this manual, *Pre-Adjudication Process*, for detail on responsibilities for obtaining different types of information.

While certain criteria have to be met before a claim can be substantiated and benefits provided, the claimant does not bear the entire burden of proving the claim. Crime Victim Assistance Program

personnel play an important role in facilitating the collection of information on the claimant's behalf.

In addition to standard sources of evidence such as police and medical reports, sources of evidence to support the claimant's evidence may include, for example, witnesses not previously identified, people to whom the claimant disclosed the offence, counselling reports, school records, social worker reports, etc.

63. Before denying benefits because of a deficiency in information to support a claim, the adjudicator should:

- review the claim file to ensure that all relevant information identified by the claimant has been obtained;
- advise the claimant of the deficiency in information and provide the claimant with an opportunity to identify or provide supporting information;
- seek out other available sources of supporting information as appropriate.

Claimants will be given written confirmation of the information that has been gathered and an opportunity to identify or provide additional information (see **section C-4** of this manual, *Pre-Adjudication Process*).

## Considering the Evidence

### General Provisions

64. The adjudicator should examine all available evidence and ensure that any evidence considered in making the decision is relevant to the matter being decided. Irrelevant information should be ruled out.

For evidence to be relevant, it must be applicable to the issue and there must be a logical relationship; it must have a bearing on the question at issue.

65. The adjudicator should weigh evidence in relation to its degree of relevancy. The more relevant the evidence, the more weight should be placed on it. Any evidence that is so weak as to be ineffective should be ruled out.

To test relevancy, it may help to ask: does the evidence offered render the proposition more probable than it would be without the evidence?

66. The adjudicator should ensure that inferences are based on the evidence and are reasonable, and should avoid speculation or conjecture when considering the evidence. If witnesses or others have provided information that is clearly speculation or conjecture, it should be given no weight.

A reasonable inference is based on evidence. Facts are established and, based on those facts, a logical or probable inference can be drawn.



Speculation or conjecture is sometimes referred to as a “mere guess.” It does not have a sound basis in evidence.

67. If the evidence already obtained is not sufficient to make a decision, the adjudicator should determine whether additional evidence is available.
68. Where there are questions about the interpretation of specialized evidence, such as medical or dental records or vocational assessments, the adjudicators should, first, request review of the file from the appropriate Crime Victim Assistance Program consultant, and, second, request additional expert evidence if required.

See also the policy on inconclusive medical evidence under *Medical Evidence* below.

69. The adjudicator may take into account hearsay and other evidence that would not be admissible in criminal proceedings. Caution should be exercised when using hearsay evidence.

The adjudication of applications is not restricted by the technical rules of evidence that are applied in court. In addition, procedural and technical matters that may impede a criminal trial may not be relevant to the Crime Victim Assistance Program adjudication process.

Hearsay is what someone else has been heard to say—for example, “she told me that...”—as opposed to the direct evidence of the witness.

70. Direct evidence, such as information provided by someone with first-hand knowledge, should be given more weight than information provided by someone with only second- or third-hand knowledge of the facts. Indirect evidence should generally not be used in isolation, but rather to confirm or strengthen the claim.
71. If polygraph evidence is provided to the Crime Victim Assistance Program, the evidence may be considered but should not be determinative. The adjudicator, in weighing the evidence, should consider that:
- polygraph evidence is not direct evidence and has less weight than direct evidence;
  - the reliability and validity of polygraph evidence have been called into question;
  - polygraph evidence is not admissible in criminal courts and may not be admissible in civil proceedings.

Unsolicited polygraph evidence is sometimes provided to the Crime Victim Assistance Program as part of the police report, or by other means.

72. Information from a source totally independent of the parties involved is usually more credible than information from someone

who is related to one of the parties, or from someone who has something to gain or lose depending on the outcome.

73. With the exception of professional or expert opinion, the adjudicator should consider facts and not opinions of, comments on, and interpretations of the evidence.
74. All professional or expert evidence should be considered, but the adjudicator should come to his or her own conclusions about the relevance and weight of the evidence.

Expert evidence includes evidence from consultants contracted by the Crime Victim Assistance Program as well as external service providers. While there is a requirement to consider expert evidence, this does not mean that opinions, conclusions, or recommendations provided by the expert will necessarily be accepted.

### **Claimant Statements**

75. There is no requirement for corroboration—a claim may be accepted based on the claimant's statements alone. However, before making a decision based solely on the claimant's statements, the adjudicator should ensure that efforts have been made to obtain supporting evidence from other sources.

Where there is no additional evidence, the likelihood of the adjudicator being satisfied that the claimant is eligible for benefits under the Crime Victim Assistance Act will hinge on the credibility of the claimant's evidence. This will include factors such as whether the claimant has a good recollection of the events and whether the evidence provided by the claimant is consistent.

See also the provisions under *Medical Evidence* below.

76. When assessing the claimant's credibility, the adjudicator should bear in mind that various factors—such as culture, language, developmental level, substance abuse, disability, and trauma—may affect how people communicate generally and about their victimization specifically.

Such factors may explain statements that could otherwise be incorrectly interpreted as a reflection on the claimant's credibility.

77. Where there are inconsistent statements from a claimant, the adjudicator should consider and weigh all the evidence, including the conditions under which the statements were made and the reasons given for the inconsistency.

Inconsistent statements may result from unclear communication, or from a claimant trying to clarify or expand on a prior statement. In addition, victims may recant, or change their statements, because of fear of retaliation from the perpetrator or for other reasons.

78. If there is evidence suggesting that the claimant's memory or perception was affected because the claimant was under the

influence of drugs or alcohol at the time of the incident, the effect of the drugs or alcohol should be considered in assessing the accuracy of the claimant's statements.

79. A lie may be the basis for drawing an adverse inference about the facts to which the lie relates or about the general credibility of the claimant. But it is not, in itself, a reason for denying benefits, particularly when it relates to something not relevant to the claim.

CVAA, section 19.

80. If a claimant knowingly makes a false or misleading statement, or provides false or misleading information, in either an application for benefits or subsequent information that is required to be provided under the Crime Victim Assistance Act, the claimant commits an offence under the act.

If a person is convicted of an offence in these circumstances, the court may order the person to repay all or part of the cost of any benefit, including an interim benefit, provided to that person by the Crime Victim Assistance Program.

81. Before denying benefits solely because of the credibility of the claimant, the adjudicator should make every effort to speak with the claimant, by telephone or in person, and provide the claimant with the opportunity to address the credibility concerns.

### Medical Evidence

82. Crime Victim Assistance Program personnel are responsible for determining when medical evidence is needed, what kind of medical evidence is needed, and on what questions.

Medical evidence might consist of a report, some information, or an opinion from the attending physician, or it might consist of advice from another doctor or the Crime Victim Assistance Program medical consultant.

83. A claimant's statement about his or her medical condition is evidence if it relates to matters that would be within the claimant's knowledge, and it should not be rejected solely on the ground of possible bias.
84. Statements made by first aid attendants or other types of paramedical personnel may be considered as they relate to matters within the normal experience or training of that type of paramedical personnel. The adjudicator should exercise caution in considering statements that go beyond that into areas requiring greater medical expertise, or that conflict with the opinion of a medical practitioner.
85. Where there are conflicts in medical evidence, the adjudicator should analyze the opinions and conflicts on each issue and arrive at his or her own conclusions about where the preponderance of

the evidence lies. If two or more medical reports indicate a probable difference of medical opinion and the issue is serious, the adjudicator should generally discuss the issue with the medical practitioners involved. The adjudicator may also seek advice from the Crime Victim Assistance Program medical consultant to determine whether the best medical evidence has been obtained.

86. In assessing evidence from medical practitioners or health professionals, the adjudicator should *avoid*:

- automatically giving more weight to the opinion of one type of medical practitioner or health professional than to another.

For example, there is no rule that the evidence of a specialist physician is always to be preferred to that of a general physician, or that the evidence of a physician is always to be preferred to that of a chiropractor or other qualified health professional.

- automatically giving more weight to the opinion of the Crime Victim Assistance Program medical consultant than to another medical practitioner;
- weighing evidence in a conflict of medical opinion by counting the number of opinions on each side of an issue;
- assuming that there is a conflict of medical opinion because medical reports from two or more medical practitioners or health professionals indicate different conclusions.

A difference in conclusions could result from different assumptions of non-medical fact, so it is important for the adjudicator to consider why the conclusions are different and whether the relevant non-medical facts have been clearly established.

87. To ensure fairness and consistency in decision-making, the adjudicator should seek and consider medical opinions before denying a claim because of inconclusive medical evidence. The following steps should be taken, where necessary, in a graduated process of evidence gathering:

- first, request that the Crime Victim Assistance Program medical consultant review the file and provide an opinion on the evidence, including whether additional medical evidence should be obtained;
- second, request an opinion from the claimant's doctor or other appropriate medical practitioner.

Many claims can be adjudicated without additional medical expertise, using a "common sense" perspective when examining medical evidence. However, the above process provides a safeguard to ensure that claims will not be denied because of insufficient evidence when the evidence may exist but is not apparent to someone without medical expertise.

## Use and Disclosure of Witness Statements

88. Since the claimant has the right to know the reasons for the adjudication decision, including the evidence considered in making the decision, the adjudicator should always consider whether there are confidentiality concerns that may preclude, or weigh against, the use of witness statements in the decision-making process.

Witness statements may be provided as part of the police report or Report to Crown Counsel, or may be obtained directly from interviews with witnesses conducted by Crime Victim Assistance Program personnel.

89. When a witness is interviewed by Crime Victim Assistance Program personnel, the interviewer should explain at the outset that the information provided by the witness might be used in the adjudication process and disclosed to the claimant.
90. If there is reason to believe that disclosure of information in a witness statement would pose a safety risk to any person, Crime Victim Assistance Program personnel should try to obtain the information by other means. If this is not possible and the information is significant to decision making, it should be documented (on file and in decisions) in a way that protects the identity of the witness.

## Effect of Interim Benefits on Adjudication

91. The fact that interim benefits have been provided to a claimant should not, in itself, affect the determination of whether the claimant is an eligible victim, immediate family member, or witness under the Crime Victim Assistance Act.

For policy on providing interim benefits, see **section C-5** of this manual.

92. Where the adjudication determines that a claimant is eligible for benefits, any interim benefits that have been provided are deducted from the benefits to be awarded upon adjudication.

See also *Deductions and Reductions* in **section C-9** of this manual.

93. Where the adjudication determines that a claimant is not eligible for crime victim assistance benefits, the provision of interim benefits should be terminated. Recovery of interim benefits that have already been provided is generally not sought.

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## SECTION C-6(A). APPENDIX A: GOOD SAMARITAN EVENTS

### Criminal Code Provisions Related to Good Samaritan Events

One of the criteria for Good Samaritan events is that the claimant must have been acting lawfully. Below are key provisions of the Criminal Code on arrest without warrant and protection of persons administering and enforcing the law.

#### Section 494. Arrest Without Warrant by Any Person

- (1) Any one may arrest without warrant
  - (a) a person whom he finds committing an indictable offence; or
  - (b) a person who, on reasonable grounds, he believes
    - (i) has committed a criminal offence, and
    - (ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person.

#### Arrest by owner, etc., of property

- (2) Any one who is
  - (a) the owner or a person in lawful possession of property, or
  - (b) a person authorized by the owner or by a person in lawful possession of property,may arrest without warrant a person whom he finds committing a criminal offence on or in relation to that property.

#### Delivery to peace officer

- (3) Any one other than a peace officer who arrests a person without warrant shall forthwith deliver the person to a peace officer.

#### Section 25. Protection of Persons Acting Under Authority

- (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law
  - (a) as a private person,
  - (b) as a peace officer or public officer,
  - (c) in aid of a peace officer or public officer, or
  - (d) by virtue of his office,is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

#### Idem

- (2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person

who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

#### When not protected

- (3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

#### When protected

- (4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if
- (a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;
  - (b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;
  - (c) the person to be arrested takes flight to avoid arrest;
  - (d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and
  - (e) the flight cannot be prevented by reasonable means in a less violent manner.

#### Power in case of escape from penitentiary

- (5) A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of the Corrections and Conditional Release Act, if
- (a) the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and
  - (b) the escape cannot be prevented by reasonable means in a less violent manner.

### **Section 26. Excessive Force**

Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.



## **Section 27. Use of Force to Prevent Commission of Offence**

Every one is justified in using as much force as is reasonably necessary

- (a) to prevent the commission of an offence
  - (i) for which, if it were committed, the person who committed it might be arrested without warrant, and
  - (ii) that would be likely to cause immediate and serious injury to the person or property of anyone; or
- (b) to prevent anything being done that, on reasonable grounds, he believes would, if it were done, be an offence mentioned in paragraph (a).

### **Section 27.1. Use of Force on Board an Aircraft**

- (1) Every person on an aircraft in flight is justified in using as much force as is reasonably necessary to prevent the commission of an offence against this Act or another Act of Parliament that the person believes on reasonable grounds, if it were committed, would be likely to cause immediate and serious injury to the aircraft or to any person or property therein.

#### Application of this section

- (2) This section applies in respect of any aircraft in flight in Canadian airspace and in respect of any aircraft registered in Canada in accordance with the regulations made under the Aeronautics Act in flight outside Canadian airspace.

## **Section 28. Arrest of Wrong Person**

- (1) Where a person who is authorized to execute a warrant to arrest believes, in good faith and on reasonable grounds, that the person whom he arrests is the person named in the warrant, he is protected from criminal responsibility in respect thereof to the same extent as if that person were the person named in the warrant.

#### Person assisting

- (2) Where a person is authorized to execute a warrant to arrest,
  - (a) every one who, being called on to assist him, believes that the person in whose arrest he is called on to assist is the person named in the warrant, and
  - (b) every keeper of a prison who is required to receive and detain a person who he believes has been arrested under the warrant,is protected from criminal responsibility in respect thereof to the same extent as if that person were the person named in the warrant.

## **Section 29. Duty of Person Arresting**

- (1) It is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so.

### Notice

- (2) It is the duty of every one who arrests a person, whether with or without a warrant, to give notice to that person, where it is feasible to do so, of
  - (a) the process or warrant under which he makes the arrest; or
  - (b) the reason for the arrest.

### Failure to comply

- (3) Failure to comply with subsection (1) or (2) does not of itself deprive a person who executes a process or warrant, or a person who makes an arrest, or those who assist them, of protection from criminal responsibility.

## **Section 30. Preventing Breach of Peace**

Every one who witnesses a breach of the peace is justified in interfering to prevent the continuance or renewal thereof and may detain any person who commits or is about to join in or to renew the breach of the peace, for the purpose of giving him into the custody of a peace officer, if he uses no more force than is reasonably necessary to prevent the continuance or renewal of the breach of the peace or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of the breach of the peace.

## **Section 31. Arrest for Breach of Peace**

- (1) Every peace officer who witnesses a breach of the peace and every one who lawfully assists the peace officer is justified in arresting any person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace.

### Giving person in charge

- (2) Every peace officer is justified in receiving into custody any person who is given into his charge as having been a party to a breach of the peace by one who has, or who on reasonable grounds the peace officer believes has, witnessed the breach of the peace.

## SECTION C-7. ADJUDICATION: REDUCTION OR REFUSAL OF BENEFITS

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### Purpose

Under the Crime Victim Assistance Act, benefits may be reduced or denied where a claimant's actions are contrary to the aims of crime victim assistance or hamper the processing of the claim.

The cooperation of claimants is required in providing information to the Crime Victim Assistance Program on issues affecting their claims. In addition, since the Program's best source of supporting evidence is often the police investigation, the cooperation of claimants with law enforcement is important to the evidence-gathering process.

Beyond these practical considerations, publicly funded benefits for victims of crime are based on certain premises and principles (see *Premises* and *Guiding Principles* in [section B-2](#) of this manual). These include:

- the premise that assisting and protecting victims of crime who cooperate with the justice system will encourage greater public cooperation in the apprehension and prosecution of offenders;
- the guiding principle that accountability to the public requires that the Crime Victim Assistance Program:
  - reduce or deny benefits to claimants whose actions contributed to the crime;
  - deny claims if claimants refuse to cooperate with law enforcement authorities, unless there are compelling reasons for their failure to cooperate.

Further, there are certain circumstances in which the provision of benefits will not serve their intended purpose, such as when a claimant is putting his or her health or safety in jeopardy or is otherwise undermining the purpose of a benefit.

See also *Deductions and Reductions* in **section C-9** of this manual for information on applying reductions to benefits as well as information on deducting amounts received from other sources.

## **Failure to Comply with Crime Victim Assistance Act Requirements**

1. Under the Crime Victim Assistance Act, claimants may be required to provide information, undergo medical or other examinations, and provide consent to obtain information necessary for determining if they are eligible for benefits. Failure to comply with one of these requirements may result in the claimant being declared ineligible for a benefit until the requirement is met.

**CVAA**, section 6(1).

**CVAA**, section 6(4).

Examples of situations where this may arise are when the claimant:

- refuses to undergo an independent medical or psychological assessment requested by the Crime Victim Assistance Program;
- refuses to attend an interview with the adjudicator to discuss his or her claim and areas of conflict;
- withdraws consent for the Program to obtain information pertaining to his or her claim.

## **Failure to Cooperate with Law Enforcement Authorities**

2. Under the Crime Victim Assistance Act, the director may, subject to the regulations, refuse to provide a benefit, or reduce the amount of, limit, suspend, or terminate a benefit awarded to:
  - a victim who did not report the offence to law enforcement authorities;
  - a victim, an immediate family member, or a witness who has not cooperated with law enforcement authorities in the investigation, apprehension, or prosecution of the perpetrator.

**CVAA**, section 9(3).

For the purpose of this policy, the above situations are referred to as "failure to cooperate." However, these two types of failure to cooperate—failure to report an offence and failure to cooperate with law enforcement authorities in an ongoing manner—do not necessarily occur together. For example, a victim may report the offence to police but then refuse to cooperate with the police investigation.

While there is no expectation that immediate family members or witnesses are to report the offence to police, there is an expectation that they will cooperate in the investigation or prosecution of the offence once it has come to the attention of law enforcement authorities.

See the definition of "law enforcement authorities" in the *Glossary* at **section E-1** of this manual.

3. Failure to cooperate may include:

- not reporting the offence to police or not reporting it within a reasonable period of time (this applies to victims only);  
See also provision no. 4 below, on reporting.
- refusing to discuss the offence with police, or refusing to respond to questions about the offence posed by police;
- withholding or secreting information from police regarding the description, identity, or whereabouts of the perpetrator;
- failing to provide law enforcement authorities with the identity of witnesses to the offence;
- impeding the progress of the criminal investigation;
- refusing, without reasonable cause, to participate in the prosecution of the perpetrator (including refusing to serve as a witness in court);
- advising other persons to refuse to cooperate with law enforcement authorities with respect to the offence.

A delay in reporting does not necessarily constitute failure to cooperate with law enforcement authorities. The length of the delay (e.g., several days versus several months) and the claimant's circumstances are examined before coming to a conclusion with respect to failure to cooperate.

4. There is no requirement for victims to report the offence to police in order to receive benefits through the Crime Victim Assistance Program, as the Program recognizes that some victims have compelling reasons for not reporting (see provision no. 10 below). In the absence of compelling reasons, there is an expectation that victims will make a report to police.

Reporting of violent crime by victims assists the criminal justice system in apprehending perpetrators and preventing further offences. In addition, the information in police reports is relied upon to provide supporting evidence for crime victim assistance claims.

5. If a claimant applying for benefits has not cooperated with law enforcement authorities, Crime Victim Assistance Program personnel should advise the claimant that this might affect the claimant's eligibility for benefits. Where appropriate, the claimant should be referred to victim services for support.

The involvement of victim services may be particularly beneficial in cases where a claimant is reluctant to get involved with the criminal justice system because of fears about what to expect or not having support. However, it is important to recognize that there may be compelling reasons for a claimant's failure to cooperate with law enforcement authorities, as outlined in provision no. 10 below.

6. Responsibility for establishing that a claimant, more likely than not, failed to cooperate with law enforcement authorities rests with the Crime Victim Assistance Program.

A finding of failure to cooperate is not made unless the adjudicator is satisfied, based on affirmatively proven facts and on a balance of probabilities, that this conclusion is warranted. The onus is not on the claimant to prove that he or she fully cooperated with law enforcement authorities.

7. Where there is evidence to support a finding that the claimant failed to cooperate with law enforcement authorities, the claimant should be informed of this and given an opportunity to respond, before the finding is made.

The claimant may be able to provide additional evidence, including his or her reasons for failing to cooperate.

Where the decision will be unfavourable to the claimant, the principles of procedural fairness require that the claimant be given an opportunity to respond to the case against him or her. (For more information, see *Principles of Procedural Fairness* in **section B-3** of this manual.)

8. Behaviour suggesting a failure to cooperate should be viewed in the context of the claimant's circumstances and behaviour as a whole.

For example, was the claimant in shock, traumatized, in the hospital, or medicated? What happened in subsequent contacts with police? Did the police attempt to follow up with the claimant?

An obvious case of failure to cooperate would be a claimant who knows the identity of the perpetrator but refuses to tell the police, simply because the claimant does not like police or wants to seek his or her own form of "justice." On the other hand, there would be no finding of failure to cooperate where a claimant was less than fully responsive to police during an initial contact in the hospital, but was clearly cooperative during subsequent contacts.

9. The adjudicator should not make a finding of failure to cooperate with law enforcement authorities where:

- there are compelling reasons for a claimant's failure to cooperate; or
- the claimant appeared to be only partially cooperative but this was understandable in the circumstances.

If either of these situations results in insufficient evidence to determine that the claimant is an eligible victim, immediate family member, or witness, then the finding should be one of insufficient evidence.

10. Compelling reasons for failure to cooperate with law enforcement authorities may include:

- cultural fear of authorities (except fear of self-incrimination);

- reasonable fear of retaliation from the perpetrator or the perpetrator's associates;
  - factors related to domestic violence (e.g., fear of further violence, having children taken away, or having no financial support);
  - reasonable fear of public embarrassment or humiliation owing to the nature of the offence (e.g., a sexual offence);
  - lack of capacity;
  - where the claimant is a minor:
    - a parent's fear of re-traumatizing the child;
    - the claimant's desire to keep the victimization private from his or her parent(s);
    - the claimant's lack of maturity or sophistication, or peer-group influence.
11. In the absence of a compelling reason for a claimant's failure to cooperate with law enforcement authorities, a finding of failure to cooperate should be made.
12. When a finding of failure to cooperate is made, the adjudicator should consider denial, suspension, or termination of benefits, as applicable to the circumstances. Reduction or limitation of benefits is generally not appropriate.
13. If the adjudicator receives information that a claimant who is receiving benefits is no longer cooperating with law enforcement authorities, the claimant's eligibility for benefits should be reassessed. Unless there is a compelling reason for the claimant's failure to cooperate, the adjudicator should:
- suspend the provision of benefits until the claimant agrees to cooperate;
  - stop the provision of benefits if the claimant refuses to cooperate.
14. When a victim's application for benefits is denied because of failure to cooperate with law enforcement authorities, a claim from an immediate family member or a witness in relation to that offence may still be eligible, unless the immediate family member or witness also failed to cooperate with law enforcement authorities. However, the victim's failure to cooperate may result in denial of benefits to an immediate family member or a witness because of insufficient evidence to support the claim.

## Party to the Offence that Caused the Victim's Injury

15. Benefits must not be awarded to a claimant—whether a victim, an immediate family member, or a witness—if the claimant was a party to the offence that caused the victim's injury.

**CVAA**, sections 9(1)(a) and 9(1)(b).

If the victim was a party to the offence, the Crime Victim Assistance Act prohibits awarding benefits to an immediate family member of the victim. Benefits may be awarded to a witness in relation to the incident.

**CVAA**, section 9(1)(a).

Under section 21 of the Criminal Code, a party to an offence is someone who:

**Criminal Code**, part 1, sections 21 and 22.

- actually commits the offence;
- does or omits to do anything for the purpose of aiding another person to commit the offence; or
- abets (encourages) any person in committing the offence.

In addition, someone may be a party to an offence if he or she is part of two or more persons who formed a common intention to carry out an unlawful purpose and one of the persons, in carrying out that purpose, commits the offence.

Under section 22, someone who counsels another person to be a party to an offence may be a party to an offence committed by the other person.

16. Based on the available evidence, the adjudicator may determine that the claimant was a party to the offence whether or not law enforcement authorities have made such a determination or charges have been recommended or laid in that regard.

While the definition of "party to" used in this policy is derived from the Criminal Code, the determination of whether a claimant was a party to the offence that caused the victim's injury is a determination made under the Crime Victim Assistance Act, not the Criminal Code. Relevant evidence will be obtained from law enforcement authorities where possible, but confirmation from law enforcement authorities that a claimant was a party to the offence is not necessary.

## Contribution to the Victim's Injury

17. Under the Crime Victim Assistance Act, the director may, subject to the regulations, refuse to provide a benefit, or reduce the amount of, limit, suspend, or terminate a benefit, if the conduct of the claimant directly or indirectly contributed to the victim's injury or death.

**CVAA**, section 9(2)(b).

To simplify the wording of policy provisions in this section, the above options are discussed in terms of reduction or refusal of benefits. This is not intended to mean that benefits may not be limited, suspended, or terminated as appropriate.

This includes claimants who are victims, immediate family members, or witnesses.



18. Contribution of the claimant should not be examined/assessed:

- until it has been determined that the claimant meets the basic eligibility criteria for a victim, an immediate family member, or a witness; and
- unless there is evidence indicating that the claimant may have directly or indirectly contributed to the victim's injury or death.

Since assessment of contribution may result in reduction or refusal of benefits to claimants who meet the basic eligibility criteria, there is no point in examining contribution if it has not been determined that the claimant meets these criteria. Further, since there is no requirement in the Crime Victim Assistance Act to consider contribution, evidence of contribution is not sought out. Contribution is examined only in claims where evidence comes to the attention of the adjudicator indicating that contribution is an issue.

19. In order to make a finding of contribution, the adjudicator should be satisfied that:

- the evidence supports a finding that the claimant more likely than not contributed to the victim's injury; and
- the nature of the contributory behaviour warrants reduction or refusal of benefits in accordance with the policy set out in provisions no. 20 to 30 below.

The onus is not on the claimant to prove that he or she did not contribute to the victim's injury; the exercise of discretion under s. 9(2)(b) of the Crime Victim Assistance Act is based on facts in evidence. A finding of contribution is not made where there are questions or suspicions about the circumstances of the incident but objective evidence of contribution is lacking or the evidence is scanty and of poor quality.

The policy on contribution should be applied in the same manner as other policy in this manual—to guide decision making where applicable to the circumstances of the claim. Where there is no relevant policy, or the circumstances of the claim warrant a departure from policy, refer to *Effect of Policy* in **section B-3** of this manual.

20. The link between the claimant's behaviour and the injury should be clearly established for a finding of contribution.

For example, contribution is not assessed where:

- the victim was in the company of another person who started a fight with two others, resulting in the victim being assaulted, yet the victim did nothing to indicate that he or she wanted to participate in the fight; or
- the victim, who happens to be a gang member, was a customer in a store and was shot when the store was robbed by armed assailants.

However, contribution may be assessed in cases where the claimant's contributory behaviour did not occur at the time of the offence but the offence was committed because of the claimant's prior actions or, in

limited circumstances, associations. One of the factors to consider in determining if the contributory behaviour is linked with the offence is whether the events occurred closely in time.

21. The following circumstances should not, in themselves, result in a reduction or refusal of benefits because of contribution:

- intoxication by alcohol or other drugs (regardless of whether the intoxication may have increased the risk of injury);
- being in an area known to have a high level of crime;
- provoking the perpetrator by words or gestures, except where the provocative behaviour clearly indicated consent to fight;
- being reckless or failing to take precautions for one's own safety, except for circumstances of extreme recklessness where the risk of harm to the claimant/victim or others was high;
- staying in a relationship involving domestic violence;
- being victimized in the context of sex trade work;
- being victimized for leaving, or attempting to leave, a gang or other organized criminal group;
- committing a non-criminal offence (an offence under a provincial statute or municipal bylaw), such as an offence under the Liquor Control and Licensing Act or Motor Vehicle Act;
- where the contributory behaviour was the result of coercion or duress.

22. Generally, a finding of contribution should be made only in circumstances involving criminal activity or extreme recklessness by the claimant (but not necessarily in all cases involving such behaviour).

23. Where there is evidence to support a finding of contribution, the claimant should be informed of this and given an opportunity to respond, before a decision is made to reduce or deny benefits.

Where the decision will be unfavourable to the claimant, the principles of procedural fairness require that the claimant be given an opportunity to respond to the case against him or her. (For more information, see *Principles of Procedural Fairness* in **section B-3** of this manual.)

24. Where reduction of benefits because of contribution is warranted, this is done on a percentage basis: 25%, 50%, 75%, or 100% (i.e., refusal to provide any benefits). The two main categories are 50% and 100%, with the other categories generally used where there are mitigating factors.

25. Mitigating factors should be considered in determining the percentage that benefits will be reduced because of contribution. Mitigating factors may reduce the percentage one or more levels (e.g., from 100% to 75%, from 50% to 0%). Examples of mitigating factors are youth and disability, including developmental, learning, or mental health disability.

For example, if the claimant was injured while committing an offence involving damage to property only, which generally should result in a 50% reduction (see provision no. 27 below), but there was a mitigating factor in that the claimant was 13 years old, the reduction may fall to the next level, or 25%.

26. Subject to other provisions on contribution in this policy, and bearing in mind that each case is determined on the basis of its particular circumstances, examples of contributory behaviour that warrant 100% reduction of benefits (i.e., refusal to provide benefits) include the following:

- committing a criminal offence involving violence, serious threats of violence, or profit from the sale or distribution of illegal drugs or other criminal enterprises (e.g., organized crime or gang activity);

Criminal offences involving violence are intended to include Criminal Code "offences against the person" and "sexual offences."

- voluntarily engaging in fighting where there was a likelihood of bodily harm—such as when weapons were used by all parties;
- voluntarily participating in an activity where there was a high risk of harm to the claimant or others (e.g., dangerous stunts, street racing).

27. Subject to other provisions on contribution in this policy, and bearing in mind that each case is determined on the basis of its particular circumstances, examples of contributory behaviour that warrant 50% reduction of benefits include the following:

- fighting where the victim voluntarily engaged in a physical fight that resulted in excessive force or the use of weapons by the other party (or parties) only;

Where two parties willingly engage in a physical fight, the offence of assault is generally not committed since the parties have consented to the use of force. However, if the force used is excessive or if weapons are used, that vitiates (invalidates) consent, as a person cannot consent to the infliction of serious bodily harm.

- committing a criminal offence other than those described in provision no. 26 above.

Examples of criminal offences that warrant a 50% reduction of benefits include: property theft or damage, illegal gambling, purchasing drugs for personal use, solicitation, failure to pay a debt owed for an illicit purchase or activity.

28. When making a determination that the provision of benefits will be reduced or refused because of contribution, the adjudicator should set out, in the adjudication decision:
- how the evidence supports a finding that the claimant's behaviour more likely than not contributed to the injury;
  - reasons for the amount of reduction of benefits, or refusal to provide benefits, because of contribution;
  - where applicable, how the reduction of benefits because of contribution will affect the provision of specific benefits awarded to the claimant.
29. Where a reduction of benefits because of contribution is warranted, all benefits for which the claimant is eligible should generally be reduced by the same percentage (see also the next provision).
- This means that the Crime Victim Assistance Program will pay 25%, 50%, or 75% of the cost of a particular service or expense or, in the case of periodic payments such as income support, pay only that percentage of the periodic payment. However, there are some exceptions to this approach. For example, counselling benefits are awarded on the basis of number of sessions (rather than the dollar amount of each session); therefore, reductions are made on the basis of the number of sessions (e.g., if 24 sessions would have been awarded, but the reduction of benefits because of contribution is 50%, only 12 sessions would be awarded).
30. Where a victim has sustained significant injuries and it is not practical or reasonable to reduce certain types of benefits on a percentage basis, adjustments to other benefits may be made instead.
31. If benefits awarded to a victim are reduced because the victim contributed to his or her injury, benefits awarded to an immediate family member of the victim, or a witness in relation to the offence against the victim, should be reduced by the same percentage. If benefits for a victim are denied because of contribution, benefits for an immediate family member or a witness should be denied.

## **Behaviour Contrary to Recovery/Benefits**

32. Under the Crime Victim Assistance Act, the director may, subject to the regulations, refuse to provide a benefit, or reduce the amount of, limit, suspend, or terminate a benefit, if, in the opinion of the director, the claimant engages in conduct or an activity that:
- is detrimental to the claimant's health or safety;
  - undermines the purpose of the benefit; or
  - is contrary to a condition attached to the benefit.

**CVAA**, section 9(2)(c).

The purpose of this provision is to provide an inducement for claimants to facilitate their recovery as well as a means of helping to ensure that benefits are effective and used as intended. This provision is not meant to be a punitive measure for past behaviour that has ceased.

Behaviour contrary to recovery or benefits may include, for example: substance abuse/addiction, abusive or violent behaviour towards a service provider, repeatedly missing appointments, etc.

33. Where the claimant engages in conduct or an activity that meets the above criteria, the adjudicator should inform the claimant of this. The claimant should generally be advised that continuation of the behaviour will result in suspension of benefits. In exceptional circumstances (e.g., where there is an immediate danger to life), benefits may be suspended immediately—without providing the claimant with a warning.
34. Once benefits have been suspended, the claimant should be advised that benefits may be reinstated if the claimant assures the adjudicator that the behaviour will not be repeated. If the claimant persists in the behaviour after such assurance is given, benefits may be suspended again.
35. Where the issue is whether or not the claimant's behaviour is detrimental to the claimant's health or safety, and the adjudicator has doubts about making this determination, medical or other expert advice should be sought.
36. Where the issue is specifically the claimant's refusal to undergo medical or other treatment believed to be essential to the claimant's recovery, suspension or termination of benefits should not be considered unless:
  - medical advice has been sought and supports a determination that failure to undergo the treatment would be detrimental to the claimant's health or safety;
  - there is evidence that the claimant was offered the treatment, knows that the Crime Victim Assistance Program considers it essential to the claimant's recovery, was in a position to make a choice, and refused the treatment;
  - the claimant has been given an opportunity to explain his or her refusal to undergo treatment.
37. The adjudicator should take into account the reasonableness of a claimant's refusal to undergo treatment, for example:
  - risks involved in the treatment;
  - the probability of the treatment being successful;
  - religious grounds for refusing treatment.

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## SECTION C-8. ADJUDICATION: ELIGIBILITY FOR SPECIFIC BENEFITS

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### Purpose

Determining eligibility for specific types of benefits is the second main step in the adjudication process, after the claimant has been found to be an eligible victim, immediate family member, or witness.

This section of the manual provides general policy on eligibility for benefits; **section D** provides detailed policy on a benefit-by-benefit basis.

### Types of Benefits

**CVAA**, sections 4(1), 4(2), and 4(3).

1. Under the Crime Victim Assistance Act, there are different types of benefits that may be awarded to eligible victims, immediate family members, and witnesses.

**Section D-1** of this manual, *Specific Types of Benefits: Overview*, provides a table outlining the types of benefits for victims, immediate family members, and witnesses.

**CVAA**, sections 4(1), 4(2), and 4(3).

2. While the Crime Victim Assistance Act allows for specific types of benefits to be awarded, this does not necessarily mean that a claimant is entitled to receive the benefits. The provision of benefits is subject to requirements of the act and regulations, and the award of benefits is discretionary.

The act provides that benefits “may” be awarded, subject to the regulations and other requirements.

**CVAA**, section 4(1); **CVA (General) Regulation**, section 5(1), which prescribes crime scene cleaning as an additional category of benefit under section 4(1)(o) of the act.

3. Victims may be awarded the following types of benefits:
  - medical or dental services or expenses;
  - prescription drug expenses;
  - disability aids;
  - counselling services or expenses;
  - vocational services or expenses;
  - protective measures, services, or expenses;
  - repair or replacement of damaged or destroyed personal property;

- home modification, maintenance, or moving expenses;
  - vehicle modification or acquisition;
  - homemaker, childcare, or personal care services or expenses;
  - maintenance for a child born as a result of a prescribed offence;
  - income support;
  - lost earning capacity;
  - transportation and related expenses;
  - crime scene cleaning.
4. Immediate family members may be awarded the following types of benefits (some benefits are for certain types of immediate family members only):
- counselling services or expenses;
  - prescription drug expenses;
  - vocational services or expenses;
  - funeral expenses;
  - income support;
  - childcare services or expenses;
  - homemaker services or expenses;
  - transportation and related expenses, including childcare expenses;
  - loss of parental guidance for a minor child;
  - bereavement leave;
  - crime scene cleaning.
5. Witnesses may be awarded the following types of benefits:
- counselling services or expenses;
  - prescription drug expenses;
  - transportation and related expenses, including childcare expenses;
  - crime scene cleaning.

**CVAA**, section 4(2); **CVA (General) Regulation**, sections 5(1) and 5(2), which prescribe crime scene cleaning, childcare services or expenses, and homemaker services or expenses as additional categories of benefits under section 4(2)(i) of the act.

**CVAA**, section 4(3); **CVA (General) Regulation**, sections 5(1) and 5(3), which prescribe crime scene cleaning and childcare services or expenses as additional categories of benefits under section 4(3)(d) of the act.

## Determining if Benefit-Specific Criteria are Met

6. The adjudicator should consider the claimant's eligibility for all types of benefits appropriate to the claimant's circumstances, whether or not the claimant has specifically requested the benefits.

The benefits requested by the claimant may not include all benefits for which the claimant is eligible. Or, the claimant may have requested benefits that are clearly not appropriate to his or her circumstances (e.g., a request for a vehicle modification or acquisition benefit made by a claimant who does not have a disability).



7. Where a claimant meets the basic eligibility criteria for more than one claimant category (i.e., a victim, an immediate family member, and/or a witness), the adjudicator should determine what benefits the claimant is eligible for in each applicable claimant category. The claimant should be awarded the full range and level of benefits that are reasonable in the circumstances.
8. Where the need for services or goods arose from the offence but they are not eligible costs under a particular benefit category, the adjudicator should determine whether they are eligible costs under any of the other benefit categories.
9. Where there is evidence to support providing certain types of benefits to the claimant, a decision on those benefits may be made even if the adjudicator is awaiting outstanding information in relation to the claimant's eligibility for other types of benefits.

See **section C-5** of this manual, *Interim Benefits*, as well as the provision on *Expediting Adjudication* in **section C-6** of this manual.

Sections 4(1) and 4(2) of the **CVAA** provide this general criterion for victims and immediate family members respectively; for witnesses, each of the benefits set out in the **CVA (General) Regulation**, sections 29 to 32, link the need for the benefit with the offence.

10. For each benefit, the adjudicator must be satisfied that the need for the benefit arose as a result of the offence.
11. For each benefit, the adjudicator must be satisfied that the specific eligibility criteria for that benefit, as set out in the crime victim assistance regulations, are met. The adjudicator should also ensure that the policy on that benefit is applied to the circumstances of the claim.
12. The determination of whether a benefit is necessary and reasonable should be based on factors indicated in the policy for the particular benefit, as well as the purpose, premises, and guiding principles of crime victim assistance benefits (see **section B-2** of this manual, *Introduction to the Crime Victim Assistance Program*).

Many benefit categories share the following basic requirements: that the benefit must be necessary, reasonable, and economically reasonable. These concepts are all integral to the accountability of the Crime Victim Assistance Program to the public generally and to its claimants specifically.

- The necessity requirement is generally tied to a particular need or a particular loss. For example, is a particular type of disability aid needed to assist a claimant with activities of daily living?
- The reasonableness requirement is a broad one, which may involve consideration of a variety of issues, not only cost issues. For example, if a particular type of counselling is to be provided, does it fall within commonly accepted psychological or psychiatric practice?
- Economic reasonableness is a subset of reasonableness, and involves identifying and weighing alternative services/expenses in relation to the particular circumstances.

"Economically reasonable" is defined in section 1 of the **CVA (General) Regulation** and the *Glossary* at **section E-1** of this manual.

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## SECTION C-9. ADJUDICATION: DECISION

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### Purpose

The adjudication decision determines if a claimant is an eligible victim, immediate family member, or witness and, if so, what benefits the claimant is eligible for under the Crime Victim Assistance Act, regulations, and policy. In some cases, the decision may address reduction or refusal of benefits because the claimant contributed to the victim's injury or did not cooperate with the criminal justice system.

There are two outcomes of adjudication decisions: eligible (claim approved and benefits provided) or ineligible (claim denied). In either case, the decision indicates how the result was reached, although the reasons are generally more detailed if a claim is fully or partly denied. If the claimant is eligible for benefits, the decision indicates what benefits are provided and, where applicable, any conditions attached to the provision of benefits.

### Basic Eligibility

1. The adjudicator should refer to the policy in **section C-6** of this manual, *Adjudication: Basic Eligibility*, in determining whether the claimant meets the criteria for a victim, an immediate family member, or a witness under the Crime Victim Assistance Act.

Where applicable, the adjudicator should refer to the policy in **section C-7** of this manual, *Adjudication: Reduction or Refusal*

*of Benefits*, in determining whether benefits should be denied or reduced because the claimant contributed to the victim's injury or failed to cooperate with law enforcement authorities.

**Section C-6** addresses basic eligibility criteria such as the location, date, and type of offence/event; injury as a result of the offence; criteria for the three different claimant categories; and key decision-making issues such as standard and burden of proof, considering the evidence, etc.

**Section C-7** addresses the circumstances in which benefits may be reduced or refused.

2. Before denying a claim because it appears that the basic eligibility criteria have not been met, the adjudicator should ensure that:
  - all reasonable avenues for obtaining supporting evidence have been explored;
  - available evidence has been obtained as well as, where warranted, expertise to assist in interpreting that evidence;
  - credibility issues have been addressed with the claimant, where relevant.

## Types and Amounts of Benefits

### Specific Types of Benefits

3. The adjudicator should refer to the policy in **section C-8** of this manual, *Adjudication: Eligibility for Specific Benefits*, and the applicable benefit category in **section D** of this manual in determining the amount of benefit for which the claimant is eligible.

**Section D** includes information on any limitations set by regulation as well as policy requirements in determining the necessity, reasonableness, and amount of particular types of benefits.

4. Where the adjudicator is awarding some benefits and awaiting information on the claimant's eligibility for other types of benefits, the decision should indicate that:
  - there is information outstanding regarding the claimant's eligibility for the other benefits;
  - a decision on those benefits will be made upon receipt of that information.

### Retroactive Benefits

5. Benefits should not be awarded retroactively for a period of more than one year from the date of the application.

The purpose of crime victim assistance benefits is primarily to help offset claimants' current and future losses resulting from violent crime. However, this provision for retroactive benefits is consistent with the

CVAA, section 3(2).

general one-year time limit for applications under the Crime Victim Assistance Act.

Exceptions and extensions to the application time limit have no bearing on providing benefits retroactively. For example, if a victim submits an application for benefits in relation to a sexual assault committed five years previously, the application will be accepted because of the sexual offence exception to the application time limit (section 3(4) of the act). Nonetheless, the period of retroactivity for eligible benefits does not extend farther back than one year before the application date.

## Deductions and Reductions

CVAA, section 9(4)(c).

6. In determining the amount of a benefit, the adjudicator should:

- determine the cost to the claimant by deducting, from the cost of the service or expense, any "same or similar" benefit that the claimant has received or will receive;

A "same or similar" benefit is an amount or a service provided from another source for the same or a similar purpose as the benefit provided under the Crime Victim Assistance Act. (For examples of "same or similar" benefits in relation to income support and lost earning capacity, see **appendix B to section D-14** of this manual.)

- determine the amount of benefit to which the claimant is entitled, subject to any reduction or further deduction:
  - if there is no maximum set in regulation or policy, the amount is the cost to the claimant;
  - if there is a maximum set in regulation or policy, the amount is the maximum allowed or the cost to the claimant, whichever is lower;
- if the benefit is to be reduced because the claimant contributed to the victim's injury, reduce the amount to which the claimant is entitled by the percentage of reduction assessed (see *Contribution to the Victim's Injury* in **section C-7** of this manual);
- if an interim benefit was provided by the Crime Victim Assistance Program, deduct the interim benefit from the remaining amount.

Example: a claimant is eligible for a crime scene cleaning benefit. The claimant paid \$4,000.00 for the cleaning and received \$1,000.00 for the cleaning from another source (home insurance). Contribution was assessed as a 50% reduction. The maximum crime victim assistance benefit for crime scene cleaning is \$2,500.00. The benefit would be calculated as follows:

Cost of the service or expense:	\$4,000.00
Cost to the claimant:	\$3,000.00
<i>(Cost of the cleaning minus the \$1,000.00 "same or similar" benefit.)</i>	

Claimant entitled to (subject to further reduction/deduction): \$2,500.00  
(Maximum benefit allowed (\$2,500.00) or the cost to the claimant (\$3,000.00), whichever is lower.)

After 50% contribution reduction: \$1,250.00  
(Amount to which claimant is entitled (\$2,500.00) reduced by 50%.)

After interim benefit deduction (\$0): \$1,250.00

Benefit payable: \$1,250.00

## Conditions or Limitations of Benefits

7. In addition to any conditions or limitations required or permitted by regulation, a benefit may be subject to conditions or limitations the adjudicator considers appropriate. Conditions that should be attached to specific benefits are provided in **section D** of this manual, but these are not exhaustive. When determining whether to attach conditions or limitations to benefits, the adjudicator should consider:

**CVAA**, sections 4(1), 4(2), and 4(3).

- circumstances of the claim that indicate a need for conditions or limitations of benefits to be provided;
- any applicable conditions or limitations in the regulations;
- any applicable policy in **section D** of this manual;
- the guiding principles of the Crime Victim Assistance Program set out in **section B-2** of this manual, *Introduction to the Crime Victim Assistance Program*.

## Notifying the Claimant of the Decision

### Basic Requirements

8. The Crime Victim Assistance Act requires that the claimant be provided with written notice of:
- any decision for which a request for reconsideration may be made under section 13(1) of the Crime Victim Assistance Act;
  - the reasons for that decision;
  - the claimant's right to request a reconsideration of that decision.

**CVAA**, section 11(1).

The Crime Victim Assistance Program always notifies the claimant in writing when a decision is made.

See **section C-12** of this manual, *Reconsideration*, for information on the types of decisions that are open to reconsideration and the process for requesting a reconsideration.

The claimant must also be informed that he or she may request a reassessment if there is new information or a change of circumstances that may affect his or her eligibility for benefits.

**CVAA**, section 12(2).

This is an opportunity for the claimant to identify or provide new information that may result in a more favourable decision (e.g., benefits being awarded or increased). See **section C-11** of this manual, *Reassessment*, for more information on the reassessment process.

**CVAA**, section 12(1).

9. Where benefits are awarded, the claimant must be informed that he or she is required to notify the Crime Victim Assistance Program, in writing and as soon as possible, of any change of circumstances that may affect his or her eligibility for benefits.

The Program is accountable for the use of public funds and for ensuring that benefits provided continue to be appropriate to the claimant's circumstances and needs.

**CVAA**, sections 19(2)(c) and 19(4).

It is an offence under the Crime Victim Assistance Act for the claimant to contravene this notification requirement. A person convicted of an offence in these circumstances:

- may have to pay a penalty under the Offence Act;
- may be ordered by the court to repay all or part of the cost of any benefit, including an interim benefit, provided by the Crime Victim Assistance Program from the date the person was required to report the change in circumstances.

10. Where a legal representative is involved in representing the claimant's interests, the legal representative must be provided with a copy of the decision and accompanying correspondence.

### **Language and Writing Style**

11. The decision and accompanying correspondence should be written in a clear and concise manner, using plain language wherever possible.
12. The adjudicator should keep in mind the trauma experienced by victims of crime and those close to them, and consider how the language and writing style used in the decision may be perceived by the claimant.

For example, graphic or detailed accounts of offences should be avoided unless it is necessary to include them to address specific conflicting or contested evidence.

13. With the exception of relevant information that is directly quoted, Crime Victim Assistance Program personnel should use objective and respectful language to describe offences and injuries, and characteristics or circumstances of claimants, perpetrators, witnesses, or others.

Non-objective language includes, for example: language that downplays the impact of an offence or suggests responsibility or consent on the part of the victim (in the absence of evidence to support this); pejorative terms to describe psychological or physical injuries/disabilities, cultural or ethnic background, level of literacy, or lifestyle.

## Contents of the Decision

14. Written notification of the decision should include (in the decision itself or accompanying correspondence where applicable):

- a clear description of the matter being adjudicated, including what benefits were requested by the claimant;
- a summary of the evidence-gathering process, including any interviews conducted;
- a summary of all significant, relevant evidence obtained;
- information on contact with the claimant where relevant issues were discussed, and the claimant's response;
- information on relevant legislation, regulations, or policy, and discretionary factors involved in making the decision;
- an explanation of how the evidence was evaluated (its reliability, analysis of conflicting evidence, reasons for the weight apportioned to the evidence);
- in support of the conclusion reached, an explanation of:
  - what evidence was considered favourable, with reasons;
  - what evidence was considered unfavourable, or discounted, with reasons;
- a brief statement of the decision made;
- an explanation of what the decision entails regarding payment or non-payment of various benefits;
- if benefits are provided, information on any conditions attached to the benefits and the implications of not complying with those conditions;
- an explanation of the reconsideration and reassessment processes, including the deadline for requesting a reconsideration.

Clear decision making and consistency are important to the credibility of the Crime Victim Assistance Program. When decisions are inconsistent with policy (and thus with other decisions), without an adequate explanation for the inconsistency, this creates a sense that the decision-making process is arbitrary or unfair.

15. When a claim is denied because the incident that caused the claimant's injury did not involve a prescribed offence, the decision should explain how this conclusion was reached. This should include, where applicable, setting out the elements of offences that appear related to the incident and indicating what elements are missing.



16. Where a determination is made that benefits will be reduced or refused under section 9 of the Crime Victim Assistance Act, the decision should set out:
- how the evidence, on a balance of probabilities, supports the finding that resulted in the reduction or refusal of benefits;
  - where the claimant was found to have contributed to the victim's injury:
    - reasons for the percentage reduction assessed;
    - where applicable, how the reduction of benefits will affect the provision of specific benefits awarded to the claimant.

Issues covered in section 9 of the act include, among others: failure to cooperate with law enforcement authorities; party to the offence; contribution to the victim's injury; and behaviour contrary to health or safety. See **section C-7** of this manual, *Adjudication: Reduction or Refusal of Benefits*, for more information on these issues.

## **Obtaining a Signed Restitution and Civil Action Form**

17. A signed original of the Restitution and Civil Action Form should be received before payments are made on benefits awarded to claimants. In circumstances requiring immediate payment of benefits, a fax copy may be accepted with the original to follow.
18. Where the signed Restitution and Civil Action Form has not been received despite repeated requests, and services have already been provided, payment may be made to the service provider.
19. Where a minor has applied for benefits independently, the Restitution and Civil Action Form should be signed by an adult acting as the claimant's legal representative.
20. Where a legal representative has applied for benefits on the claimant's behalf and the claimant does not have capacity, the Restitution and Civil Action Form should be signed by the claimant's legal representative.

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## SECTION C-10. PAYMENT

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### Purpose

The payment process supports payments for information gathering as well as for benefits to claimants. Payments are divided into two types:

- administration costs (e.g., payments for information requests, such as preparation of medical reports); and
- benefits (e.g., payments for services provided to claimants, such as counselling).

Timely payment of benefits is an important part of assisting claimants to cope with the effects of violent crime.

### General Provisions

1. Payments may be made only for goods and services approved by the Crime Victim Assistance Program, including administrative costs in processing claims and costs of benefits awarded under the Crime Victim Assistance Act.
2. Receipts or invoices for goods and services should be originals.  
[Ministry of Finance rules require originals. This includes receipts or invoices from claimants as well as suppliers of goods and services.](#)
3. Payments should be made directly to suppliers of goods and services wherever possible.

## Payments for Benefits

### Ways of Providing Benefits

4. Under the Crime Victim Assistance Act, a benefit may be provided: CVAA, section 4(7).
- as a lump sum payment;
  - as periodic payments;
  - by commuting all or part of a lump sum payment into periodic payments;
  - by commuting all or part of periodic payments to one or more lump sum payments;
  - as a product or service; or
  - by a combination of the above methods.

### Ways of Making Payments

5. Under the Crime Victim Assistance (General) Regulation, payment of benefits may be made in several ways: CVA (General) Regulation, section 3.
- paying the supplier of the benefit (i.e., the person who provided, or is providing, the benefit to the claimant);  
In some cases, the supplier may be someone close to the claimant who made the payment on the claimant's behalf (e.g., a friend who helped arrange a funeral and paid the bill for the claimant).
  - reimbursing the claimant for expenses incurred in acquiring the benefit, upon receipt of proof of payment; or
  - directly providing the benefit to the claimant.

### Payments to Suppliers versus Claimants

6. Payments for services or goods should be made directly to suppliers (i.e., service providers or other suppliers) unless this is not possible or appropriate.

Making payments directly to suppliers expedites the payment process and minimizes "out-of-pocket" expenses for claimants.

7. Payments should be made to the claimant, either directly or through a family member or other representative, where:
- the claimant has already incurred an eligible expense;
  - the following benefits are awarded: loss of parental guidance for a minor child; income support; lost earning capacity; maintenance for a child born as a result of a prescribed offence; or bereavement leave.

If the claimant is under 19, the policy on *Payments to Claimants who are Minors* (below) should be followed.

## Payments to Claimants who are Minors

8. A benefit for loss of parental guidance for a minor child should be paid, as a lump sum, to the Public Guardian and Trustee of BC in trust for the claimant, unless the claimant has reached the age of 19, is living independently, or it would be in the claimant's best interest to be paid the benefit directly.

Factors to consider in determining if it would be in the claimant's best interest to be paid the benefit directly include:

- the age or maturity of the claimant;
- the purpose for which the money would likely be used;
- the responsibility of the claimant's parent/guardian in providing financial support for that purpose.

This provision applies whether the claimant lives in BC or another jurisdiction.

This benefit is generally held in trust until the claimant turns 19 as it is intended directly for the claimant and not to replace maintenance for which a parent/guardian is responsible (e.g., food, shelter, clothing, and other basic necessities). However, there are circumstances where it may be in the claimant's best interest to receive the benefit earlier, such as for educational or other pursuits.

9. Payment of benefits (other than loss of parental guidance) should be made directly to a claimant who is a minor where:
- the claimant incurred the expense or loss directly;
  - the claimant is a victim who was awarded an income support or a lost earning capacity benefit.

For example: if the benefit is related to the claimant's time off from work because of the injury/loss, or for replacement of damaged clothing that the claimant paid for, the claimant would have incurred the loss directly.

Income support and lost earning capacity benefits can be awarded to victims under 19 only if they are living independently.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, sections 3(4), 4(4), and 6(4).

10. Where income support is awarded to a claimant who is an immediate family member under 19, payments may be made directly to the claimant if he or she is living independently. Otherwise, payments should be made to the guardian(s) responsible for supporting the claimant. In exceptional circumstances, payments may be made to the Public Guardian and Trustee of BC for administration.
11. Where a benefit is payable to a claimant who is a minor but the expense was incurred by another person, such as a parent or other legal representative, the person who incurred the expense may be reimbursed directly.

## Payments to Claimants who are Adults

12. If a family member applied on behalf of an adult claimant, payment should be made directly to the claimant unless there is evidence that the claimant lacks mental capacity. In this case, the family member should be advised that the claimant will need a legal representative to whom the benefit can be paid in trust.
13. If a legal representative applied on behalf of an adult claimant, any benefit provided as a payment must be paid to that legal representative in trust for the claimant.
14. Where payments are made directly to the claimant and there are concerns about the claimant's ability to manage the benefit, payments may be made to the Public Guardian and Trustee of BC if the Public Guardian and Trustee of BC has notified the Crime Victim Assistance Program that it is acting on behalf of the claimant.
15. In other circumstances where payments are made directly to the claimant and there are concerns about the claimant's ability to manage the benefit, the adjudicator should, with the claimant's written consent, discuss alternative payment options with appropriate people involved in the claimant's life (e.g., family member, social worker).

CVAA, section 10(1).

CVAA, section 10(2).

## Commutation of Periodic Payments

16. Periodic payments should generally not be commuted. At the discretion of the director, periodic payments may be commuted for administrative efficiency where the claimant is an adult who does not rely on the payments for basic living expenses.

See the definitions of "periodic payment" and "commutation" in the *Glossary* at **section E-1** of this manual.

Periodic payments include monthly payments for income support or lost earning capacity under the Crime Victim Assistance Act, as well as comparable types of periodic payments under the former act, the Criminal Injury Compensation Act.

Commuting benefits is generally not advisable because it is impossible to predict changes that may occur in a claimant's circumstances over the course of his or her lifetime.

17. When periodic payments for a particular type of benefit are commuted, the claimant should be advised, in writing, that he or she will not be eligible for future benefits in that benefit category in relation to the same offence.

When periodic payments for a particular type of benefit are commuted, this does not affect the claimant's eligibility for other types of crime victim assistance benefits.

### **Payments for Goods or Services Provided Outside Canada**

18. Where the claimant has received, or will be receiving, a benefit outside Canada, the amount of the benefit should be calculated and paid in Canadian currency unless there are exceptional circumstances for paying the benefit in another currency.

### **Garnishment/Attachment or Assignment of Benefits**

CVAA, section 21.

19. A benefit paid or payable under the Crime Victim Assistance Act is not:
  - subject to garnishment, attachment, seizure, or another legal process except as authorized under the Family Maintenance Enforcement Act;
  - assignable except for the purpose of paying child or spousal maintenance or support.
20. When there is a Family Maintenance Enforcement Order affecting the payment to a claimant, Family Maintenance Enforcement Program practices should be followed in calculating the amount of payment to the claimant.

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## SECTION C-11. REASSESSMENT

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### Purpose

The purpose of reassessment is to review a claimant's eligibility for benefits, usually because of new evidence or a change in the claimant's circumstances. It is not intended to challenge the appropriateness of the original decision, but rather to review the claimant's eligibility in light of new information.

Reassessment is an opportunity for:

- claimants whose applications were denied to provide information that was not available to the adjudicator when the decision was made, which may affect their eligibility for benefits;
- claimants who are receiving benefits to provide information on changes in circumstances that may affect the type or level of benefits they receive;

- the Crime Victim Assistance Program to ensure that claimants are provided the benefits for which they are eligible.

Under the Crime Victim Assistance Act, claimants have the right to request a reassessment of their eligibility for benefits. A reassessment may also be initiated by the Crime Victim Assistance Program. A reassessment is generally conducted by the adjudicator who made the original decision.

For the purpose of the policy on reassessment and reconsideration, "original decision" means the decision that is the subject of review (not necessarily the first decision on a claim).

There may be several reassessments on an ongoing claim, occurring when necessary because of changes in the claimant's health, functioning, or other circumstances (e.g., worsening or improving of an injury, receipt of benefits from other sources, etc.).

## Change of Circumstances Notification

1. Claimants receiving benefits must notify the Crime Victim Assistance Program if their circumstances change in a manner that may affect their eligibility for benefits. Notification must be in writing, as soon as possible.

CVAA, section 12(1).

Information on this notification requirement is provided with the original decision. It is an offence under the Crime Victim Assistance Act if a claimant does not advise the Program of such a change in circumstances. For more information, see *Notifying the Claimant of the Decision* in **section C-9** of this manual.

CVAA, sections 19(2)(c) and 19(4).

## Request for Reassessment

2. The claimant may, at any time, provide the Crime Victim Assistance Program with new information that may affect the claimant's eligibility for a benefit, and request a reassessment of his or her eligibility for the benefit.

CVAA, section 12(2).

See the definition of "new information" in the *Glossary* at **section E-1** of this manual.

3. A request for reassessment does not need to be in writing.

The claimant is advised of the right to request a reassessment, and how to request it, when a decision about benefits is made. A Request for Reassessment form is available but requests in other formats are accepted.

4. Where the claimant has a legal representative, the legal representative has the authority to request a reassessment on the claimant's behalf.

5. There is no legislative basis for a request for reassessment from a service provider (e.g., a psychologist providing counselling services to the claimant). If a service provider requests a reassessment on behalf of a claimant, the service provider should be informed that the request must come from the claimant.

While the Crime Victim Assistance Program will not initiate a reassessment at the request of a service provider, the Program may initiate a reassessment if such a request includes new information that appears to affect the claimant's eligibility for a benefit. See provision no. 10 below.

## Discretion to Reassess

CVAA, section 12(3).

6. Upon receipt of new information, or on the adjudicator's initiative, the adjudicator may reassess a claimant's eligibility for a benefit.

While the claimant has the right to request a reassessment, there is no legislative requirement that a reassessment be conducted.

## Claimant-Initiated Reassessment

7. When the claimant has requested a reassessment, a reassessment should be conducted unless the information provided by the claimant:
  - merely reiterates information previously provided and does not change the weight of the evidence on an issue (e.g., the same or similar information provided by the same source);
  - concerns an issue that is completely unrelated to the claimant's eligibility for benefits (e.g., information that has no bearing on any benefits available to that category of claimant);
  - concerns a change in circumstances that clearly does not affect the claimant's eligibility for benefits (e.g., information that a claimant on income support has moved into a more expensive apartment and therefore wants more money).
8. If a reassessment will not be conducted, the file should generally be forwarded for reconsideration. The claimant must be notified of this in writing, indicating why the reassessment will not be conducted and what the reconsideration process involves.

An exception is where the 60-day deadline for reconsideration had already passed by the time the request for reassessment was received.

A request for reassessment typically means that the claimant disagrees with some aspect of the original decision. Where a reassessment is not appropriate, such as where there is no new information, forwarding the file for reconsideration ensures that the claimant has full access to the review processes available under the Crime Victim Assistance Act. See

**section C-12** of this manual, *Reconsideration*, for more information on the reconsideration process.

9. Where a request for reassessment is refused and no other review will be conducted, the adjudicator must notify the claimant in writing, indicating why the reassessment will not be conducted. The adjudicator must also advise the claimant that he or she may request a reconsideration of that decision.

A decision to refuse to conduct a reassessment is open to reconsideration under the Crime Victim Assistance Act.

**CVAA**, section 13(1)(e).

### **Adjudicator-Initiated Reassessment**

10. When the claimant has not requested a reassessment but information is received (from the claimant or elsewhere) that appears to affect the claimant's eligibility for benefits, the adjudicator should conduct a reassessment.
11. When the adjudicator initiates a reassessment, the adjudicator should generally inform the claimant, in writing:
  - that a reassessment will be conducted;
  - the reason why it was initiated;
  - if applicable, how benefits will be affected while the reassessment is being conducted;
  - that the results of the reassessment will be provided to the claimant in writing.

Sometimes the original decision indicates that the claimant's eligibility for a particular benefit will be determined upon receipt of specific information (e.g., employment information necessary to determine eligibility for an income support benefit). In these circumstances, when the specified information is received, the adjudicator simply conducts the reassessment—it is not necessary to provide advance notice to the claimant.

### **Transitional Claims**

12. A former applicant may request a reassessment of a decision made under the former act, the Criminal Injury Compensation Act. A decision made under the former act may also be reassessed on the adjudicator's initiative.

A "former applicant" means an applicant under the former act.

13. The process for requesting and initiating a reassessment, outlined above, applies to transitional claims.

## **Conducting a Reassessment**

### **Who Conducts the Reassessment**

14. A reassessment should generally be conducted by the adjudicator who made the original decision, as that adjudicator will be familiar with the claim.

Exceptions:

- If the adjudicator who made the original decision is unable to complete the reassessment in a reasonable time (e.g., is on leave), the reassessment may be conducted by another adjudicator.
- If the claimant has alleged bias on the part of the adjudicator, or the original decision hinged on credibility issues, the request for reassessment should be forwarded to program management so that a different adjudicator can be assigned to conduct the reassessment.

### **When to Expedite a Reassessment**

15. Reassessments should be expedited in the following circumstances:

- the claimant has an immediate need for a benefit, including cases where the new information relates to urgent safety concerns, counselling, medical or dental needs, or financial hardship;
- the claimant has an ongoing need for a benefit (e.g., counselling or physiotherapy sessions) and a break in the provision of the benefit would be detrimental to the claimant's recovery;
- the Crime Victim Assistance Program has initiated the reassessment and the new information suggests that benefits should be stopped or reduced or that an overpayment has been made.

### **Effect of the Original Decision Pending Completion of the Reassessment**

16. The original decision stands until the reassessment process has been completed and the reassessment decision has been made.

### **Nature of the Review**

17. The reassessment should generally be conducted by means of file review.

18. The adjudicator should consider all information on file that is relevant to the issue, including information on file at the time of the original decision as well as the new information.

## Withdrawal of a Request for Reassessment

19. If, at any time before the completion of a claimant-initiated reassessment, the claimant indicates that he or she wishes to withdraw the request for reassessment, the claimant should be notified, in writing, that the request for reassessment will be withdrawn at the claimant's request.

This does not preclude the Crime Victim Assistance Program from conducting a reassessment on its own initiative, or affect the ongoing obligation of a claimant receiving benefits to notify the Program about a change in circumstances that may affect his or her eligibility for benefits.

The disposition of the request is categorized as "withdrawn." A withdrawn request for reassessment does not constitute a reassessment decision.

## Reassessment Decision

### Possible Outcomes of Reassessment

20. Subject to the regulations, the adjudicator may do any of the following on the basis of the reassessment:
- provide, refuse to provide, suspend, or terminate a benefit;
  - limit, increase, or decrease a benefit;
  - alter the amount, duration, nature, content, or form of the benefit;
  - impose or modify conditions for receipt of the benefit or any other benefit being provided.

The regulations regarding reassessments apply to transitional claims; see the provisions under *Transitional Claims* below for more information.

All of the above decisions are open to reconsideration under the Crime Victim Assistance Act.

**CVAA**, section 12(4); **CVA (General) Regulation**, sections 34 and 35.

**CVAA**, section 13(1).

## Effective Dates of Changes in Benefits

21. The effective date of any change in the provision of benefits is subject to the policy on providing benefits retroactively, as well as provisions no. 22 to 24 below.

The policy is that benefits should not be awarded retroactively for a period of more than one year from the date the claimant applied for benefits in relation to the offence (see *Retroactive Benefits* in **section C-9** of this manual).

22. If the reassessment results in a decision to provide new benefits or increase benefits, the effective date should be determined as follows.
- If the reassessment is based on information the claimant was asked to provide or had available, and the information is provided to the Crime Victim Assistance Program within a year, the effective date should be retroactive to the earliest date the claimant would have been eligible to receive the benefits.
  - If the reassessment is based on information the claimant was asked to provide or had available, and the claimant neglected to provide the information within a year, the effective date should be retroactive to the date the information was provided to the Crime Victim Assistance Program.
  - If the reassessment is based on information that the claimant could not have provided to the program (i.e., was not available or known to the claimant), or the information was overlooked in the original decision, the effective date should be retroactive to the earliest date the claimant would have been eligible for the benefits.
23. If the reassessment results in a decision to decrease, suspend, or terminate benefits, the effective date should generally be the date of the reassessment decision.
24. If the claimant received benefits for which he or she was not eligible, the adjudicator should determine whether an overpayment should be declared and the amount of the overpayment. The effective date for this purpose should be the earliest date the claimant was not eligible for the benefits.

See **section C-13** of this manual, *Recovery of Funds*, for policy on when an overpayment should be declared and the process for recovering an overpayment.

### Transitional Claims

**CVA (General) Regulation,**  
section 34(2).

25. Subject to the other provisions on transitional claims below, if a type of compensation awarded under the former act, the Criminal Injury Compensation Act, is being reassessed, the former applicant, effective on the reassessment:
- is no longer eligible for that type of compensation;
  - is eligible for a benefit that may be awarded under the Crime Victim Assistance Act for the same or a similar purpose as that type of compensation.

A "former applicant" means an applicant under the former act.

26. When a reassessment concerns periodic payments awarded to a victim under the former act, the following provisions apply.

**CVA (General) Regulation,**  
sections 34(3) to 34(6).

If, since the date the amount of the periodic payment was determined:

- the injury has worsened, the claimant is eligible for a benefit that equals either the amount of the periodic payment that he or she was receiving immediately before the reassessment, or the amount of the periodic payment that would be awarded under the Crime Victim Assistance Act if the claimant had applied at the time of reassessment, whichever is greater;
- the injury has not changed, the claimant is eligible for a benefit that equals the amount of the periodic payment he or she was receiving immediately before the reassessment;
- the injury has improved, the claimant is eligible for a benefit that equals the amount of the periodic payment that would have been awarded under the Crime Victim Assistance Act if the claimant had applied at the time of the reassessment.

27. Subject to the provisions outlined above (in no. 26), compensation awarded under the former act, and any conditions or limitations attached to the compensation, may be terminated or modified on reassessment. Otherwise, the benefit continues to be subject to any conditions or limitations attached to the compensation under the former act.

**CVA (General) Regulation,**  
section 34(7).

28. When a reassessment concerns periodic payments awarded to an immediate family member under the former act, the claimant is eligible to receive a benefit equal to the amount of, and subject to the terms and conditions of, the periodic payments that may be awarded under the former act.

**CVA (General) Regulation,**  
section 34(8).

29. A former applicant's eligibility for a benefit awarded under the transitional provisions of the Crime Victim Assistance Act commences on the date of reassessment or reconsideration, whichever is earlier.

**CVA (General) Regulation,**  
section 34(1), in reference to  
awards under sections 34 and  
35.

## **Notifying the Claimant of the Reassessment Decision**

30. The adjudicator must notify the claimant in writing of the reassessment decision, the reasons for the decision, and the claimant's right to request a reconsideration of the decision.

**CVAA,** sections 12(5) and 11.



## **Disclosure of Information to a Legal Representative**

31. Where a legal representative is involved in representing the claimant's interests, the legal representative must be provided with a copy of the decision and accompanying correspondence.

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## SECTION C-12. RECONSIDERATION

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### Purpose

Reconsideration provides a process for reviewing (and, as appropriate, changing) a decision when a claimant believes an error has been made in the decision. The review is conducted by another adjudicator—a reconsideration adjudicator—who considers only the information available when the original decision was made.

For the purpose of the policy on reconsideration and reassessment, “original decision” means the decision that is the subject of review (not necessarily the first decision on a claim).

Claimants have the right to reconsideration of decisions as provided for in the Crime Victim Assistance Act. Through the reconsideration process, the Crime Victim Assistance Program can rectify errors of law and fact made in the adjudication of individual claims.

## Request for Reconsideration

### Right to Request a Reconsideration

1. The Crime Victim Assistance Act provides that a claimant may request a reconsideration of any of the following decisions:
  - refusing to allow an exemption, under section 3(4) of the act, from the time limit for making an application;
  - refusing to allow an extension, under section 3(5) of the act, of the time limit for making an application;
  - refusing to award or provide a benefit, or limiting, suspending, or terminating a benefit;
  - setting or altering the amount, duration, nature, content, or form of a benefit awarded;
  - a decision made under section 9 of the act;  
*Section 9 applies to circumstances in which benefits must or may be refused or reduced.*
  - refusing to conduct a reassessment under section 12 of the act;
  - varying or rescinding a decision on the basis of a reassessment under section 12(4) of the act;
  - determining the amount a person is liable to repay under section 23(1) of the act.
2. Where the claimant has a legal representative, the legal representative has the authority to request a reconsideration on the claimant's behalf.
3. There is no legislative basis for a request for reconsideration from a service provider (e.g., a psychologist providing counselling services to the claimant). If a service provider requests a reconsideration on behalf of a claimant, the service provider should be informed that the request must come from the claimant.

The Crime Victim Assistance Program will not initiate a reconsideration at the request of a service provider. If new information is received that appears to affect the claimant's eligibility for benefits, the Program may initiate a reassessment. For more information, see **section C-11** of this manual, *Reassessment*.

**CVAA**, section 13(1).

Note that "claimant," as used in this policy, includes someone applying on behalf of a victim, an immediate family member, or a witness in accordance with section 3(1)(d) of the act.

## Requirements of the Request

CVAA, section 13(2).

4. A request for reconsideration must be in writing. The request must identify the decision to be reconsidered and the error the claimant believes was made in the decision. It must be delivered to the director within 60 days from the date the decision was delivered.

If a request for reconsideration is incomplete, the date and nature of the request should be noted in the claim file, and the claimant should be advised of the deficiency and how to rectify it.

The claimant is advised of the right to request a reconsideration, and how to request it, when a decision about benefits is made. A Request for Reconsideration form is available but written requests in other formats are accepted if they identify the decision and alleged error.

CVAA, section 24.

Under the Crime Victim Assistance Act, anything that is delivered by mail is deemed to have been delivered on the 14th day after the date it is mailed.

CVAA, section 13.

5. All requests for reconsideration should initially be reviewed to determine whether they meet the requirements of section 13 of the Crime Victim Assistance Act. Where a request for reconsideration does not meet these requirements, the claimant should be notified of this and given an opportunity to respond before the request is refused.

This initial review process helps to ensure not only that inappropriate requests do not get referred for reconsideration (e.g., requests that include new information and should be referred for reassessment), but also that incomplete requests can be rectified before being referred for reconsideration. Moreover, claimants who are not entitled to reconsideration are best served if they are informed of this as soon as possible.

## Late Requests for Reconsideration

CVAA, section 13(3).

6. The director may allow a late request for reconsideration (in effect, extend the 60-day time limit for making the request) if the director is satisfied that the request *could not reasonably have been delivered* within 60 days from the date the decision was delivered.

See provision no. 4 above for the meaning of "delivered."

7. If a claimant wishes to submit a late request for reconsideration, the claimant should be asked to provide, in writing, the reasons why the request could not reasonably have been delivered within the 60-day time period.

8. Factors that support allowing a late request for reconsideration include:
- evidence that the claimant could not have mailed or delivered the request because of problems with mail service or inability to make a delivery by hand;
  - evidence that, at the time of the original decision, the claimant was a minor who did not have a capable adult acting on his or her behalf or whose interests were not adequately represented by a capable adult;
  - evidence that the claimant did not receive the decision, or did not receive it until after the 60-day time period had elapsed or almost elapsed;
- This may include, for example, evidence that the letter was "returned to sender" or went to another person (e.g., the person who applied on the claimant's behalf), or that the claimant moved within the time period.
- evidence that the claimant was incapacitated from injury or illness;
  - evidence that the claimant was absent from his or her home community for all or most of the 60-day time period;
  - evidence that the claimant requested a reconsideration within the 60-day time period but the request was missing required information.
9. When a decision is made not to allow a late request for reconsideration, the claimant should be notified of this in writing.

### **Additional Time to Make Submissions**

10. When a reconsideration will be conducted, the claimant should be advised, in writing, that he or she may provide additional submissions within four weeks (or longer if requested by the claimant). The claimant should also be advised that any submissions should address the alleged error in the original decision and not provide new information, since new information cannot be considered in a reconsideration.

See the definition of "new information" in the *Glossary* at **section E-1** of this manual.

### **Transitional Claims**

11. A former applicant may request a reconsideration of a decision made under the former act, the Criminal Injury Compensation Act.

A "former applicant" means an applicant under the former act.

12. The process for requesting a reconsideration outlined above applies to transitional claims.

## When No Request for Reconsideration is Made

CVAA, section 13(4).

13. If a claimant does not request a reconsideration within the 60-day time period or, if an extension of the time period has been granted, within the extended time limit:
  - the claimant is deemed to have accepted the decision; and
  - subject to the reassessment provisions under section 12 of the Crime Victim Assistance Act, the decision is final and conclusive and is not open to review in a court or to appeal to any body.

## Conducting a Reconsideration

### Assigning the Reconsideration

CVAA, section 14(1).

14. On receiving a request for reconsideration made in accordance with section 13 of the Crime Victim Assistance Act, the director must do one of the following:
  - if the director did not make the original decision, reconsider the decision; or
  - assign the reconsideration to a reconsideration adjudicator (as defined in the *Glossary* at **section E-1** of this manual).

CVAA, section 14(1).

15. A reconsideration cannot be conducted by the person who made the original decision.

### Grounds for Dismissing a Request for Reconsideration

CVAA, section 14(2)(c).

16. A request for reconsideration may be dismissed if it is considered "frivolous" or "vexatious." Where a request for reconsideration clearly appears to be frivolous or vexatious, the reconsideration adjudicator should advise the claimant why the request is inappropriate and give the claimant an opportunity to respond, prior to dismissing the request.

A frivolous request is one that is lacking in seriousness or substance or is easily recognized as devoid of merit. This will include requests for reconsideration that do not involve any alleged error of fact or law, such as: requests submitted because the claimant simply did not like the decision; requests submitted because new information is available and the claimant was unsure which review process to request.

A vexatious request is one that is made maliciously or intended to harass or annoy.

### When to Expedite a Reconsideration

17. A reconsideration should be expedited if the request concerns a benefit for which the claimant has an immediate need, including benefits to address urgent safety concerns, counselling or medical needs, or financial hardship.

## Effect of the Original Decision Pending Completion of the Reconsideration

18. The original decision stands until the reconsideration process has been completed and the reconsideration decision has been made.

## Nature of the Review

19. The reconsideration should generally be conducted by means of file review.
20. The reconsideration adjudicator must consider only the material that was on file when the original decision was made and the claimant's submissions regarding the alleged error in that decision.

**CVAA**, section 14(2).

The reconsideration adjudicator should ensure that the material for consideration does not include:

- any file material dated after the date of the original decision (except correspondence and submissions made in relation to the request for reconsideration);
- where applicable, any new information provided with the claimant's submissions regarding the alleged error in the decision.

The date of the original decision will serve as a guide for identifying file material to be reviewed.

## Submissions with New Information

21. If a claimant's submissions in support of a request for reconsideration include new information that may affect the claimant's eligibility for benefits, the need to conduct a reassessment should be considered.

For more information about the reassessment process, see **section C-11** of this manual, *Reassessment*.

## Withdrawal of a Request for Reconsideration

22. If, at any time before the completion of the reconsideration, the claimant indicates that he or she wishes to withdraw the request for reconsideration, the claimant should be notified, in writing, that the request for reconsideration will be withdrawn at the claimant's request. The claimant should be advised that, if he or she subsequently wishes to re-submit the request, this must be done within the time limit set out in the Crime Victim Assistance Act.

The disposition of the request is categorized as "withdrawn"—a withdrawn request for reconsideration does not constitute a reconsideration decision.



## Reconsideration Decision

### Possible Outcomes of Reconsideration

CVAA, section 14(2).

23. Upon reconsideration, the reconsideration adjudicator may:

- confirm the original decision;
- vary or rescind the original decision, effective from the date of the original decision; or
- dismiss the request for reconsideration if the reconsideration adjudicator considers it frivolous or vexatious.

24. The original decision may be varied or rescinded because of an error of fact, law, or mixed fact and law. This includes, for example, the following errors:

- the decision failed to take into consideration significant evidence;
- facts were taken as established that were not supported by the evidence or by a reasonable inference from the evidence;
- there was a breach of the principles of procedural fairness;
- the decision is contrary to the act, regulations, or policy in place at the time the decision was made.

25. When a decision is rescinded, the claim should be referred for re-adjudication unless the decision can be varied without further information or investigation.

### Effective Dates of Changes in Benefits

26. The effective date of any change in the provision of benefits is subject to the policy on providing benefits retroactively, as well as provisions no. 27 and 28 below.

The policy is that benefits should not be awarded retroactively for a period of more than one year from the date the claimant applied for benefits in relation to the offence (see *Retroactive Benefits* in **section C-9** of this manual).

CVAA, section 14(2)(b).

27. If the reconsideration varies or rescinds the original decision, the effective date is the date of the original decision.

28. If the claimant received benefits for which he or she was not eligible, the reconsideration adjudicator should determine whether an overpayment should be declared and the amount of the overpayment. The effective date for this purpose should be the earliest date the claimant was not eligible for the benefits.

See **section C-13** of this manual, *Recovery of Funds*, for policy on when an overpayment should be declared and the process for recovering an overpayment.

## Transitional Claims

29. Subject to the other provisions on transitional claims below, if a type of compensation awarded under the former act, the Criminal Injury Compensation Act, is being reconsidered, the former applicant, effective on the reconsideration:

- is no longer eligible for that type of compensation;
- is eligible for a benefit that may be awarded under the Crime Victim Assistance Act for the same or a similar purpose as that type of compensation.

A "former applicant" means an applicant under the former act.

**CVA (General) Regulation,**  
section 34(2).

30. When a reconsideration concerns periodic payments awarded to a victim under the former act, the following provisions apply.

**CVA (General) Regulation,**  
sections 34(3) to 34(6).

If, since the date the amount of the periodic payment was determined:

- the injury has worsened, the claimant is eligible for a benefit that equals either the amount of the periodic payment that he or she was receiving immediately before the reconsideration, or the amount of the periodic payment that would be awarded under the Crime Victim Assistance Act if the claimant had applied at the time of reconsideration, whichever is greater;
- the injury has not changed, the claimant is eligible for a benefit that equals the amount of the periodic payment he or she was receiving immediately before the reconsideration;
- the injury has improved, the claimant is eligible for a benefit that equals the amount of the periodic payment that would be awarded under the Crime Victim Assistance Act if the claimant had applied at the time of the reconsideration.

31. Subject to the provisions outlined above (in no. 30), compensation awarded under the former act, and any conditions or limitations attached to the compensation, may be terminated or modified on reconsideration. Otherwise, the benefit continues to be subject to any conditions or limitations attached to the compensation under the former act.

**CVA (General) Regulation,**  
section 34(7).

32. When a reconsideration concerns periodic payments awarded to an immediate family member under the former act, the claimant is eligible to receive a benefit equal to the amount of, and subject to the terms and conditions of, the periodic payments that may be awarded under the former act.

**CVA (General) Regulation,**  
section 34(8).

33. A former applicant's eligibility for a benefit awarded under the transitional provisions of the Crime Victim Assistance Act commences on the date of reassessment or reconsideration, whichever is earlier.

**CVA (General) Regulation,**  
section 34(1), in reference to  
awards under sections 34 and  
35.

## **Notifying the Claimant of the Reconsideration Decision**

**CVAA**, section 14(3).

34. The adjudicator must notify the claimant in writing of the reconsideration decision, the reasons for the decision, and the possibility of further recourse through judicial review. The claimant should be advised that application for judicial review must be commenced within 60 days of the date of the reconsideration decision.

## **Disclosure of Information to a Legal Representative**

35. Where a legal representative is involved in representing the claimant's interests, the legal representative must be informed that a reconsideration will be conducted. After the reconsideration decision has been made, the legal representative must be provided with a copy of the decision and accompanying correspondence.

## **Judicial Review**

**CVAA**, section 14.1(1).

36. Subject to the reassessment provisions of the Crime Victim Assistance Act, decisions are final and conclusive if they:
- have been reconsidered under the act; or
  - are not permitted to be reconsidered under the act.

These decisions are not open to:

- review in a court, except on a question of law or excess of jurisdiction; or
- appeal to any body.

**CVAA**, section 14.1(2).

37. An application for judicial review on a question of law or excess of jurisdiction must be brought no later than 60 days after the date of the decision to which it pertains.
38. When notice of judicial review is received, the file should be forwarded to program management for discussion with legal counsel, who will handle the matter from that point forward with the assistance of program management.

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## SECTION C-13. RECOVERY OF FUNDS

Purpose	1
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• Liability for and Declaration of Overpayments	5
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### Purpose

Recovery of the cost of crime victim assistance benefits from perpetrators of violent crime is important in holding perpetrators accountable for their actions. Recovery of costs from offenders may be obtained through restitution orders in criminal court. Recovery of costs may also be obtained through legal action (civil action) brought by claimants or by the Crime Victim Assistance Program.

Claimants are not required to take legal action against anyone responsible for their injury or loss. However, if a claimant is awarded money from a restitution order or legal action, the Program may recover all or part of the amount it paid in benefits. If the claimant does not commence legal action, the director of Crime Victim Assistance may decide to do so after consulting with the claimant.

The Crime Victim Assistance Program may also seek recovery of the cost of benefits from claimants or other sources in cases where an overpayment has been made. The reason for the overpayment and the claimant's circumstances are considered in determining repayment or assignment options.

### Assignment and Recovery in Relation to a Judgment or Settlement under Section 8 of the Act

**CVAA**, sections 8(1) and 8(2).

1. The Crime Victim Assistance Act provides that the director may require a claimant to assign to the director all or part of any right the claimant has:
  - to receive payment of an amount owing under a judgment or settlement; or

- to enforce a judgment or settlement.

"Judgment or settlement" is defined in section 8(1) of the act. It includes a legal action initiated by the claimant and a restitution order.

2. Crime Victim Assistance Program personnel should immediately notify program management if they become aware that:
  - the claimant or Crown counsel is requesting restitution, or a judge is considering a restitution order;
  - the claimant is pursuing legal action against the person(s) responsible for his or her injury or loss.

See the definition of "legal action" in the *Glossary* at **section E-1** of this manual.

3. Program management should assist those responsible for determining damages by calculating the costs of crime victim assistance benefits that have or may be provided. If this information is requested by someone other than the claimant, the claimant's written consent to the release of the information is required.

For restitution, information on the cost of benefits may be provided to the claimant or criminal justice personnel. For a civil action, information on the cost of benefits may be provided to the claimant or his or her legal counsel.

4. If, before being awarded crime victim assistance benefits, the claimant has received, in relation to the offence, an award from a judgment or settlement or a payment from a restitution or compensation order, that amount must be deducted from the amount of benefits to be awarded.
5. When benefits are awarded, the claimant should be advised, in writing, of his or her basic rights and responsibilities in relation to restitution and civil action.

This information is contained in the Restitution and Civil Action Form, which is sent to the claimant with the decision awarding benefits. The claimant is to sign and return the form before benefits are provided.

6. If a claimant is awarded money from either a restitution order or a civil action, the claimant must notify the Crime Victim Assistance Program. The claimant may be required to repay all or part of the amount that the Program paid in benefits on his or her claim. Where applicable, deductions may be made from future benefits to be provided to the claimant.

By signing the Restitution and Civil Action Form, the claimant agrees to notify the Program of such an award.

7. The amount that may be recovered by the Crime Victim Assistance Program under an assignment referred to in section

**CVAA**, sections 9(4)(a) and 9(4)(b).

**CVAA**, section 8(3).

8(2) of the Crime Victim Assistance Act is determined by the way in which restitution or damages are assessed in the judgment or settlement.

- If costs are categorized, the amount is the cost of benefits that have the same or a similar purpose as any of the categories of damages or restitution identified.
- If there is a global assessment of damages, the amount that may be recovered is the amount of the benefits provided (up to the amount awarded in damages).

### **Additional Provisions Specific to Legal Action Initiated by the Claimant**

CVAA, section 15(1).

8. If the claimant commences an action, and legal action by the director has not commenced, a copy of the writ of summons must be delivered to the director. Delivery must be within 10 days after the date the writ was served on the defendant in the action.
9. Crime Victim Assistance Program management should advise the claimant or the claimant's legal counsel of the Program's subrogation rights in relation to the cost of benefits that have or may be provided to the claimant.

CVAA, section 15(2).

10. The amount that a claimant may claim as damages in an action is generally not reduced by the amount of crime victim assistance benefits that have or may be provided.

CVAA, section 16(3).

An exception is where the director has previously commenced an action. In that case, the amount the claimant may claim is reduced by the amount claimed by the director.

11. Before entering into an agreement to receive money from a civil action, the claimant must notify the Crime Victim Assistance Program.

The claimant agrees to notify the Program by signing the Declaration of Understanding on the Restitution and Civil Action Form.

12. Program management should discuss with the claimant or the claimant's legal counsel the importance of being kept informed of, and involved in, any settlement discussions.
13. If, after any crime victim assistance benefits have been provided, there is a settlement or release without the agreement of the director, program management should seek recovery of the costs of the benefits and, where appropriate, should suspend or terminate the provision of benefits.

If the director did not agree to the settlement or release, the director may still bring an action against the person(s) responsible for the claimant's injury or loss (see *Legal Action Initiated by the Crime Victim Assistance Program*, below). Program management may also seek recovery from the claimant through a repayment agreement (see *Repayment Agreements and Assignments*, below).

**CVAA**, section 15(3).

## **Legal Action Initiated by the Crime Victim Assistance Program**

14. The director may bring an action on behalf of the Crime Victim Assistance Program if a benefit was provided to a claimant and:

**CVAA**, section 16(1).

- the claimant has not commenced an action; or
- the claimant commenced an action and, without the agreement of the director, agreed to a settlement or gave a release concerning the action, after the date the benefit was provided.

15. The director may claim the rights of the claimant to damages in the action. The director is deemed to be an assignee of, and is subrogated to, these rights. The director may claim the value of the benefits provided, or to be provided, under an award in the same or a similar category of benefits as the damages that may be claimed in the action.

**CVAA**, section 16(2).

16. The amount a claimant may claim in an action commenced after the director's action is commenced is reduced by the amount claimed by the director.

**CVAA**, section 16(3).

17. Crime Victim Assistance Program management should consult with the claimant, and with legal counsel for the BC government, before determining whether to commence an action against the person(s) responsible for the claimant's injury or loss.

18. If the Crime Victim Assistance Program commences an action, the director must deliver to the claimant a copy of the writ of summons within 10 days after it is served on the defendant in the action.

**CVAA**, section 16(4).

19. The claimant must cooperate with the director as required in pursuing the action. If the claimant fails to cooperate with the director as required, the director may suspend or rescind the decision awarding benefits, or reduce the benefits, to the claimant.

**CVAA**, sections 16(4) and 16(5).

20. The court may award costs to the government.

**CVAA**, section 16(6).



CVAA, section 17.

21. The amount recovered from the defendant must be applied:

- first, to pay the costs of bringing the action, including the costs of execution;
- second, to repay the amount provided, or to be provided, for benefits by the Crime Victim Assistance Program; and
- third, to the claimant.

## Overpayments

### Liability for and Declaration of Overpayments

CVAA, sections 23(1) and 23(1.1).

22. If, under section 9, 12, or 14 of the Crime Victim Assistance Act, a claimant is determined to be ineligible for some benefits already provided, the claimant is liable to repay the government the cost or value of those benefits, as determined by the director.

Section 23 of the act—on overpayments, repayments, and assignments—refers to decisions made to reduce or refuse benefits under section 9, as well as decisions made on reassessment (section 12) or reconsideration (section 14).

23. An overpayment should be declared when the amount of a benefit provided to a claimant exceeds the amount for which the claimant was eligible because of:

- an administrative error;
- a decisional error based on fraud or misrepresentation by the claimant; or
- a decisional error with respect to the statutory authority of the Crime Victim Assistance Program.

See the definitions of “overpayment,” “administrative error,” and “decisional error” in the *Glossary* at **section E-1** of this manual.

24. An overpayment may be declared when the amount of a benefit provided to a claimant exceeds the amount for which the claimant was eligible because the claimant is awarded or provided an amount from another source for the same or a similar purpose.

CVAA, section 9(5)(a).

The Crime Victim Assistance Act provides that the claimant must, on the request of the director, repay all or a portion of the value of the benefit, up to the amount the claimant received, or was eligible to receive, from the other source.

25. The claimant should be notified, in writing, of:

- the amount of the overpayment;
- the reason for the overpayment.

CVAA, sections 11(1) and 13(1).

If a decision regarding overpayment is one for which a reconsideration may be requested under the Crime Victim

Assistance Act, the claimant must be notified of the above as well as the right to request a reconsideration of the decision.

A reconsideration may be requested for a decision regarding the amount a claimant is liable to repay under section 23(1) of the act. See provision no. 22 above for more information.

### **Repayment Agreements and Assignments**

26. Subject to the regulations, the director may enter into an agreement, or may accept any right assigned, for the repayment of benefits. **CVAA**, section 23(2).
27. The reason for the overpayment and the claimant's circumstances should be considered in determining repayment or assignment options.
28. An amount that a person is liable to repay under section 23(1) of the Crime Victim Assistance Act, or under an agreement entered into under section 23(2) of the act, is a debt due to the government. The government may: **CVAA**, section 23(3).
- recover the debt in a court of competent jurisdiction; or
  - deduct the debt from any subsequent payment of a benefit.

Note that, under section 21 of the Crime Victim Assistance Act, crime victim assistance benefits are not subject to garnishment, attachment, seizure, or other legal process except as authorized under the Family Maintenance Enforcement Act. A crime victim assistance benefit is not assignable except for the purpose of paying child or spousal maintenance or support.

## **SECTION D. SPECIFIC TYPES OF BENEFITS**

**D-1. Overview of Specific Types of Benefits**

**D-2. Medical Services or Expenses**

**D-3. Dental Services or Expenses**

**D-4. Prescription Drug Expenses**

**D-5. Disability Aids**

**D-6. Counselling Services or Expenses**

**D-7. Protective Measures, Services, or Expenses**

**D-8. Repair or Replacement of Damaged or Destroyed  
Personal Property**

**D-9. Home Modification, Maintenance, or Moving Expenses**

**D-10. Vehicle Modification or Acquisition**

**D-11. Homemaker, Childcare, or Personal Care Services or  
Expenses**

**D-12. Maintenance for a Child Born as a Result of a  
Prescribed Offence**

**D-13. Vocational Services or Expenses**

**D-14. Income Support**

**D-15. Lost Earning Capacity**

**D-16. Loss of Parental Guidance for a Minor Child**

**D-17. Transportation and Transportation-Related Childcare**

**D-18. Funeral Expenses**

**D-19. Earnings Loss Due to Bereavement Leave**

**D-20. Crime Scene Cleaning**

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## SECTION D-1. SPECIFIC TYPES OF BENEFITS: OVERVIEW

Purpose of Section D	1
Organization of Information on Benefits	1
Types of Benefits by Claimant Category	2
Spousal Relationships and Eligibility for Benefits	2

### Purpose of Section D

Section D of the manual focuses on the purpose and eligibility criteria of specific types of benefits available under the Crime Victim Assistance Act and regulations.

**CVAA**, sections 4(1), 4(2), and 4(3); **CVA (General Regulation)**, sections 5(1), 5(2), and 5(3), which prescribe additional categories of benefits under section 4 of the act.

The act sets out the framework for providing certain types of benefits to victims, immediate family members, and witnesses. Additional types of benefits, and the parameters of benefits, are set out in the regulations.

For each type of benefit, the manual provides legislative and regulatory requirements as well as Crime Victim Assistance Program policy. As in previous parts of the manual, sections of the act and regulations are identified in the margins adjacent to the policy provisions to which they apply.

### Organization of Information on Benefits

Sections D-2 through D-20 each pertain to a different type of benefit, or group of benefits, available under the Crime Victim Assistance Act and regulations.

The format used for organizing information within these sections is as follows:

- purpose (of the benefit);
- eligible categories of claimants;
- eligibility criteria;
- types of eligible services or expenses;
- types of ineligible services or expenses;
- amount of the benefit and, in some cases, payment of the benefit;
- conditions or limitations of the benefit.

## Types of Benefits by Claimant Category

This table provides a snapshot of benefits that may be provided to victims, immediate family members (IFMs), and witnesses. See the applicable section of the manual (first column) for the eligibility criteria for the benefit.

	Benefit Category	Victim	IFM	Witness
D-2	medical services or expenses	3		
D-3	dental services or expenses	3		
D-4	prescription drug expenses	3	3	3
D-5	disability aids	3		
D-6	counselling services or expenses	3	3	3
D-7	protective measures, services, or expenses	3		
D-8	repair or replacement of damaged or destroyed personal property	3		
D-9	home modification, maintenance, or moving expenses	3		
D-10	vehicle modification or acquisition	3		
D-11	homemaker, childcare, or personal care services or expenses <ul style="list-style-type: none"> <li>homemaker</li> <li>childcare (see also under transportation)</li> <li>personal care</li> </ul>	3 3 3	3 3	
D-12	maintenance for a child born as a result of a prescribed offence	3		
D-13	vocational services or expenses	3	3	
D-14	income support	3	3	
D-15	lost earning capacity	3		
D-16	loss of parental guidance for a minor child		3	
D-17	transportation and transportation-related childcare	3	3	3
D-18	funeral expenses		3	
D-19	earnings loss due to bereavement leave		3	
D-20	crime scene cleaning	3	3	3

## Spousal Relationships and Eligibility for Benefits

Within the immediate family member category, claimants qualifying as spouses (see [section C-6](#) of this manual) may be eligible for a range of benefits; however, some benefits depend on the type of spousal relationship. The tables on the next page outline benefits available to spouses according to the type of spousal relationship, provided the benefit-specific criteria are met.

<b>Married and Divorced Spouses—Relationship at Time of Offence/Injury</b>				
Type of benefit	Married, and not legally separated <sup>1</sup>	Married, legally separated, <sup>1</sup> and receiving or may receive spousal support <sup>2</sup>	Married, legally separated, <sup>1</sup> and not receiving or will not receive spousal support <sup>2</sup>	Divorced, and receiving or may receive spousal support <sup>2</sup>
prescription drugs	3	3	3	3
counselling	3	3	3	3
homemaker services	3 <sup>3</sup>	3 <sup>3</sup>	3 <sup>3</sup>	
childcare services	3 <sup>3</sup>	3 <sup>3</sup>	3 <sup>3</sup>	
vocational services	3	3 <sup>4</sup>		3 <sup>4</sup>
income support	3	3 <sup>4</sup>		3 <sup>4</sup>
transportation and related childcare	3	3	3	3
funeral expenses	3	3	3	3
bereavement leave	3	3	3	3
crime scene cleaning	3	3	3	3

<b>Common Law and Other Spouses—Relationship at Time of Offence/Injury</b>				
Type of benefit	Living common law (living together for 2 years or longer)	Had been common law but were separated, for 1 year or less	Had been common law but were separated, for over 1 year, and receiving or may receive spousal support <sup>2</sup>	Living together, for less than 2 years
prescription drugs	3	3	3	3
counselling	3	3	3	3
homemaker services	3			3
childcare services	3			3
transportation and related childcare	3	3	3	3
vocational services	3	3	3 <sup>4</sup>	
income support	3	3	3 <sup>4</sup>	
funeral expenses	3	3	3	3
bereavement leave	3	3	3	3
crime scene cleaning	3	3	3	3

<sup>1</sup> “Legally separated” means the spouse had an order for judicial separation.

<sup>2</sup> “May receive spousal support” means qualified to apply for, or entitled to, spousal support as per section 1(2) of the **Crime Victim Assistance Act**.

<sup>3</sup> Married spouses who were not living with the victim at the time of the offence may be eligible for homemaker or childcare services if the victim had been sharing those responsibilities (see **section D-11** of this manual).

<sup>4</sup> For income support and vocational services, the spouse must have been “in receipt of spousal support” at the time of the victim’s death (see **section D-13** and **section D-14** of this manual).

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## SECTION D-2. MEDICAL SERVICES OR EXPENSES

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Eligibility Criteria	2
Types of Eligible Services or Expenses	4
Types of Ineligible Services or Expenses	5
Amount of the Benefit	6
• Deductions or Reductions	7
Conditions or Limitations of the Benefit	7

### Purpose

The “medical services or expenses” benefit helps to offset the costs of medical care that victims of violent crime require to recover from or manage the effects of their injury. Medical services are intended to help victims regain the level of health and functioning they experienced before the offence. When this is not possible, medical services help victims manage the effects of their injury and attain the highest level of health and functioning that is reasonable under the circumstances.

This benefit includes not only services by medical practitioners but also services by a variety of health professionals and facilities, as well as medical equipment and supplies and ambulance or emergency transportation.

Victims awarded a medical services or expenses benefit may be eligible for assistance with the costs of transportation and childcare necessary to attend appointments and obtain medical services (see **section D-17** of this manual, *Transportation and Transportation-Related Childcare*).

Other crime victim assistance benefits also help offset health-care related costs, such as dental services or expenses, prescription drug expenses, disability aids, and counselling services or expenses.

### Eligible Category of Claimant

CVAA, section 4(1)(a).

- Victim

## Eligibility Criteria

1. The adjudicator must be satisfied that the need for the medical service or expense arose as a result of the injury from the offence, and that the benefit is necessary. Confirmation from a medical service provider should be sought where this determination cannot be made from other available evidence.

Note that the definition of injury in the Crime Victim Assistance Act includes pregnancy, and that a claimant who is pregnant as a result of a prescribed offence may require medical services.

See the definition of “medical service provider” in the *Glossary* at **section E-1** of this manual.

2. In addition to medical services or expenses that are obviously medically necessary, a medical service or expense may be deemed necessary for the purpose of this benefit where it:

- is necessary for the claimant’s well-being; or
- aids in restoring the claimant’s health, functioning, or appearance.

For example, medical treatment to remove or reduce scars from the offence, or from medical interventions required because of the offence, may be necessary for restoring appearance as well as psychological or emotional health.

3. Medical services must be provided by a medical practitioner, health professional, or other person or facility satisfactory to the director. If there are concerns about the qualifications of a service provider, the file should be referred to program management.

See the definitions of “medical practitioner” and “health professional” in the *Glossary* at **section E-1** of this manual.

4. The adjudicator must be satisfied that the medical service or expense is reasonable. In addition to cost issues, which are addressed in the next provision, the adjudicator should consider the following in determining reasonableness:
  - whether the type of service or expense falls within commonly accepted medical practice;
  - whether failure to provide the medical service or expense is likely to have an adverse effect on the claimant’s ability to recover from the injury or manage the effects of the injury.

5. The adjudicator must be satisfied that the cost of providing the benefit is economically reasonable—the most economical alternative that is appropriate in the circumstances.

See the provisions under *Amount of the Benefit* below for additional policy on cost issues.

**CVAA**, section 4(1); **CVA (General) Regulation**, section 7(2).

**CVAA**, section 1(1).

**CVA (General) Regulation**, section 7(1) and, for types of health professionals, section 2.

**CVA (General) Regulation**, section 7(2).

**CVA (General) Regulation**, sections 1 (definition of economically reasonable) and 7(2).

6. Guidance on the economic reasonableness of services and expenses should be obtained from the rates set for the Medical Services Plan of BC, any applicable recommended fee schedules for service providers, and industry or community rates for the same types of services or expenses.

See also the related provisions under *Amount of the Benefit*.

7. Claims involving concurrent therapies should be carefully examined to help ensure that all therapies are necessary and are effective when undertaken concurrently. If the claimant has been referred to other practitioners by his or her general practitioner, and the general practitioner is monitoring the claimant's care, this may help to ensure the appropriateness of concurrent therapies.

Where the adjudicator is not satisfied about the necessity or effectiveness of concurrent therapies, the adjudicator should ask the Crime Victim Assistance Program medical consultant to provide an opinion.

8. Where a claimant requiring medical benefits has failed to comply with treatment or has jeopardized the effectiveness of treatment, the reasons for the claimant's behaviour should be explored.

This may occur, for example, when a claimant:

- has not undertaken any of the recommended treatment;
- has undertaken treatment but is not fully participating;
- discontinues treatment against medical advice;
- endangers his or her health by neglecting basic self-care or by taking actions that are clearly harmful to his or her health.

Where the claimant's capability to take care of himself or herself is in question, the need for additional supports should be determined. Otherwise, the adjudicator should take the appropriate steps in accordance with the policy on *Behaviour Contrary to Recovery/Benefits* in **section C-7** of this manual.

9. In addition to the above considerations, when determining whether a medical services or expenses benefit is reasonable, the adjudicator may consider the potential impact of providing the benefit on the claimant's need for other types of benefits under the Crime Victim Assistance Act.

For example:

- Specialist's fees that exceed the fee schedule for that specialty may be economically reasonable if transportation and related expenses would have to be paid for the claimant to travel to see another specialist.
- Additional physiotherapy sessions (over the maximum number generally provided) may be reasonable if they will likely enable the claimant to return to work sooner or reduce the long-term impact of the injury, and thus reduce the claimant's need for income support or other benefits in the future.

10. Policy on medical services or expenses does not generally apply to services or expenses that are covered in policy on other benefits, in other sections of this manual, for example:

- prescription drugs—see **section D-4**, *Prescription Drug Expenses*;
- dental work—see **section D-3**, *Dental Services or Expenses*;
- disability aids—see **section D-5**, *Disability Aids* (or, in the case of disability aids damaged or destroyed because of the offence, **section D-8**, *Repair or Replacement of Damaged or Destroyed Personal Property*);
- counselling—see **section D-6**, *Counselling Services or Expenses*;

Costs of psychiatric or other medical treatment for severe mental disorders may be eligible medical services or expenses if the need for the treatment resulted from the offence. See the definition of “psychiatric services” in the *Glossary* at **section E-1** of this manual.

- personal care—while medical rehabilitation costs are covered under the medical services or expenses benefit, see *Personal Care Services or Expenses* in **section D-11**, for claims involving personal care services or expenses that are short-term or not extensive;

See the definition of “medical rehabilitation” in the *Glossary* at **section E-1** of this manual.

- eyeglasses or contact lenses damaged or destroyed as a result of the offence—see **section D-8**, *Repair or Replacement of Damaged or Destroyed Personal Property*.

11. When adjudicating claims for benefits related to health care, the adjudicator should review all applicable benefit categories since more than one type of benefit may apply.

For example, if a claimant has dental surgery performed in a hospital, the claimant may be eligible for benefits under several categories: dental services and expenses, medical services and expenses, and prescription drug expenses.

## Types of Eligible Services or Expenses

12. Medical services or expenses must fall within the following categories:

- diagnosis, treatment, and care by a medical practitioner;
- assessment, treatment, and care by a health professional;
- assessment, treatment, and care by a person satisfactory to the adjudicator;
- ambulance or emergency transportation;

**CVA (General) Regulation**,  
section 7(1).

- health care services provided by or at a facility or an institution satisfactory to the adjudicator;

Where a claimant's needs are best met within a residential care facility, this benefit may include all reasonable costs associated with the claimant residing and receiving care in the facility.

- equipment, devices, aids, and supplies directly related to the diagnosis, assessment, treatment, or care described above;
- expenses directly related to diagnostic tools, tests, and analysis respecting the diagnosis, assessment, treatment, or care described above.

13. Medications or nutritional supplements available without a prescription may be eligible expenses if they are necessary and reasonable for the claimant's medical care related to the injury from the offence. In making this determination, the adjudicator should consider whether the medication or supplement is a medical-only item, a dual-purpose item, or an item without a specific medical purpose. Refer to **appendix A to section D-2, Medications/Supplements Available Without a Prescription**, which explains the distinctions between these categories and provides examples of items that fall within them.

- Medical-only items should be considered eligible expenses if their use is consistent with the nature of the claimant's injury.
- For dual-purpose items, verification should generally be obtained from a medical practitioner or health professional that the item is being used for a medical purpose to treat or manage the effects of the claimant's injury.

## Types of Ineligible Services or Expenses

14. Services or expenses related to the following should not be considered reasonable and/or necessary for the purpose of this benefit:

- experimental treatments or procedures;
- medical services outside the public health system (e.g., services provided by private clinics or that require travelling to another jurisdiction) where the services can reasonably be provided within the public health system;
- annual or routine medical examinations (unless required for the purpose of assessing the need for a crime victim assistance benefit);
- medical examinations for third-party use only (e.g., for motor vehicle licensing, employment, school or university, recreational or sporting events, immigration).

## Amount of the Benefit<sup>2</sup>

15. The following maximum amounts apply when a claimant obtains medical services outside BC:

**CVA (General) Regulation,**  
section 7(3).

- for a type of medical service funded under the Medicare Protection Act, the maximum amount that may be paid is the amount payable under that act;
- for a type of medical service funded under the Hospital Insurance Act, the maximum amount that may be paid is the amount payable under that act.

16. For the following types of services, a maximum of 12 sessions or visits should be awarded, with additional sessions to be subsequently awarded if the eligibility criteria continue to be met:

- physiotherapy;
- massage therapy;
- chiropractic therapy;
- acupuncture;
- visits to a podiatrist;
- visits to naturopathic physician.

An exception is where it is clear at the outset, from the nature of the claimant's injury and the medical evidence, that more than 12 sessions or visits will be required. In that case, the adjudicator should consider seeking the opinion of the Crime Victim Assistance Program medical consultant regarding the amount of therapy that may be required.

17. Fees paid for the services outlined in the above provision should be consistent with industry or community rates for the particular type of service provided to the claimant.

18. Where a claimant is awarded a number of sessions or visits (e.g., 12 massage therapy sessions), and fails to attend an appointment without giving adequate notice to the service provider, the Crime Victim Assistance Program should:

- find out if the service provider will waive the fee for the missed appointment;

Calling the service provider and explaining the circumstances may convince the service provider to waive the fee. If the fee is not waived, the service provider has to be paid for the missed session.

- if the service provider will not waive the fee, count the missed appointment as one of the sessions or visits awarded to the claimant, unless exceptional circumstances prevented

<sup>2</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

the claimant from cancelling the appointment with adequate notice;

- if there is a pattern of missed appointments, advise the claimant that the benefit may be suspended.

19. Where a claimant is residing in a care facility and receiving an income support or lost earning capacity benefit from the Crime Victim Assistance Program, it is generally not considered reasonable to pay the full cost of the claimant's care as a medical services or expenses benefit.

In consultation with the claimant, a Crime Victim Assistance Program vocational rehabilitation consultant, and, where appropriate, the care facility, the adjudicator should determine whether some or all of the claimant's income support or lost earning capacity benefit should be allocated towards the "room and board" or "rent" portion of the claimant's stay at the care facility. The medical services or expenses benefit should be reduced by that amount.

See the definition of "residing in a care facility" in the *Glossary* at **section E-1** of this manual.

Income support and lost earning capacity benefits are provided to assist claimants who cannot earn income to pay for their living expenses, including basic expenses such as housing and food. Where a claimant is residing in a care facility, housing and food are typically included in the cost of staying at the facility. If the Crime Victim Assistance Program were to pay the full cost for a claimant to reside in a care facility while also paying the claimant a full income support or lost earning capacity benefit, this would generally result in providing benefits for living expenses twice. This is not reasonable under a publicly funded program.

There may be circumstances where a claimant lives independently but also, from time to time, has to go into a care facility for an extended stay. If the claimant has to pay housing expenses (i.e., rent or mortgage payments) while in the care facility, this may affect his or her ability to put a portion of the income support or lost earning capacity benefit towards the care facility "rent."

### **Deductions or Reductions**

20. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

### **Conditions or Limitations of the Benefit**

CVAA, section 4(1).

21. Subject to the regulations, provision of a benefit may be dependent on conditions or limitations the adjudicator considers appropriate. For a medical services or expenses benefit, these

include, but are not necessarily limited to, the conditions set out below.

22. If the claimant has coverage under the Medical Services Plan of BC (MSP), the benefit should be conditional on the claimant maintaining MSP coverage.
23. If the claimant was eligible for MSP coverage but did not have it at the time medical costs were incurred, the claimant should be asked to contact MSP about back-dating his or her coverage, and to pay any outstanding premiums. The provision of a medical services or expenses benefit in future should be conditional on the claimant maintaining MSP coverage.

Claimants who cannot afford to pay MSP premiums may be eligible for premium assistance. For more information, see the MSP web page at [www.healthservices.gov.bc.ca/msp/infoben/premium.html](http://www.healthservices.gov.bc.ca/msp/infoben/premium.html) - *assistance*.

24. If the claimant has coverage under a health insurance plan other than MSP—such as a health insurance plan in another province or jurisdiction—the benefit should, where appropriate, be conditional on the claimant maintaining that health insurance coverage.
25. Where appropriate to the claimant's circumstances and the nature of the benefit provided, a medical services or expenses benefit should be conditional on the claimant's active participation in his or her rehabilitation.



## **SECTION D-2(A). APPENDIX A: MEDICATIONS/SUPPLEMENTS AVAILABLE WITHOUT A PRESCRIPTION**

### **Introduction**

Medical benefits under the Crime Victim Assistance Act are for medical services or expenses to treat or manage the victim's injury from the offence, not merely to enhance the victim's general health. In determining whether a medication or supplement available without a prescription ("over the counter") is an eligible medical expense, the purpose of the item is considered as well as the nature of the victim's injury.

### **Medical-Only Items**

"Medical-only items" are medications or supplements specifically for medical care. Some examples:

- analgesics, pain relievers;
- antibiotic and antiseptic agents;
- antifungal agents;
- bandages and other wound care supplies;
- cortisone or hydrocortisone creams/ointments;
- electrolyte drinks for dehydration;
- hot/cold packs for injuries;
- stomach and intestinal medications.

### **Dual-Purpose Items**

"Dual-purpose items" are medications or supplements that have both a medical purpose and a general health purpose. Some examples, indicating the medical purpose:

- eye drops, for a medical condition or injury affecting the eye or to reduce ocular side effects of other medications;
- skin care products or camouflage cosmetics, for a diagnosed skin condition or injury;
- dietary or nutritional supplements, for a specific medical condition or injury;
- supplements to reduce side effects of other medications (e.g., fibre supplements where constipation is a side effect of a prescription medication);
- feminine hygiene products, for use after surgery or childbirth;
- herbal or homeopathic medicines, recommended by a health professional for a specific medical condition or injury;

- oral rinses, for pre- or post-operative care;
- joint supplements, for a diagnosed joint condition or injury.

### **Items Without a Specific Medical Purpose**

“Items without a specific medical purpose” are primarily for the purpose of general health, well-being, hygiene, or appearance. These include toiletries, cosmetics, and a wide range of dietary or nutritional supplements.

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## SECTION D-3. DENTAL SERVICES OR EXPENSES

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Types of Ineligible Services or Expenses	4
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### Purpose

The “dental services or expenses” benefit helps to offset the costs of dental care that victims of violent crime require to recover from or manage the effects of their injury. Dental benefits may involve restoring or improving dental health, functioning, or appearance.

Where victims have disabilities from the offence that affect their ability to maintain their dental health, this benefit helps to offset the costs of additional dental services and expenses required to do so.

Victims awarded a dental services or expenses benefit may be eligible for assistance with the costs of transportation and childcare necessary to attend dental appointments (see **section D-17** of this manual, *Transportation and Transportation-Related Childcare*).

### Eligible Category of Claimant

CVAA, section 4(1)(a).

- Victim

### Eligibility Criteria

CVAA, section 4(1).

1. The need for the dental service or expense must have arisen as a result of the offence.

The claimant may require various types of dental work; however, dental services or expenses related to the offence are the only dental costs that can be considered as a benefit under the Crime Victim Assistance Act.

2. Dental services must be provided by a dentist or other prescribed health professional. If there are concerns about the qualifications of a service provider, the file should be referred to program management.

**CVA (General) Regulation,**  
section 8(1) and, for types of  
health professionals, section 2.

3. The adjudicator must be satisfied that the dental services or expenses are necessary. Evidence to support this should be obtained from the police report, where available, and from a dental service provider.

**CVA (General) Regulation,**  
section 8(2).

The dentist should be asked to complete a Crime Victim Assistance Program Dentist Report and a Standard Dental Claim Form specifying the dental services proposed or provided. This information should be reviewed by the Crime Victim Assistance Program dental consultant.

4. The adjudicator must be satisfied that the dental services or expenses are reasonable. In determining reasonableness, the following should be considered:

**CVA (General) Regulation,**  
section 8(2).

- whether the services or expenses fall within commonly accepted dental practice;
- whether the claimant has any health issues that raise concerns about the short-term or long-term health implications of having the dental work performed;
- the opinion of the Crime Victim Assistance Program dental consultant;
- the need to balance the claimant's right to choice of practitioner with the limits of publicly funded services.

5. The adjudicator must be satisfied that the cost of providing the benefit is economically reasonable—the most economical alternative that is reasonable in the circumstances.

**CVA (General) Regulation,**  
sections 1 (definition of  
economically reasonable) and  
8(2).

- If previous dental work is being repaired or replaced, the adjudicator should approve the most economical alternative that is of a similar kind and quality to the dental work being repaired or replaced.
- If natural teeth are being repaired or replaced, the adjudicator should approve the most economical alternative that will provide the claimant with a level of dental function and appearance that is at least as good as the level the claimant had before the injury, if possible.

In some cases, dental benefits may result in dental function or appearance that is better than it was before the offence. In other cases, it may not be possible to attain as good a level of dental function or appearance as before the offence.

See the provisions under *Amount of the Benefit* below for additional policy on cost issues.

## Types of Eligible Services or Expenses

**CVA (General) Regulation,**  
section 8(1).

6. Dental services or expenses must fall within one or more of the following categories:
  - surgical or non-surgical dental diagnosis, assessment, treatment, or care by a dentist or other health professional;
  - design, construction, repair, alteration, and fitting of a complete or partial denture, or dental appliances, equipment, aids, devices, or supplies, by a dentist or other health professional;
  - expenses directly related to diagnostic tools, tests, and analysis respecting the above.
7. Repair or replacement of a dental appliance (e.g., a bridge, partial or complete denture, or implant) that was previously provided as a benefit should be considered an eligible expense if:
  - the dental appliance replaced the claimant's natural tooth/teeth; and
  - the need for repair or replacement has arisen out of normal use of the appliance.

This is based on the fact that natural teeth may last a person's entire life. Therefore, a dental appliance that replaced natural teeth, and was provided as a benefit because of the offence, should be replaced periodically as needed throughout the claimant's life span.

On the other hand, if a claimant already had a dental appliance such as a bridge, which had to be replaced as a result of the injury caused by the offence, replacement of that bridge once would restore the claimant's dental appliance to its pre-injury status. In this situation, the claimant is responsible for replacing the dental appliance when needed, since he or she would have been responsible for replacing it had the offence not occurred.

8. When a claimant requires replacement of a dental appliance much sooner than anticipated, the adjudicator should try to determine the reason for this discrepancy. If poor dental hygiene or other negligence on the claimant's part was a contributing factor, this should be taken into account in determining the reasonableness of providing the benefit and the amount of benefit to be provided.

**CVAA,** section 9(2)(c).

Under the Crime Victim Assistance Act, a benefit may be denied or reduced if the claimant's conduct is detrimental to the claimant's health or safety, undermines the purpose of the benefit, or is contrary to a condition imposed on the receipt of a benefit (see *Behaviour Contrary to Recovery/Benefits* in **section C-7** of this manual). See also *Conditions or Limitations of the Benefit* below.

9. Routine or preventive dental care services (e.g., teeth cleaning, periodic examinations) are generally not eligible as the need for

these services does not result from the offence. However, they may be considered eligible services if they are:

- part of a specific course of dental care/treatment that is necessary because of the injury from the offence; or
- over and above what would normally be required for maintaining dental health because the injury from the offence has resulted in the need for more frequent or extensive services (e.g., some claimants with disabilities who need assistance with daily dental hygiene may need to have their teeth professionally cleaned more often than the norm).

See the provisions under *Amount of the Benefit* below for additional policy.

10. Dental items purchased by the claimant (e.g., from a drugstore) may be eligible if a note or prescription is provided by the dental service provider verifying that the items are necessary for dental care or treatment related to the injury. If the claimant is receiving personal care because of a disability from the offence, and requires dental equipment or supplies to facilitate dental hygiene, verification may be obtained from the personal care provider.
11. Medications or supplements required in association with dental services are eligible expenses if they meet the criteria in:
  - **section D-2** of this manual, *Medical Services or Expenses*, for medications or supplements available without a prescription; or
  - **section D-4** of this manual, *Prescription Drug Expenses*, for prescription medications.

Medications may be required, for example, to reduce inflammation or pain associated with dental injuries or treatment or to prevent or treat infection. Liquid nutritional supplements may be required for claimants who cannot eat solid food (e.g., because of a broken jaw).

## Types of Ineligible Services or Expenses

12. Dental services or expenses that are required or desired by the claimant but are unrelated to the injury are not eligible.
13. The following services or expenses should not be considered reasonable and/or necessary for the purpose of this benefit:
  - routine or preventive dental care services (e.g., teeth cleaning, periodic dental examinations), except as indicated above under *Types of Eligible Services or Expenses*;
  - repair or replacement of dental items provided as a benefit if the items were lost, stolen, or damaged through misuse;

- repair or replacement of dental work that was provided as a benefit to replace previous dental work (e.g., if a bridge was provided to replace an existing bridge, it will not be replaced again).

As noted in provision no. 7 above, repair or replacement of a dental appliance is an eligible expense only if the dental appliance was provided as a benefit to replace a natural tooth or teeth damaged as a result of the offence.

## Amount of the Benefit<sup>3</sup>

**CVA (General) Regulation,**  
sections 8(3) and 8(4).

14. The amounts set out in the fee guides of the Association of Dental Surgeons of BC, in effect at the time the dental work is performed, are the maximum amounts payable to general practitioners and periodontists respectively. Current guides include:
  - Fee Guide for Dental Treatment Services Provided by General Practitioners;
  - Specialist Fee Guide for Periodontics.
15. If the above fee guides do not apply to a dental specialist, a fee of up to 30% above the general practitioner fee for a particular service or expense may be approved for the specialist where appropriate.
16. The amounts set out in the fee guide of the Denturist Association of BC, in effect at the time the costs are incurred, should guide the amounts payable to denturists.
17. Guidance on the reasonableness of dental services and expenses should be obtained from the Crime Victim Assistance Program dental consultant.
18. Where routine or preventive dental care services are provided because the claimant's injury has resulted in the need for more frequent or extensive services than would otherwise be required, the amount of the benefit is the cost of the *additional* services only.

For example, if professional teeth cleaning would normally be required every nine months, and the claimant needs to have his or her teeth cleaned every three months because of the injury from the offence, the benefit would consist of two-thirds of the claimant's teeth cleaning costs.

## Deductions or Reductions

19. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in

<sup>3</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

## Conditions or Limitations of the Benefit

20. Subject to the regulations, provision of a benefit may be dependent on conditions or limitations the adjudicator considers appropriate. For a dental services or expenses benefit, these include, but are not necessarily limited to, the conditions and limitation set out below.
21. Where the dental work has not yet been completed, the dental services or expenses benefit should be conditional on the claimant having the dental work completed within a reasonable period of time.
22. The amount of the benefit should be limited to the amount listed for that type of dental work in the applicable fee guide *in place at the time of the decision*, unless another amount is specifically being awarded. If a new version of the fee guide is likely to be published before completion of the dental work, both the current year and following year should be indicated.
23. Where the nature of the dental work is such that the Crime Victim Assistance Program will cover the cost of repairing or replacing a dental appliance in the future, this should be conditional on the claimant making reasonable efforts to maintain his or her dental health, including obtaining routine or preventive dental care services.

**CVAA**, section 4(1).

The claimant is responsible for the cost of any routine or preventive dental services for maintaining his or her dental health, except in limited circumstances where such services are provided as a benefit because they are necessary as a result of the offence.



## SECTION D-4. PRESCRIPTION DRUG EXPENSES

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Eligibility Criteria	1
Types of Eligible/Ineligible Services or Expenses	2
Amount of the Benefit	2
• Deductions or Reductions	4
Conditions or Limitations of the Benefit	4

### Purpose

The purpose of the “prescription drug expenses” benefit is to help offset the costs of prescription drugs that:

- victims of violent crime require to recover from or manage the effects of their physical injury;
- victims, immediate family members, and witnesses require to recover from the psychological harm caused by violent crime.

### Eligible Categories of Claimants

**CVAA**, sections 4(1)(b), 4(2)(b), and 4(3)(b).

- Victim
- Immediate family member
- Witness

Where there are differences in eligibility criteria for different categories of claimants, this is indicated in the eligibility criteria below. Otherwise, the criteria apply to all claimants.

### Eligibility Criteria

**CVA (General) Regulation**, sections 9(a), 21(1)(a), and 30(1)(a).

1. The drugs must be prescribed for the claimant by a medical practitioner or by a health professional authorized by law to prescribe those drugs.

See the definitions of “drug” and “prescription” in the *Glossary* at **section E-1** of this manual.

**CVA (General) Regulation**, sections 21(1)(b) and 30(1)(b); **CVAA**, sections 4(2), 4(3), and 1(1).

2. If the claimant is an immediate family member or a witness, the drugs must be prescribed as a result of the psychological harm experienced by the claimant because of the victim’s injury or death from the offence.

See the definition of “psychological harm” in the *Glossary* at **section E-1** of this manual.

**CVAA**, section 1(1).

3. The adjudicator must be satisfied that the prescription drugs are necessary because of the injury from the offence. If there are questions about this, confirmation should be obtained from the person who prescribed the drugs.

**CVAA**, sections 4(1)(b), 4(2)(b), and 4(3)(b); **CVA (General) Regulation**, sections 9(b), 21(1)(c), and 30(1)(c).

This may include a drug that the claimant was taking regularly before the offence; see provision no. 11 below for more information.

4. The adjudicator must be satisfied that the prescription drugs are reasonable, and that the cost of providing the benefit is economically reasonable—the most economical alternative that is appropriate in the circumstances.

**CVA (General) Regulation**, sections 9(b), 21(1)(c), and 30(1)(c), and section 1 (definition of economically reasonable).

See the provisions under *Amount of the Benefit* below for additional policy on cost issues.

5. When a prescription is for narcotic analgesics, hypnotics-sedatives, or tranquillizers, and the drugs are prescribed for more than eight weeks, the circumstances should be reviewed by the Crime Victim Assistance Program medical consultant.

See also the related provisions under *Amount of the Benefit* below.

## Types of Eligible/Ineligible Services or Expenses

6. This benefit is restricted to medications available by prescription. There are no other eligible services or expenses.

Medications or supplements available without a prescription (e.g., analgesics, liquid nutritional supplements) may be eligible medical expenses; refer to **section D-2** of this manual, *Medical Services or Expenses*.)

## Amount of the Benefit<sup>4</sup>

7. Subject to provision no. 8 below, when a claimant obtains prescription drugs within BC and the drugs are of a type funded under the Ministry of Health Services PharmaCare program (“PharmaCare”), the amount of the benefit should be the amount payable under PharmaCare and consistent with PharmaCare’s Low Cost Alternative and Reference Drug Program policy.

Prescription drugs funded by PharmaCare are categorized as “full benefit” and “partial benefit” products. Where a prescription is for a drug categorized as a partial benefit, the patient is advised that the full cost is not covered under PharmaCare but that a low cost alternative or reference drug product is available. A patient may choose to take the partial benefit as prescribed, but then the patient is responsible for the

<sup>4</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

difference in cost between the low cost alternative or reference drug price and the total cost of the prescription (see the PharmaCare Low Cost Alternative Reference Drug Program Booklet, online at [www.health.gov.bc.ca/pharmacare/lca/lcabooklets.html](http://www.health.gov.bc.ca/pharmacare/lca/lcabooklets.html)). The Crime Victim Assistance Program follows this approach as well.

8. If a prescription indicates that only the drug of a specified manufacturer, or no interchangeable drug, is to be dispensed, the amount of the benefit should reflect the full cost of the drug prescribed.

In such circumstances, the pharmacist cannot dispense an interchangeable drug (by virtue of section 30(1) of the Pharmacists, Pharmacy Operations and Drug Scheduling Act).

Where information on such prescribing instructions has not been provided to the Crime Victim Assistance Program, confirmation should be obtained from the person who prescribed the drug.

**CVA (General) Regulation,**  
sections 7(3)(c), 21(2), and  
30(2).

9. When a claimant obtains prescription drugs outside BC, and the drugs are of a type funded under PharmaCare, the maximum amount that may be paid for the drugs is the amount payable under PharmaCare.
10. If the prescription drugs are not of a type funded under PharmaCare, the amount of the benefit should be the cost to the claimant.
11. Where the claimant was taking a prescription drug on a regular basis before the offence, and continues to take it after the offence, the drug may be an eligible expense if the injury from the offence resulted in a need for the drug.
  - The full cost of the prescription drug may be an eligible expense for a reasonable period of time (i.e., the length of time the drug would typically be prescribed for treating or managing that type of injury), whether or not the claimant would likely have been taking the drug had the offence not occurred.
  - Where the dosage or duration of use of the drug increased because of the offence, the additional cost (i.e., the difference in cost before and after the offence) may be an eligible expense.

This cost difference can be determined by comparing receipts for the prescription drug before and after the offence.

12. When narcotic analgesics, hypnotics-sedatives, or tranquilizers are prescribed, the adjudicator should impose an eight-week limit, post-injury or post-surgery, to providing a benefit for these drugs. An extension should be granted if a medical practitioner or authorized health professional advises that the extension is necessary and reasonable in the circumstances. If it is anticipated

that the drugs will be prescribed for an extended period, the circumstances should be reviewed by the Crime Victim Assistance Program medical consultant annually, or more frequently as advised by the medical consultant.

The time limits and review process for benefits involving these types of prescription drugs were established due to the inherent medical concerns associated with their prolonged use.

## **Deductions or Reductions**

13. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

## **Conditions or Limitations of the Benefit**

14. Subject to the regulations, provision of a benefit may be dependent on conditions or limitations the adjudicator considers appropriate. For a prescription drug expenses benefit, this includes, but is not necessarily limited to, the condition set out below.
15. Where the claimant is likely to have an ongoing or long-term need for prescription drugs as a result of the offence, the benefit should be made conditional on the claimant's registration with Fair PharmaCare or a similar program, if the claimant is eligible to register with such a program.

CVAA, section 4.

To be eligible for Fair PharmaCare financial assistance, a person must:

- have valid BC Medical Services Plan (MSP) coverage; and
- have filed an income tax return for the relevant taxation year (i.e., two years prior).

Go to:

[www.health.gov.bc.ca/pharmacare/plani/planiindex.html#2](http://www.health.gov.bc.ca/pharmacare/plani/planiindex.html#2).

## SECTION D-5. DISABILITY AIDS

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Types of Ineligible Services or Expenses	4
Amount of the Benefit	4
• Deductions or Reductions	4
Conditions or Limitations of the Benefit	4

### Purpose

Some victims of violent crime require disability aids to alleviate the effects of their injury, improve the quality of their life, and assist them in activities of daily living. The purpose of the “disability aids” benefit is to help offset the costs of such aids.

### Eligible Category of Claimant

**CVAA**, section 4(1)(c).

- Victim

### Eligibility Criteria

**CVA (General) Regulation**, section 10(2)(a).

1. The adjudicator must be satisfied that the benefit is reasonable and necessary to:
  - alleviate the effects of the claimant’s injury;
  - help improve the quality of life of the claimant; and
  - assist the claimant in activities of daily living.

See the definition of “activities of daily living” in the *Glossary* at **section E-1** of this manual.

**CVA (General) Regulation**, sections 1 (definition of economically reasonable) and 10(2)(b).

2. The adjudicator must be satisfied that the benefit is economically reasonable—the most economical alternative that is appropriate in the circumstances.
3. In determining what disability aids are most appropriate, the adjudicator should consider:
  - the nature of the claimant’s disability, needs, and interests;
  - the claimant’s home and work circumstances;

- whether the claimant's disability has stabilized, and the length of time the claimant will likely need the disability aid;

For example, if a wheelchair is required for a short period of time only, it may be rented rather than purchased.

- how the disability aid compares with other options to meet the claimant's needs.

See the definitions of "disability" and "disability aids" in the *Glossary* at **section E-1** of this manual.

4. Where necessary, information on the need for and suitability of disability aids should be obtained from one or more of the following persons: medical practitioner, Crime Victim Assistance Program medical consultant or vocational rehabilitation consultant, other health professional or appropriate expert, or service provider.

Information on the need for and suitability of disability aids may be provided as part of a care plan for the claimant, but a care plan is not required in order to provide this benefit.

## Types of Eligible Services or Expenses

5. Services or expenses must fall within the following categories:

**CVA (General) Regulation,**  
section 10(1).

- **Mobility aids.**

Examples of mobility aids include canes, crutches, walkers, wheelchairs, and scooters.

- **Communication aids.**

Examples of communication aids include hands-free telephones, communication boards, teletypewriters (TTYs), signalling devices, computers, and dictaphones. (Hearing aids are included under "equipment, devices, appliances, and supplies" below.)

- **Vision aids.**

Examples of vision aids include white canes, magnifying glass(es), reading machines, talking calculators, and computer screen readers.

- **Specialized clothing to accommodate the disability of the claimant.**

Examples of specialized clothing include accessible or assisted-dressing clothing, clothing for persons using wheelchairs, specialized socks for leg braces or prostheses, and specialized shoes.

- **Prostheses and orthoses.**

Examples of prostheses include artificial eyes and limbs. Prostheses may be functional or cosmetic, or both. Examples of orthoses include back and ankle supports, foot orthotics, and wrist braces.

- **Equipment, devices, appliances, and supplies.**

Examples that fall within this broad category of disability aids include hearing aids, mobile hoists, appliance control systems,

pressure relief equipment, equipment to facilitate food preparation, eating and drinking supplies, adaptive chair, bed, or bath accessories, and specialized vehicle equipment.

- Fittings, repairs, replacement, and adjustment to disability aids that fall within the above categories.

The specific types of disability aids listed under each of the above categories are examples only—they are not intended to reflect the entire array of disability aids that may fall within these categories.

6. Disability aids for the purpose of assisting the claimant to work are generally eligible if the claimant is self-employed, and may be eligible if the claimant has an employer.

If the claimant has an employer, the adjudicator should contact the employer to discuss the needs of the claimant and determine if the employer will provide the disability aid(s). If the employer will not provide the disability aid(s), the adjudicator should bring the matter to the attention of program management, who may obtain a legal opinion on whether it is the employer's responsibility to accommodate the employee's disability.

Under human rights law, the employer has an obligation to accommodate an employee's disability. The extent of the accommodation is based on what is reasonable considering the nature of the employee's disability as well as the employer's circumstances, including economic feasibility.

7. Repair or replacement of a disability aid provided as a benefit is an eligible expense when the need for repair or replacement has arisen out of normal use of the item, and the claimant still requires the item as a disability aid.
8. A disability aid should be replaced, rather than repaired, if the adjudicator is satisfied that:
  - repair of the disability aid is not possible;
  - repair of the disability aid is not possible without adversely affecting its function or appearance; or
  - repair of the disability aid is not an economical alternative to replacement of the disability aid.
9. If the claimant requires replacement of a disability aid much sooner than anticipated, the adjudicator should try to determine the reason for this. If misuse or negligence on the claimant's part has been a contributing factor, this should be taken into account in determining the reasonableness of providing the benefit and the amount of benefit to be provided.

CVAA, section 9(2)(c).

Under the Crime Victim Assistance Act, a benefit may be denied or reduced if the claimant's conduct is detrimental to the claimant's health or safety, undermines the purpose of a benefit, or is contrary to a

condition imposed on the receipt of a benefit (see **section C-7** of this manual.) See also *Conditions or Limitations of the Benefit* below.

## Types of Ineligible Services or Expenses

10. Disability aids do not involve making structural changes to a residence or installing fixed equipment at a residence. Where a claimant requires such modifications, the adjudicator should refer to the policy on the home modification benefit in **section D-9** of this manual. Where required, a disability aids benefit may be provided in conjunction with a home modification benefit.
11. Disability aids do not involve making structural changes to a motor vehicle or installing fixed equipment in a motor vehicle. Where the claimant requires such modifications, the adjudicator should refer to the policy on the vehicle acquisition or modification benefit in **section D-10** of this manual. A disability aids benefit may be provided for obtaining other types of specialized vehicle equipment (e.g., equipment that does not permanently alter a vehicle).

## Amount of the Benefit<sup>5</sup>

### Deductions or Reductions

12. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

## Conditions or Limitations of the Benefit

13. Subject to the regulations, provision of a benefit may be dependent on conditions or limitations the adjudicator considers appropriate. For a disability aids benefit, these include, but are not necessarily limited to, the conditions set out below.
14. Where a disability aid is likely to be replaced by the Crime Victim Assistance Program in the future, this should be conditional on the claimant making reasonable efforts to use and maintain the disability aid as instructed.
15. Where a claimant is being provided a benefit for replacement of a disability aid sooner than anticipated and there is evidence that the claimant did not take reasonable care of the item, the claimant should be notified that failure to use and maintain the replacement disability aid as instructed may affect provision of the benefit in the future.

**CVAA**, section 4(1).

<sup>5</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.



## SECTION D-6. COUNSELLING SERVICES OR EXPENSES

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### Purpose

The “counselling services or expenses” benefit helps to offset the costs of counselling that victims, immediate family members, and witnesses need to recover from the psychological harm caused by violent crime.

It is well recognized that victims of violent crime and their close family members experience some degree of psychological harm from being victimized. It is also recognized that those who witness violent crime against a close friend or relative often experience psychological harm.

The Crime Victim Assistance Act is intended, first, to assist victims, second, to assist immediate family members, and, third, to assist witnesses. This is reflected in the different levels of counselling benefit for each of these categories of claimants.

Victims, immediate family members, and witnesses awarded a counselling services or expenses benefit may be eligible for assistance with the costs of transportation and childcare necessary to attend counselling or psycho-educational sessions (see **section D-17** of this manual, *Transportation and Transportation-Related Childcare*).

### Eligible Categories of Claimants

**CVAA**, sections 4(1)(d), 4(2)(a), and 4(3)(a).

- Victim
- Immediate family member

- Witness

Where there are differences in eligibility criteria for different categories of claimants, this is indicated in the eligibility criteria below. Otherwise, the criteria apply to all claimants.

## Eligibility Criteria

1. Recognizing the psychological harm caused by violent crime, counselling benefits are normally awarded to a claimant who meets the basic eligibility requirements for a victim, an immediate family member, or a witness under the Crime Victim Assistance Act.

2. The adjudicator must be satisfied that the counselling services or expenses are necessary to assist the claimant in his or her recovery from the psychological harm that resulted from the offence.

See the definition of "psychological harm" in the *Glossary* at **section E-1** of this manual.

While the counselling must be tied to the offence, this does not mean that the counselling cannot address peripheral issues that would otherwise impede the claimant's recovery.

**CVA (General) Regulation**, sections 11(1), 20(1), and 29(1).

**CVAA**, section 1(1).

3. The adjudicator must be satisfied that the counselling services or expenses are reasonable. In making this determination, the adjudicator should consider the following:

- whether the type of counselling falls within commonly accepted psychological or psychiatric practice;
- whether the type of counselling has been empirically validated;
- the availability of the counselling.

See the definition of "empirically validated" in the *Glossary* at **section E-1** of this manual.

**CVA (General) Regulation**, sections 11(1), 20(1), and 29(1).

4. The counselling should be provided by a counsellor who is registered with the Crime Victim Assistance Program in accordance with its Counselling Guidelines.

See the definition of "counsellor" in the *Glossary* at **section E-1** of this manual.

The Counselling Guidelines incorporate key requirements of the **Crime Victim Assistance (General) Regulation**, including provisions on fees (schedule 2), insurance (sections 11(2)(b), 20(2)(b), and 29(2)(b)), and criminal record checks (sections 11(2)(c), 20(2)(c), and 29(2)(c)). There is a link to the Counselling Guidelines at: [www.pssg.gov.bc.ca/victim\\_services/cva/index.htm](http://www.pssg.gov.bc.ca/victim_services/cva/index.htm).

**CVA (General) Regulation,**  
sections 11(5) and 11(6).

5. If the claimant is a victim, the adjudicator should consider whether the claimant is eligible for psycho-educational sessions: that is, if psycho-educational sessions are necessary to assist the victim in developing or implementing a treatment plan to aid in his or her psychological recovery. In claims involving child victims, or adult victims with significant psychological or physical trauma, psycho-educational sessions should be awarded. Psycho-educational sessions should also be awarded in other types of claims where the eligibility criteria are met.

See the definition of “psycho-educational session” in the *Glossary* at **section E-1** of this manual.

Psycho-educational sessions are usually awarded in circumstances where the victim has been awarded counselling sessions, but the award of counselling sessions is not a prerequisite. For example, psycho-educational sessions may be awarded when counselling is not appropriate for a victim because of age or capacity, but a parent or caregiver needs assistance in learning how best to support the victim in his or her psychological recovery.

### **Transitional Claims**

**CVA (General) Regulation,**  
section 35(1).

6. If a claimant who was awarded counselling under the former act requests additional counselling in relation to the same injury, the claimant may be awarded additional counselling sessions upon reassessment or reconsideration, provided that the claimant continues to meet the eligibility criteria for counselling services.

For information on the number of sessions that may be awarded in these cases, see *Amount of the Benefit: Transitional Claims* below.

### **Types of Eligible Services or Expenses**

7. The only types of eligible services or expenses are counselling and psycho-educational sessions, and reasonable expenses related to the provision of these services.
8. Counselling expenses, which should be approved by the Crime Victim Assistance Program in advance, include:
  - long distance telephone charges when a session has to be held by telephone (see also provision no. 12 below);
  - a counsellor’s transportation and related expenses, and travel time (at a reduced rate), when the counsellor has to travel to provide the service.
9. The policy on transportation and related expenses for claimants to access benefits should be used as a guide in determining the reasonableness of transportation and related expenses for counsellors.

See *Transportation and Related Expenses: Amount of the Benefit* in **section D-17** of this manual.

## Types of Ineligible Services or Expenses

10. The following services or expenses are not eligible:

- stress management courses, self-improvement seminars or self help books, tapes, audio or video displays, or other similar materials;
- counselling provided by a counsellor who does not have professional liability insurance that is satisfactory to the director;
- counselling provided by a counsellor who does not have a criminal record check that is satisfactory to the director.

**CVA (General) Regulation,**  
sections 11(2), 20(2), and  
29(2).

11. Counselling or psycho-educational sessions that are provided under the Crime Victim Assistance Act will not directly involve the perpetrator.

Restorative justice processes (such as victim-offender mediation and restorative circles) are used in some cases, and the Crime Victim Assistance Program recognizes their value. Counselling sessions provided under the act may be used in restorative justice processes, with the exception of counselling sessions involving the offender.

12. In addition, the following services or expenses should not be considered reasonable and/or necessary for the purpose of this benefit category:

- Psychoanalysis.

Psychoanalysis is a particular type of psychotherapy that is not covered by the Medical Services Plan of BC. It typically requires several sessions a week over two to three years with a trained psychoanalyst. Its purpose and scope extend far beyond recovery from a specific traumatic event.

- Types of counselling/therapy/healing that are not commonly accepted in the field of psychological or psychiatric practice, for example, practices such as reiki, re-birthing, neurotherapy, or aromatherapy.
- Counselling provided by telephone, unless crisis intervention is required and the claimant is unable to attend a session in person due to illness or distance.

The invoice should indicate that the session was provided by telephone, the reason why this was necessary, and the duration of the session.

## Interim Benefits

13. If a claimant meets the criteria for providing a counselling benefit on an interim basis, up to 12 counselling sessions should be provided as an interim benefit.

See **section C-5** of this manual, *Interim Benefits*, for the criteria for providing benefits on an interim basis and how this affects benefits subsequently awarded. Note that counselling sessions provided on an interim basis are counted when a decision awarding counselling benefits is made.

## Amount of the Benefit<sup>6</sup>

14. Limitations on the counselling benefit apply to all psychotherapeutic sessions that fall within the definition of counselling. If a claimant has other medical/psychiatric treatment issues, the claimant's eligibility for coverage under other benefit categories should be considered.

Counselling benefits may be provided along with other services as part of a multi-faceted treatment plan, whether or not the other services are provided as crime victim assistance benefits. For example, counselling benefits may be provided in the context of a residential treatment program where other costs (e.g., other types of treatment, room and board) are not covered through the Crime Victim Assistance Program.

Note that some forms of residential treatment may be eligible for funding as medical rehabilitation under the medical services or expenses benefit (see **section D-2** of this manual).

**CVA (General) Regulation**, sections 11(7), 20(5), and 29(5).

15. The maximum amount that may be paid for a counselling or psycho-educational session is the amount set out in schedule 2 of the Crime Victim Assistance (General) Regulation.

**CVA (General) Regulation**, section 11(3).

16. If the claimant is a victim who was 19 years of age or older at the time of the offence, the maximum benefit for counselling services is 48 sessions.

A session is one hour. See the definition of "session" in the *Glossary* at **section E-1** of this manual.

**CVA (General) Regulation**, section 20(3).

17. If the claimant is an immediate family member who was 19 years of age or older at the time of the offence, the maximum benefit for counselling services is 36 sessions.

**CVA (General) Regulation**, section 29(3).

18. If the claimant is a witness who was 19 years of age or older at the time of the offence, the maximum benefit for counselling services is 12 sessions.

**CVA (General) Regulation**, sections 11(4), 20(4), and 29(4).

19. If the claimant is a victim, an immediate family member, or a witness who was under 19 years of age at the time of the offence, additional counselling sessions (i.e., more than the above maximums) may be awarded if the adjudicator is satisfied that additional counselling is necessary and reasonable.

Children affected by violent crime may have some recurrence of the psychological effects of the crime during adulthood, often triggered by

<sup>6</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

significant events (e.g., marriage, the birth of a child, the death of a parent). The purpose of providing additional counselling sessions is to help claimants through such recurrences, not to provide for lengthy periods of ongoing counselling throughout adulthood.

- If continuation of counselling is requested when a victim has received 48 counselling sessions, an immediate family member has received 36 sessions, or a witness has received 12 sessions, the need for additional counselling should be determined. If necessary, an assessment should be carried out by a Crime Victim Assistance Program psychological consultant.
- Limits should be placed on the number of counselling sessions awarded annually once the claimant has reached adulthood and has received a specified number of sessions:
  - victims who have received 48 sessions: a limit of 24 per year;
  - immediate family members who have received 36 sessions: a limit of 18 per year;
  - witnesses who have received 12 sessions: a limit of six per year.
- If a request for additional counselling is made at a later date (e.g., years after the claimant completed the counselling sessions awarded), and it is unclear that the need for counselling relates to the offence, an intake assessment may be carried out.

20. Counselling sessions should be awarded as follows:

- An adult victim of significant psychological or physical trauma, including but not limited to sexual or family violence, may be awarded up to 48 counselling sessions at the outset where it appears that all sessions will be required.
- A child victim of significant psychological or physical trauma, including but not limited to sexual or family violence, should be awarded 24 counselling sessions at the outset. A reassessment before the completion of these sessions may be appropriate.
- An immediate family member of a deceased victim should be awarded up to 36 counselling sessions at the outset.
- The minimum number of counselling sessions that should be awarded is six.

**CVA (General) Regulation,**  
section 11(5).

21. Subject to limits on the number of counselling sessions that may be awarded, when additional counselling sessions are requested, the adjudicator should consider whether the claimant continues to experience psychological harm as a result of the offence and to make progress towards recovery. A progress report from the claimant's counsellor may assist in determining if these criteria are being met. Advice may also be sought from a Crime Victim Assistance Program psychological consultant.

22. A victim may be awarded four psycho-educational sessions for a support person or persons, whether or not counselling sessions have been awarded. Where two or more support persons will attend separate sessions, the victim may be awarded four psycho-educational sessions per person.

A session is one hour. See the definition of "session" in the *Glossary* at **section E-1** of this manual.

23. Where a claimant fails to attend a counselling session without giving adequate notice to the counsellor, the Crime Victim Assistance Program should:

- find out if the counsellor will waive the fee for the missed session;

Calling the counsellor and explaining the circumstances may convince the counsellor to waive the fee. If the fee is not waived, the counsellor has to be paid for the missed session.

- if the counsellor will not waive the fee, count the missed session as one of the sessions awarded to the claimant, unless exceptional circumstances prevented the claimant from cancelling the session with adequate notice and the maximum number of sessions has not been awarded;
- if there is a pattern of missed sessions, advise the claimant that the benefit may be suspended.

### **Transitional Claims**

**CVA (General) Regulation,**  
sections 35(2) to 35(4).

24. If a former applicant who was an adult at the time of the offence requests a reassessment or reconsideration and, by the date of the reassessment or reconsideration, the claimant has received, under the former act:

- less than 36 counselling sessions, the claimant may be eligible for additional sessions up to 48 sessions in total (under both acts);
- between 36 and 60 counselling sessions, the claimant may be eligible for additional sessions up to 60 sessions in total (under both acts);
- 60 or more counselling sessions, the claimant may be eligible for up to 12 additional sessions.

A “former applicant” means an applicant under the former act, the Criminal Injury Compensation Act.

25. If a former applicant who was a minor at the time of the offence requests a reassessment or reconsideration, eligibility for counselling sessions should be determined in the same way as for an applicant under the Crime Victim Assistance Act.

See provision no. 19 above, which recognizes the particular needs of those who were psychologically injured during childhood and allows for additional counselling sessions to be awarded where necessary and reasonable.

### **Deductions or Reductions**

26. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

27. Visits to counsellors that are provided free of charge or paid for by other sources are not deducted.

Maximums for this benefit are by number of sessions, not dollar amounts, and counselling provided by other sources may be free of charge or may not be directly comparable to counselling and psycho-educational sessions provided through the Crime Victim Assistance Program.

### **Conditions or Limitations of the Benefit**

28. Subject to the regulations, provision of this benefit may be dependent on conditions or limitations the adjudicator considers appropriate.

**CVAA**, section 4.



## SECTION D-7. PROTECTIVE MEASURES, SERVICES, OR EXPENSES

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Payment of the Benefit	10
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### Purpose

This benefit helps to offset the costs of “protective measures, services, or expenses” that victims of violent crime require to reduce their risk of additional harm from the perpetrator or the perpetrator’s associates, or to recover psychologically.

### Eligible Category of Claimant

CVAA, section 4(1)(f).

- Victim

### Identifying and Expediting Urgent Claims

1. Crime Victim Assistance Program management should be immediately notified where there is information indicating that:
  - a person has an urgent need for protective measures;
  - a person who needs protective measures has received, or is being assessed for, a new identity for protective reasons;

- a perpetrator has come to the attention of the High Risk Offender Community Notification Advisory Program or is a potential referral to that Program.
2. Where a person contacts the Crime Victim Assistance Program indicating that he or she is in immediate physical danger, Program personnel should, with that person's consent, facilitate contact with police or victim services in that person's community, with the aim of getting that person to a safe place as soon as possible. This should be done whether or not an application has been submitted or the person appears to meet the definition of a victim under the Crime Victim Assistance Act.
  3. Where the information in an application suggests that a claimant may be eligible for protective measures, the claimant should be contacted by phone as soon as possible to clarify:
    - whether the claimant wishes to request protective measures;
    - if so, whether the claimant appears to have an urgent need for protective measures.
  4. Where there appears to be an urgent need for protective measures, steps should be taken to expedite information gathering and decision making with respect to the claimant's eligibility for protective measures.

This applies whether the need for protective measures arises from the risk posed by a particular perpetrator or the psychological trauma to the claimant.
  5. In determining the claimant's safety needs with respect to a perpetrator who has been charged or convicted, Crime Victim Assistance Program personnel should:
    - check the status of the accused/offender on the Justice Information System (JUSTIN);
    - advise the claimant to register with the Victim Safety Unit to obtain advance notification of the offender's release from custody.

## **Coordination with Victim Services**

6. If a victim service worker is not already involved with the claimant, Crime Victim Assistance Program personnel should refer the claimant to a victim service worker in his or her community.
7. If a victim service worker is involved, claims involving protective measures should, with the claimant's consent, be handled in conjunction with the claimant's victim service worker.

In order for the Crime Victim Assistance Program to share information with the victim service worker, the claimant's written consent is

required. An Authorization for the Release of Information form is available for this purpose.

## Eligibility Criteria

### All Protective Measures, Services, or Expenses

**CVA (General) Regulation,**  
sections 12(2)(b) and 12(3)(c).

8. The adjudicator must be satisfied that *one* of the following conditions applies:
- there is a real and substantial risk that the claimant is likely to be harmed by the perpetrator or others (e.g., associates of the perpetrator); or
  - the claimant is so psychologically traumatized as a result of the offence that the benefit is needed for his or her recovery.

See the definitions of “real and substantial risk” and “psychologically traumatized” in the *Glossary* at **section E-1** of this manual.

These criteria reflect two different aims of this benefit category. Only one of the criteria has to be met, but both may apply in some circumstances.

9. If the need for the benefit is based on the risk to the claimant’s safety, verification of real and substantial risk to the claimant should be obtained from the police or victim services. If the claimant has not yet contacted the police, he or she should be referred to the police.

In urgent cases where a police report is not yet available, or more information is required, every effort should be made to obtain a verbal statement from the police or victim services as soon as possible.

A report or information from the police can be in various forms—it does not have to be a standard police incident report or Report to Crown Counsel. Police information may come from specialized units such as domestic violence or elder abuse units.

10. If the need for the benefit is based on the psychological trauma to the claimant, information concerning the nature of the offence (coupled with an understanding of the effects of victimization) may be sufficient to satisfy the adjudicator that the benefit is necessary for the claimant’s recovery. If the adjudicator is not satisfied that the benefit is necessary for the claimant’s recovery, verification should be sought from a counsellor or medical practitioner, or a Crime Victim Assistance Program psychological consultant.

**CVA (General) Regulation,**  
sections 12(2)(a) and 12(3)(a).

11. The adjudicator must be satisfied that the benefit is necessary and reasonable. In making these determinations, the adjudicator

should consider whether the protective measures to be awarded are commensurate with:

- the degree of risk or psychological trauma to the claimant (as applicable);
- the particular personal, home, or work-related security needs of the claimant.

12. The adjudicator must be satisfied that the provision of the benefit is economically reasonable—the most economical alternative that is appropriate in the circumstances.

**CVA (General) Regulation**, sections 12(2)(c) and 12(3)(d) and section 1 (definition of economically reasonable).

## Relocation Expenses

Relocation expenses may include moving expenses and a relocation allowance (for more detail on types of expenses, see *Types of Eligible Services or Expenses: Relocation Expenses* below).

13. For the claimant to be eligible for relocation expenses, the adjudicator must be satisfied that the other protective measures, services, or expenses available as crime victim assistance benefits are inadequate to reduce the risk to the claimant or enable the claimant to recover from the psychological trauma (as applicable in the circumstances).
14. In determining whether a proposed relocation is likely to serve its purpose(s) (i.e., protection from harm and/or recovery from psychological trauma), the adjudicator should consider:
- whether the claimant needs to move outside the community or jurisdiction in which he or she has been living;
  - the claimant's wishes and circumstances, including relevant family and work circumstances;
  - where there is a risk of harm from the perpetrator, the perpetrator's circumstances and any relevant history.

**CVA (General) Regulation**, section 12(3)(b).

Relocations do not necessarily involve moving considerable distances. While some relocations may require moving to another city or province (or, in rare circumstances, to another country), other relocations may be appropriate within the same city or area, particularly if it is a large area. Further, some claimants may not need to move out of their community if they move to a more secure or protected type of accommodation.

15. Where a claimant who resides in BC wishes to relocate outside the province, Crime Victim Assistance Program personnel should determine if any minor children will be relocating with the claimant. If so, verification that the claimant has custody of the child(ren), and the legal right to move the child(ren) out of the province, should be obtained. Program management should be consulted where there are concerns about child custody issues.

**CVA (General) Regulation,**  
section 12(4)(a).

16. To be eligible for a relocation allowance, the claimant must be unemployed for a period of time following the relocation.

There is no requirement that the claimant have been employed prior to the relocation.

Being unemployed after the relocation does not mean that the claimant is automatically eligible for a relocation allowance. There should be some loss of income (see the next provision).

**CVA (General) Regulation,**  
section 12(3)(a).

17. The adjudicator should be satisfied that a relocation allowance is reasonable and necessary. This may be determined from evidence that the claimant will experience, or has experienced, a loss of household income because of the relocation.

Claimants who were working before the relocation may have had to quit their jobs for protective or geographic reasons (i.e., the perpetrator knew where they worked, or they moved too far away to commute to work). Claimants who were not working before the relocation may have relied on the perpetrator for financial support.

On the other hand, claimants who were not working but were receiving income assistance before the relocation, and continue to receive (uninterrupted) income assistance after the relocation, will not experience a loss of income because of the relocation.

18. Since a relocation allowance is a form of income support, it is not reasonable for a relocation allowance benefit and an income support or a lost earning benefit to be *simultaneously* provided.

If the claimant meets the eligibility criteria for both a relocation allowance benefit and an income support or a lost earning capacity benefit, the adjudicator should determine which benefit, or which order of benefits, would be most advantageous to the claimant.

A relocation allowance is equivalent to the maximum income support or lost earning benefit (for up to three months). Therefore, where a claimant experiences a partial loss of employability, the relocation allowance will provide a higher amount per month than an income support or a lost earning capacity benefit.

It is possible for the claimant to receive these benefits on a sequential basis. For example, if a claimant is eligible for the full income support benefit for short-term loss of employability, that benefit could be provided first. Then, if the claimant becomes employable within a reasonable period of time, the relocation allowance could be provided to assist the claimant in the transition to finding work in the new location.

19. Providing relocation expenses does not preclude providing other protective measures after relocation, where such measures are necessary and reasonable in the circumstances.

For example, a claimant may require security devices at the new residence, or communication measures or safety training, to further reduce the risk of harm or facilitate psychological recovery.

## Transitional Claims

20. A claimant is not eligible for a protective measures, services, or expenses benefit if, in relation to the same injury/offence, the claimant was awarded compensation for pain and suffering under section 2(4)(f) of the former act, the Criminal Injury Compensation Act.

**CVA (General) Regulation,**  
section 36(1)(a).

## Types of Eligible Services or Expenses

21. Services or expenses must fall within one or more of the following categories:

**CVA (General) Regulation,**  
section 12(1).

- acquisition, rental, installation, or maintenance of security or communication devices, equipment, and services;
- courses for personal protection or security;
- relocation expenses.

## Security or Communication Devices, Equipment, and Services

22. This category covers not only the acquisition of security or communication items but also, where applicable, the installation, rental, and maintenance of these items. It includes, but is not necessarily limited to, services or expenses related to:

- measures to make homes more secure, such as bars and locks/stoppers for windows, doors, or other points of entry; locks, door viewers, and reinforcement plates for doors; security doors;
- measures to make areas outside homes more secure, such as fencing, gates, or outdoor lighting (including motion-activated lighting);
- home alarm systems;
- personal alarms or cellular phones (see the limitation under *Amount of the Benefit* below);
- measures to protect the identity of claimants, such as confidential name changes, unlisted or blocked telephone numbers, and post-office boxes;
- replacement of doors, windows, or security devices at the claimant's residence that were damaged or destroyed during the offence or, where home insurance covers these costs, payment of the deductible (if the amount of the deductible is less than the cost of the item being replaced).

Where the amount of the insurance deductible is higher than the cost of the item being replaced, the Crime Victim Assistance Program provides the cost of the item. This is consistent with the requirement that the benefit be economically reasonable.

23. When determining what security or communication measures are appropriate, the adjudicator should consider not only the claimant's security while at home but also the claimant's security in other contexts. Security or communication measures may be provided at more than one location where this is necessary and reasonable.

Other places where the claimant may require security or communication measures may be at work, in a vehicle, or at a residence the claimant regularly visits (e.g., a family member's home). The nature and location of the offence, the assessment of risk, and the claimant's living and work circumstances may affect the determination of where such measures are appropriate.

24. While some types of security measures will serve to protect the claimant's property as well as the claimant, they cannot be approved solely to protect property. Security measures are eligible expenses only if they are necessary and reasonable for the protection or psychological recovery of the claimant.
25. When comparing the reasonableness of different home alarm systems, the adjudicator should consider the following factors:
- what type of monitoring a system requires;
  - how long the claimant is likely to use a home alarm system;
  - the need for portability of the system;
  - whether equipment will be provided at no cost if a monitoring contract is entered into.
26. Where the cost of alarm system monitoring is being awarded, this should initially be for a one-year period. The need for continued monitoring should be assessed before the expiry of the one-year period.

An initial award of longer than one year may be made where the circumstances of the claim indicate that monitoring will be required for a longer period due to risk of harm to the claimant.

### **Courses for Personal Protection or Security**

**CVA (General) Regulation,**  
section 12(1)(b).

27. Courses for personal protection or security include, but are not necessarily limited to, the following types of courses:
- personal and home safety education;
  - physical self-defence training, including courses on breakaway or safe escape techniques;
  - verbal self-protection training, such as courses on de-escalation of aggression or conflict management.

## Relocation Expenses

28. Relocation expenses may include only the following:

**CVA (General) Regulation,**  
section 12(1)(c).

- a relocation allowance for claimants who are unemployed following relocation;  
*See provision no. 33 below for the amount and duration of the allowance.*
- actual moving expenses for the claimant and his or her family members (if they live with the claimant), and for moving household goods either with the claimant and family or separately;  
*See provision no. 29 below for more detail on moving expenses.*
- rental security deposit (see the definition in the *Glossary* at **section E-1**), including a security deposit for any family pet(s) if required;
- connection fees for telephone and utilities (i.e., heating, electricity, and cable), including security deposits if required.

29. Moving expenses may include necessary and reasonable expenses associated with:

- temporary accommodation of the claimant and family prior to or during the move, or during a temporary relocation;
- travel expenses for the claimant and family to get to the new location, or, in the case of a temporary relocation, to get to the temporary accommodation and back home;
- kennelling and transportation of family pets;
- temporary storage of household goods;
- moving of household goods.

*In some situations, the need for relocation may be temporary—the claimant and family will be able to return home after leaving for a short period. Nonetheless, the claimant may still incur moving expenses (e.g., temporary accommodation and travel/transportation).*

*See **Amount of the Benefit** below for additional criteria that apply to relocation and moving expenses.*

## Types of Ineligible Services or Expenses

30. Services or expenses that should not be considered reasonable and/or necessary for the purpose of this benefit include, but are not limited to:

- a guard dog;
- a body guard or security guard;
- a weapon;
- a course for self-protection using a weapon (e.g., firearms training);



- surveillance equipment for gathering evidence;
- wages for the claimant's time spent packing or moving;
- wages for family members, friends, or acquaintances who help the claimant pack or move;
- storage fees for a non-licensed storage facility;
- amounts owing for telephone or utilities prior to relocating;
- costs associated with selling a house or finding a rental property (e.g., realtor's commission or rental property agent's fee).

## Amount of the Benefit

**CVA (General) Regulation,**  
section 12(5).

31. The maximum amount that may be awarded for protective measures, services, or expenses—excluding relocation expenses—is \$3,000.00. (See provision no. 33 below for the maximum amount for relocation expenses.)
32. The amount provided for a cellular phone should generally not exceed \$150.00. This amount may be used towards the purchase of a phone or a service contract, or both. It may be exceeded where basic cellular phone service for emergency use cannot be provided within this amount.

The \$150.00 maximum is based on the average cost of purchasing a cellular phone. The limitation on this benefit recognizes that cellular phones will often be used not only for emergency use (the purpose of this benefit) but also for non-emergency use.

**CVA (General) Regulation,**  
sections 12(4) and 12(6).

33. The maximum amount that may be awarded for relocation expenses is \$7,000.00.

Within this category, a relocation allowance is a weekly allowance of 40 times the minimum wage, which is paid for the period during which the claimant is unemployed following the relocation, up to a maximum of three months.<sup>7</sup>

See the definition of "minimum wage" in the *Glossary* at **section E-1** of this manual.

34. Where temporary accommodation is required, it should generally not exceed a two-month period: the month in which the offence occurred and one additional month.
35. Where temporary storage of household goods is required, this should generally not exceed a three-month period.

<sup>7</sup> Unless otherwise specified, "month" means a period calculated from a day in one month to a day numerically corresponding to that day in the following month, less one day (Interpretation Act).

## Deductions or Reductions

36. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

## Payment of the Benefit<sup>8</sup>

37. Whenever possible, a rental security deposit should be paid directly to the landlord.

## Conditions or Limitations of the Benefit

38. Subject to the regulations, provision of a benefit may be dependent on conditions or limitations the adjudicator considers appropriate. For a protective measures, services, or expenses benefit, these include, but are not necessarily limited to, the conditions set out below.
39. When a benefit is provided because of the risk of harm from the perpetrator or others (e.g., the perpetrator's associates), the benefit should be conditional on the claimant making reasonable efforts to avoid contact with the perpetrator or others who may compromise the claimant's safety.
40. When a relocation benefit is provided on the basis of a claimant's immediate need to relocate, the benefit should be conditional on the claimant relocating as soon as reasonably possible, within a specified timeframe. In determining an appropriate timeframe, the adjudicator should consult with the claimant and consider:
- the nature of the risk to the claimant;
  - whether the claimant has a safe place to live pending relocation, and how long the claimant can stay there;
  - any factors that might impede an immediate relocation (e.g., having to sell a home or obtain new accommodation).

CVAA, section 4(1).

<sup>8</sup> See **section C-10** of this manual, *Payment*, for additional policy on payment of benefits.

## SECTION D-8. REPAIR OR REPLACEMENT OF DAMAGED OR DESTROYED PERSONAL PROPERTY

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### Purpose

The “repair or replacement of damaged or destroyed personal property” benefit helps to offset the costs of repairing or replacing victims’ personal property—including eyeglasses, disability aids, and clothing—that is damaged or destroyed as a result of violent crime.

### Eligible Category of Claimant

CVAA, section 4(1)(g).

- Victim

### Eligibility Criteria

Under section 4(1) of the CVAA, the need for the benefit must have arisen as a result of the offence or event that resulted in the victim’s injury.

1. The personal property to be repaired or replaced must have been damaged or destroyed as a result of the offence. This benefit does not include theft of personal property, or loss of personal property except as specified in provision no. 2 below.

See the definitions of “personal property” and “damaged or destroyed” in the *Glossary* at **section E-1** of this manual.

2. Personal property should generally be considered destroyed if the claimant had the personal property in his or her possession at the time of the offence and, because of the circumstances surrounding the offence, the claimant could not reasonably recover the property after the offence.

This might occur, for example, if an assault occurred on the street and the claimant’s eyeglasses fell off during the assault, then the claimant was taken to hospital by ambulance without the eyeglasses.

3. If property has been seized by police as evidence, the adjudicator should consider the following in determining whether it can be reasonably recovered:
  - the length of time the claimant is likely to be without the item (as estimated by police);
  - the claimant's ability to function without the item for that length of time;
  - whether the item was or would be damaged to the extent that it would have to be replaced after it is returned to the claimant (including damage from forensic testing as well as from the offence).
4. Replacement of eyeglass frames or disability aids damaged during the offence should be allowed if the adjudicator believes that repair is not possible or is not an economical alternative to replacement.
5. Replacement of damaged clothing should be allowed unless it is possible to repair the clothing in such a way that the damage or repair does not affect the appearance of the clothing.
6. Clothing should be considered destroyed (and therefore not repairable) if it was worn by the claimant at the time of the offence and the claimant does not want to wear the clothing again because of its association with the offence. In such circumstances, the clothing should be replaced.
7. If property that was damaged or destroyed as a result of the offence is not eligible for repair or replacement under this benefit category, the adjudicator should consider whether it is eligible for a crime scene cleaning or protective measures benefit.

Crime scene cleaning benefits include repair or replacement of items damaged or destroyed because of biohazardous substances or hazardous chemicals (see **section D-20** of this manual). Protective measures benefits include repair or replacement of damaged or destroyed property such as doors, windows, or security devices (see **section D-7** of this manual).

**CVA (General) Regulation,**  
sections 13(1)(a) and 13(1)(c).

**CVA (General) Regulation,**  
section 13(1)(d).

## Types of Eligible Services or Expenses

8. Eligible services or expenses include only the following:
  - repair or replacement of eyeglass frames;
  - replacement of eyeglass lenses or contact lenses with lenses of a comparable kind and quality;
  - repair of the following disability aids: mobility aids; specialized clothing to accommodate the disability of the claimant; prostheses and orthoses; or equipment, devices,

**CVA (General) Regulation,**  
section 13(1).

appliances, and supplies (see **section D-5** of this manual, *Disability Aids*, for more information);

- replacement of any of the above types of disability aid with a disability aid of a comparable kind and quality if, in the opinion of the adjudicator, repair of the disability aid is not reasonable;
- repair of clothing or replacement of the clothing with clothing of a comparable kind and quality if, in the opinion of the adjudicator, the clothing cannot reasonably be repaired.

9. Eyeglasses or contact lenses to be replaced should have corrective lenses. This may include sunglasses with corrective lenses.

Corrective lenses include those prescribed by an optometrist or ophthalmologist as well as corrective lenses in eyeglasses available without a prescription (e.g., reading glasses purchased at a department store).

10. When an eye examination is required for replacing eyeglasses or contact lenses, the cost of the eye examination may be an eligible expense, under the medical services or expenses benefit, if the examination is deemed to be necessary and reasonable (see **section D-2** of this manual).

## Types of Ineligible Services or Expenses

11. Personal property that is not included in the categories of eligible services or expenses (e.g., cell phones, jewellery, purses or satchels) is not eligible for repair or replacement under this benefit category, even if it was damaged or destroyed during the offence.

See the definition of "personal property" in the *Glossary* at **section E-1** of this manual.

See also other benefit categories under which property may be repaired or replaced, as indicated in provision no. 7 above.

12. Personal property that falls within the categories of eligible services or expenses, but was not being used by the claimant at the time of the offence, is not eligible for repair or replacement.

See the definition of "personal property" in the *Glossary* at **section E-1** of this manual.

## Amount of the Benefit<sup>9</sup>

13. A maximum of \$150.00 may be awarded for:

- repair or replacement of eyeglass *frames* (there is no maximum amount for lenses);
- repair or replacement of clothing (other than specialized clothing that is a disability aid).

There is no maximum amount for repair or replacement of disability aids under section 13(1)(c) of the Crime Victim Assistance (General) Regulation, which includes specialized clothing to accommodate the disability of the victim as per section 10(d) of the regulation.

**CVA (General) Regulation**, section 13(2).

## Deductions or Reductions

14. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

## Conditions or Limitations of the Benefit

15. Subject to the regulations, provision of this benefit may be dependent on conditions or limitations the adjudicator considers appropriate.

**CVAA**, section 4(1).

<sup>9</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

## SECTION D-9. HOME MODIFICATION, MAINTENANCE, OR MOVING EXPENSES

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### Purpose

The purpose of the “home modification, maintenance, or moving expenses” benefit is to help offset the costs of home modifications, home maintenance, and moving expenses required to improve the quality of life of victims who have a disability as a result of violent crime.

This benefit is intended to assist victims with a disability in achieving the highest level of functioning within their homes as is reasonably possible through residential modifications, changing their place of residence, or both. It also assists victims in maintaining and repairing their residence when they are unable to do this work because of their

disability and there is no one else in the household able to do this work.

## Eligible Category of Claimant

- Victim

**CVAA**, section 4(1)(h).

## Eligibility Criteria Applicable to All Benefits

1. For any of the benefits within this benefit category, the adjudicator must be satisfied that the claimant has a disability as a result of the offence and needs the benefit because of it. The type of verification required will depend on the circumstances.

For example, if a police report indicates that the claimant was shot in the back and permanently paralyzed, this will be sufficient evidence that the claimant has a disability. However, information from a medical practitioner, health professional, or service provider will usually be necessary to determine the most suitable types of benefits.

See the definition of "disability" in the *Glossary* at **section E-1** of this manual.

**CVA (General) Regulation**, sections 14(2)(a), 14(3)(a) and 14(3)(b), and 14(4)(a); **CVAA** section 4(1).

2. A claimant may be eligible for one *or more* of the following benefits:
  - home modification expenses;
  - an allowance for home maintenance expenses;
  - moving expenses.
3. The adjudicator should consider all relevant factors, including the claimant's preferences, in determining which benefit or combination of benefits represents the best approach to meeting the claimant's needs at a reasonable cost.

Consultation with the claimant is particularly important if the claimant is facing the possibility of having to move. While the claimant's preferences are considered, it may not always be economically reasonable to provide the types of benefits the claimant desires.

**CVA (General) Regulation**, sections 14(2), 14(3), and 14(4).

## Home Modifications

### Eligibility Criteria

These criteria are in addition to the *Eligibility Criteria Applicable to All Benefits*, above.

4. Home modifications may apply to the victim's residence or the victim's proposed residence, as defined in this policy.

See the definitions of "victim's residence" and "victim's proposed residence" in the *Glossary* at **section E-1** of this manual.

**CVA (General) Regulation**, section 14(2)(b).



5. Modifications may be made to more than one residence where the claimant regularly spends time in each residence and making the modifications to the residences meets the eligibility criteria for this benefit.

For example, modifications to a second residence where the claimant regularly spends time, such as the home of family members or close friends, may be necessary to enable the claimant to maintain important relationships.

**CVA (General) Regulation,**  
section 14(2)(b).

6. The adjudicator must be satisfied that the home modifications are necessary to assist the claimant in his or her daily activities. Verification of the need for the benefit may be provided by an occupational or rehabilitation therapist or other appropriate practitioner.

**CVA (General) Regulation,**  
section 14(2)(b).

7. The adjudicator must be satisfied that the home modifications are reasonable. In making this determination, the adjudicator should consider the following:

- the manner in which the home modifications will assist the claimant in his or her daily activities;
- whether the types of modifications required can reasonably be made to the victim's residence or proposed residence;
- the economic reasonableness of the home modifications;
- any other relevant circumstances, such as whether the need for the modifications is likely to be temporary or the claimant is not planning to stay in the residence for long.

For example:

- If a structural modification is required, the reasonableness of the modification may depend on whether the architecture of the residence/property lends itself to being modified relatively easily.
- If a claimant's disabling condition is expected to be temporary, or if the claimant is planning to move in the near future, it will not be reasonable to make major structural changes to the residence, but installation of some types of equipment may be reasonable.

8. If the total cost of home modifications is likely to be greater than \$1,000.00, three estimates detailing the types and costs of services/expenses should be obtained. In assessing these estimates, the adjudicator should determine what benefits are reasonable to provide considering all relevant circumstances, not only the financial cost.

The estimates will usually be obtained by Crime Victim Assistance Program personnel working with an occupational therapist. However, in some cases, the claimant may obtain the estimates and forward them to the Program for assessment.

See also the provisions under *Amount of the Benefit* below.

9. If the claimant rents the residence, or if the claimant owns the residence but it is part of a jointly owned residential complex, the adjudicator must be satisfied that the owner of the residence or manager of the complex, as applicable, has approved the modifications. When home modifications will involve structural changes, this approval should be in writing.
10. Where home modifications involve significant costs, the adjudicator should be satisfied that the claimant intends to stay in the residence for at least five years.

### **Types of Eligible Services or Expenses**

11. Types of eligible home modification services or expenses include, but are not necessarily limited to:
  - making structural changes to the interior or exterior of the residence (e.g., replacing steps with a ramp, widening doorways, changing the height of countertops or built-in cupboards/shelves, constructing showers that are wheelchair accessible), including the cost of obtaining any necessary building permits;
  - installing equipment that is attached to the interior or exterior of the residence (e.g., stair lifts, wheelchair lifts, wing taps for sinks, specialized shower stalls or bath lifts, grab bars);
  - costs associated with temporary accommodation if the claimant cannot reside in the home while modifications are being made.
12. The adjudicator should refer to the policy on disability aids (see [section D-5](#) of this manual, *Disability Aids*) for additional types of equipment or supplies that may be provided in the home to assist victims who have disabilities with activities of daily living.

*In contrast to home modifications, equipment/supplies used in the home that fall within the category of "disability aids" do not involve structural modifications to the residence.*

13. Repair or replacement of home modifications provided as a benefit is an eligible expense when the need for repair or replacement has arisen out of normal use of the item.

### **Types of Ineligible Services or Expenses**

14. The cost of repairing or replacing an item that was damaged through misuse should not be considered an eligible expense.
15. The cost of returning a residence to its former state (i.e., removing or "undoing" the home modifications) is generally not an eligible expense for a claimant who owns the residence.

16. If the claimant is living in a care facility, the cost of modifications to the care facility is generally not an eligible expense, as it is the facility's responsibility to ensure accessibility for its residents.

### **Amount of the Benefit<sup>10</sup>**

#### Deductions or Reductions

17. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

### **Conditions or Limitations of the Benefit**

**CVAA**, section 4(1).

18. Subject to the regulations, provision of a benefit may be dependent on conditions or limitations the adjudicator considers appropriate. For a home modification benefit, these include, but are not necessarily limited to, the conditions set out below.
19. A home modification benefit should be conditional on the homeowner ensuring that the modifications comply with applicable building, insurance, and other requirements (e.g., BC Building Code and Builders Lien Act; building, plumbing, and zoning bylaws; general liability and workers compensation insurance).
20. When a home modification benefit involves significant costs, the benefit should be conditional on the claimant staying in the residence for at least five years, unless unanticipated circumstances require the claimant to move. Failure to comply with this condition may preclude the provision of another home modification benefit, since the benefit must be reasonable as well as necessary.

## **Moving Expenses**

### **Eligibility Criteria**

These criteria are in addition to the *Eligibility Criteria Applicable to All Benefits*, above.

**CVA (General) Regulation**, section 14(4).

21. Moving expenses should be paid if:
- the claimant has a *long-term* disability as a result of the offence;  
*See the definition of "long-term disability" in the Glossary at **section E-1** of this manual.*
  - the claimant cannot live in his or her residence unless modifications are made; and

<sup>10</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

- the adjudicator is satisfied that the required modifications cannot reasonably be made to that residence.

Where claimants are not eligible for moving expenses under this section, they may be eligible for transportation and related expenses to transport them and their belongings for the purpose of accessing services provided under the Crime Victim Assistance Act (e.g., to move to a residential facility). For more information, see **section D-17** of this manual.

## Types of Eligible Services or Expenses

22. Types of eligible moving expenses include:

- actual moving expenses for the claimant and his or her family members (if they live with the claimant), and for moving household goods either with the claimant and family or separately;  
See provision no. 23 below for more detail.
- rental security deposit (see the definition in the *Glossary* at **section E-1** of this manual), including a security deposit for any family pet(s) if required;
- connection fees for telephone and utilities (i.e., heating, electricity, and cable), including security deposits if required.

23. Moving expenses may include necessary and reasonable expenses associated with:

- temporary accommodation of the claimant and family prior to or during the move, or during a temporary move;
- travel expenses for the claimant and family to get to the new location, or, in the case of a temporary move, to get to the temporary accommodation and back home;
- kennelling and transportation of family pets;
- temporary storage of household goods;
- moving of household goods.

In some situations, the need for the move may be temporary—the claimant and family will be able to return home after leaving for a short period. Nonetheless, the claimant may still incur moving expenses (e.g., temporary accommodation and travel/transportation).

See *Amount of the Benefit* below for additional criteria that apply to moving expenses.

## Types of Ineligible Services or Expenses

24. Moving expenses that should not be considered reasonable for the purpose of this benefit include, but are not limited to:

- wages for the claimant's time spent packing or moving;
- wages for family members, friends, or acquaintances who help the claimant pack or move.

**CVA (General) Regulation,**  
section 14(4).

### **Amount of the Benefit**

25. The maximum amount that may be paid for moving expenses is \$2,000.00. Moving expenses may be awarded once only in relation to the same injury/offence.
26. Where temporary accommodation is required, it should generally not exceed a two-month period.
27. Where temporary storage of household goods is required, it should generally not exceed a three-month period.

### Deductions or Reductions

28. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

### **Payment of the Benefit<sup>11</sup>**

29. Whenever possible, a rental security deposit should be paid directly to the landlord.

### **Conditions or Limitations of the Benefit**

**CVAA**, section 4(1).

30. Subject to the regulations, provision of a moving expenses benefit may be dependent on conditions or limitations the adjudicator considers appropriate.

## **Home Maintenance**

### **Eligibility Criteria**

These criteria are in addition to the *Eligibility Criteria Applicable to All Benefits*, above.

**CVA (General) Regulation,**  
section 14(3)(b).

**CVA (General) Regulation,**  
section 14(3)(c).

31. For a home maintenance benefit, the adjudicator must be satisfied that:
  - the claimant is unable to maintain and repair his or her residence, or the property surrounding it, because of the disability that resulted from the offence; and
  - no other person in the claimant's household is reasonably able to do this work.

See the definition of "person in the claimant's household" in the *Glossary* at **section E-1** of this manual.

<sup>11</sup> See **section C-10** of this manual, *Payment*, for additional policy on payment of benefits.

Note that claimants who have a disability as a result of the offence may also be eligible for a homemaker services or expenses benefit (see **section D-11** of this manual).

### **Types of Eligible/Ineligible Services or Expenses**

- 32. A home maintenance benefit is a standard allowance for claimants whose disability prevents them from doing the above types of work. It is not necessary to itemize costs or submit receipts.
- 33. This benefit may include a variety of services or expenses related to maintaining and repairing a home and property, such as lawn care and other yard work, general home repairs, painting, snow removal, etc.

### **Amount of the Benefit<sup>12</sup>**

- 34. The home maintenance allowance is \$100.00 per month, payable directly to the claimant.

**CVA (General) Regulation**,  
section 14(3).

### Deductions or Reductions

- 35. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

### **Conditions or Limitations of the Benefit**

- 36. Subject to the regulations, provision of a home maintenance allowance may be dependent on conditions or limitations the adjudicator considers appropriate.

**CVAA**, section 4(1).

<sup>12</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

## SECTION D-10. VEHICLE MODIFICATION OR ACQUISITION

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### Purpose

Victims who have disabilities as a result of violent crime may experience a loss of their independence. The purpose of the “vehicle modification or acquisition” benefit is to help offset the costs of making modifications to a motor vehicle or obtaining an accessible motor vehicle, when such costs are necessary to provide greater independence to victims with long-term disabilities.

### Eligible Category of Claimant

**CVAA**, section 4(1)(i).

- Victim

### Eligibility Criteria

**CVA (General) Regulation**, section 15(1)(a).

1. The adjudicator must be satisfied that the claimant has a long-term disability as a result of the offence.

See the definition of “long-term disability” in the *Glossary* at **section E-1** of this manual.

**CVA (General) Regulation**, section 15(1)(b).

2. The adjudicator must be satisfied that a motor vehicle needs to be acquired or modified in order for the claimant to drive it or be transported in it.

See the definitions of “vehicle acquisition” and “vehicle modification” in the *Glossary* at **section E-1** of this manual.

**CVA (General) Regulation**, section 15(1)(c).

3. The adjudicator must be satisfied that the benefit is reasonable and necessary to provide greater independence to the claimant. In making this determination, the adjudicator should consider not only the two types of benefits in this category—vehicle

modification and vehicle acquisition—but also whether a transportation allowance would be a more appropriate benefit (see **section D-17** of this manual).

A transportation allowance is an alternative to a vehicle modification or acquisition benefit—these benefits cannot be awarded simultaneously. See provision no. 12 below.

4. Where appropriate, the adjudicator should seek advice from an occupational therapist, industry specialist, or other expert in determining which type of benefit should be awarded. The following factors should be considered:
  - the nature of the claimant's disability and any special needs affecting transportation;
  - the claimant's living circumstances and interests;
  - where applicable, the family's circumstances (e.g., the need to transport other family members when transporting the claimant);
  - whether the claimant's disability has stabilized, and the length of time the claimant will likely need the benefit;
  - whether the claimant or claimant's family has a vehicle that could be modified, and the age and condition of the vehicle;
  - if the claimant is unable to drive, whether there is someone involved in the claimant's life who could drive a vehicle for the claimant on a regular basis;
  - whether the claimant can cover the cost of using a vehicle (e.g., insurance, gas, maintenance);
  - the "one-time only" nature of the benefits in this category (see provision no. 13 below);
  - if each type of benefit would provide a similar degree of independence to the claimant, which is the most economically reasonable.
5. When considering a vehicle modification or acquisition benefit for a claimant living in a care facility, the adjudicator should ensure that the vehicle is for the claimant's use, rather than a means for the facility to transport residents whom it is responsible for transporting.
6. The vehicle to be modified or acquired should primarily be a personal-use vehicle rather than a commercial vehicle.
7. For a vehicle modification benefit, the adjudicator should verify that the victim's vehicle is suitable for modification in the manner required for the claimant to drive it or be transported in it. Verification should be based on a driving/vehicle assessment and



consultation with a Crime Victim Assistance Program vocational rehabilitation consultant.

See the definition of "victim's vehicle" in the *Glossary* at **section E-1** of this manual.

8. If the claimant is not the registered owner of the vehicle to be modified, the adjudicator should obtain a letter from the registered owner authorizing the modifications.
9. For a vehicle acquisition benefit, the adjudicator should verify that the claimant does not have a vehicle or, if the claimant has a vehicle, that the vehicle is not suitable for modification in the manner required for the claimant to drive it or be transported in it. The latter should be based on a driving/vehicle assessment and consultation with a Crime Victim Assistance Program vocational rehabilitation consultant.
10. Where the claimant's disability has not stabilized and a vehicle acquisition benefit is being considered, the adjudicator should determine whether it would be more appropriate for a vehicle to be leased rather than purchased.
11. If a vehicle is leased rather than purchased, the lease may be renewed where reasonable and necessary. Renewal of the lease should not be considered an award of another vehicle acquisition benefit, but rather a continuation of the benefit initially awarded.
12. A claimant who receives a vehicle modification or acquisition benefit is not eligible to receive a transportation allowance in relation to the same injury/offence.

**CVA (General) Regulation,**  
sections 15(2) and 18(5).

The purpose of this provision is to preclude the simultaneous award of two benefits for similar purposes, which is neither necessary nor reasonable. However, over the course of a claim, there may be changes in the claimant's circumstances affecting his or her eligibility for these benefits. For example, if the claimant has been receiving a transportation allowance but is no longer able to use it, that benefit may be terminated and it may be appropriate to award a vehicle modification or acquisition benefit. Note that the claimant would not be eligible for a transportation allowance after a vehicle modification or acquisition benefit has been awarded.

**CVA (General) Regulation,**  
section 15(3).

13. A claimant may be awarded a benefit in the vehicle modification or acquisition category of benefits only once in relation to the same injury/offence. See also the next provision on repair or replacement of the benefit.

This category of benefits has two types of benefits: vehicle modification and vehicle acquisition. While each type of benefit may be awarded once only, it is possible to award both types of benefits (once each) where warranted over the course of a claim.

Maintenance or repair of disability-related equipment installed in a vehicle is considered part of the award, not a separate award. For more information, see provision no. 17 below.

## Types of Eligible Services or Expenses

14. Vehicle modifications generally fall into one of the following two categories:
  - devices or products that help a person with a disability operate a motor vehicle independently (e.g., hand controls, special pedals, and modified seats);
  - modifications to a vehicle to accommodate electric wheelchairs required by persons with certain types of disabilities (e.g., wheelchair lifts and ramps, and roof, floor, and door alterations).
15. Vehicle acquisition generally involves the purchase of a new vehicle that has been modified to meet the claimant's needs, or the lease of a modified vehicle.
16. Where appropriate, a vehicle acquisition benefit may also involve a payment for registration of the vehicle.
17. Maintenance or repair of disability-related equipment installed in a vehicle is an eligible expense where the need arises out of normal use of the equipment and the claimant still requires the equipment.

## Types of Ineligible Services or Expenses

18. The following expenses should not be considered reasonable expenses for the purpose of this benefit category:
  - insurance costs;
  - normal operating and maintenance costs.

See provision no. 17 above regarding maintenance or repair of disability-related equipment installed as part of a vehicle modification or acquisition benefit.

## Amount of the Benefit<sup>13</sup>

### Deductions or Reductions

19. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

<sup>13</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

## Conditions or Limitations of the Benefit

CVAA, section 4(1).

20. Subject to the regulations, provision of a benefit may be dependent on conditions or limitations the adjudicator considers appropriate. For a vehicle modification or acquisition benefit, these include, but are not necessarily limited to, the conditions set out below.
21. The benefit should be conditional on the claimant assuming responsibility for vehicle insurance and operating costs.
22. For a vehicle acquisition benefit, where the Crime Victim Assistance Program has recommended a particular type of vehicle to ensure that the claimant's future needs are accommodated (e.g., the need for a larger wheelchair), but a different vehicle is provided at the claimant's request, the benefit should be conditional on the claimant assuming the costs of future modifications to the vehicle.

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## SECTION D-11. HOMEMAKER, CHILDCARE, OR PERSONAL CARE SERVICES OR EXPENSES

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### Purpose

The purpose of the “homemaker, childcare, or personal care services or expenses” benefit category is to help offset the costs of homemaker services, childcare, and personal care required by victims who have a disability as a result of violent crime.

There are also benefits for spouses of deceased victims: childcare services or expenses and homemaker services or expenses. These benefits are intended to assist families by offsetting the costs of childcare and homemaker services that they require during a difficult transition period.

Another benefit category covers childcare expenses for victims, immediate family members, and witnesses who require transportation for specific purposes. The transportation-related childcare benefit is covered in **section D-17** of this manual, *Transportation and Transportation-Related Childcare*.

## Eligible Categories of Claimants

- Victim
- Immediate family member who is a spouse of a deceased victim (homemaker and childcare benefits only)

Where there are differences in eligibility criteria for different categories of claimants, this is indicated in the eligibility criteria below. Otherwise, the criteria apply to all claimants.

## Homemaker Services or Expenses

(Victims, Spouses of Deceased Victims)

### Eligibility Criteria

1. Where the benefit is for a victim, the claimant must have a disability as a result of the offence and, because of the disability, be unable to perform some or all of the homemaker tasks the claimant performed before his or her injury.

This benefit applies to victims with either a short-term or long-term disability as a result of the offence.

See the definitions of "disability" and "homemaker tasks" in the *Glossary* at **section E-1** of this manual.

2. Where the benefit is for the spouse of a deceased victim:
  - the claimant must have been married to the victim, or living and cohabiting with the victim in a marriage-like relationship, at the time of the offence;
  - the victim's death must have resulted from the offence.
3. Whether the benefit is for a victim or a spouse, the victim must have performed some or all of the homemaker tasks before the offence. Unless there is evidence to the contrary, it can be assumed that the victim performed some of the homemaker tasks.
4. There should be no other person in the claimant's household who is reasonably able to perform the homemaker tasks. Factors to consider in determining whether another person in the household could perform the homemaker tasks include the person's age, ability, role in the household, and availability.

See the definition of "person in the claimant's household" in the *Glossary* at **section E-1** of this manual.

**CVAA**, sections 4(1)(j) and 4(2)(i); **CVA (General) Regulation**, section 5(2), which prescribes childcare services or expenses and homemaker services or expenses as additional categories of benefit under section 4(2)(i) of the act.

**CVA (General) Regulation**, sections 16(6)(a) and 16(6)(b).

**CVA (General) Regulation**, section 28(1)(a).

**CVAA**, sections 4(2) and 1(1) (definition of victim).

**CVA (General) Regulation**, sections 16(6)(b) and 28(1)(b).

**CVA (General) Regulation**, section 16(6)(c).

5. The adjudicator must be satisfied that the homemaker benefit is reasonable and necessary. In making these determinations, the adjudicator should consider the following factors:
  - the claimant's abilities, living circumstances, and employment and other demands on time;
  - the types of household tasks the claimant needs assistance with;
  - whether there is a family member or other person with whom household tasks were shared before the offence and continue to be shared;
  - whether homemaker services were obtained before the offence and, if so, for how many hours per week/month;
  - whether there are children in the household and, if so, their ages, abilities, and needs;
  - whether the amount of the benefit is reasonable (see *Amount of the Benefit* below);
  - for a spouse, whether the services or expenses are incurred within the five-year time limit for this benefit (see *Amount of the Benefit* below).
6. The claimant may hire a relative or friend to provide homemaker services if the relative or friend:
  - did not share household tasks with the claimant prior to the offence (unless a loss will be incurred by providing the homemaker services, such as having to take time off work);
  - is not the perpetrator;
  - has the appropriate abilities, skills, and experience to provide the services;
  - will be providing the services in compliance with any applicable employment standards and insurance requirements in the jurisdiction;
  - submits invoices to the claimant that meet standard invoicing requirements.

Normally, payment is provided directly to the service provider. However, in this situation, the Crime Victim Assistance Program reimburses the claimant for eligible costs (upon submission of original invoices or receipts), rather than making payments directly to the relative or friend providing the services.

7. Where a claimant requires services around the home that are not eligible under this benefit category (see *Types of Eligible/Ineligible Services or Expenses* below), the adjudicator should determine if those services are covered under another benefit category, such as the home maintenance allowance in **section D-9** of this manual.

## Types of Eligible Services or Expenses

8. Eligible homemaker costs include services provided or expenses incurred to assist a person with shopping, cleaning, cooking, and other household tasks.

**CVA (General) Regulation,**  
section 16(1).

Expenses incurred may include associated costs such as transportation or grocery delivery.

Other household tasks may include tasks outside the home that are required for day-to-day use of the home, such as snow shovelling (of areas required for safe entry to the home and areas required by law to be cleared) or cutting wood to heat the home.

## Types of Ineligible Services or Expenses

9. Services or expenses that should not be considered reasonable and/or necessary for the purpose of the homemaker benefit include, but are not limited to:

- home or property maintenance costs (e.g., heavy cleaning, painting, yard maintenance);
- personal care or medical costs;
- childcare costs.

Other benefits (e.g., home maintenance, childcare, personal care, medical, and income support or lost earning capacity benefits) may cover some of these costs for eligible claimants.

## Amount of the Benefit<sup>14</sup>

10. The maximum amount that may be awarded for homemaker services or expenses for a victim or spouse is \$400.00 per month.

**CVA (General) Regulation,**  
sections 16(7) and 28(2).

11. Where the homemaker benefit is for a victim, it may be provided for as long as the claimant continues to meet the eligibility criteria for the benefit.

12. Where the homemaker benefit is for a spouse, it may only be provided for services obtained, or expenses incurred, within five years of the date of the victim's death.

**CVA (General) Regulation,**  
section 28(1)(c).

13. In determining whether the cost of a homemaker benefit is reasonable, the adjudicator should consider:

- the standard community rates for the services;
- the availability of qualified service providers;
- whether the nature of the services required warrants a departure from the standard community rates.

<sup>14</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.



14. The fact that the claimant hires a relative or friend to provide the homemaker services should not, in itself, affect the rate that will be paid for the services.

The criteria in provision no. 13 above apply to all service providers, including those who are relatives or friends of claimants.

#### Deductions or Reductions

15. In calculating the amount of the benefit, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

#### **Conditions or Limitations of the Benefit**

**CVAA**, sections 4(1) and 4(2).

16. Subject to the regulations, provision of a homemaker benefit may be dependent on conditions or limitations the adjudicator considers appropriate.

#### **Childcare Services or Expenses<sup>15</sup>** (Victims, Spouses of Deceased Victims)

In cases involving deceased victims, childcare benefits may be awarded to spouses only. Where there is no eligible spouse, there may be other sources of assistance:

- the child(ren)'s guardian may be eligible for a Child Care Subsidy through the BC Ministry of Children and Family Development (information online at [www.mcf.gov.bc.ca/childcare/eligibility.htm](http://www.mcf.gov.bc.ca/childcare/eligibility.htm));
- a relative raising the child(ren) may be eligible for financial and other assistance through the Extended Family Program of the BC Ministry of Children and Family Development (information online at [www.mcf.gov.bc.ca/alternativestofostercare/extended\\_family.htm](http://www.mcf.gov.bc.ca/alternativestofostercare/extended_family.htm)).

#### **Eligibility Criteria**

**CVA (General) Regulation**, sections 16(3)(a) and 16(3)(b).

17. Where the childcare benefit is for a victim, the claimant must have a disability as a result of the offence, and, because of the disability, be unable to provide some or all of the childcare the claimant provided before the injury.

This benefit applies to victims with either a short-term or long-term disability as a result of the offence.

See the definitions of "disability" and "childcare" in the *Glossary* at **section E-1** of this manual.

<sup>15</sup> See **section D-17** of this manual, *Transportation and Transportation-Related Childcare*, for childcare benefits for victims, immediate family members, and witnesses who need to travel for specific purposes.

18. Where the childcare benefit is for the spouse of a deceased victim:
- the claimant must have been married to the victim, or living and cohabiting with the victim in a marriage-like relationship, at the time of the offence;
  - the victim's death must have resulted from the offence.
19. Whether the benefit is for a victim or a spouse, the victim must have provided some or all of the childcare before the offence. Unless there is evidence to the contrary, it can be assumed that the victim provided some of the childcare.
20. The benefit applies only in relation to childcare for the claimant's child or children who are under 19 or who are unable to live independently because of a disability.
21. There should be no other person in the claimant's household who is reasonably able to provide the childcare. Factors to consider in determining whether another person in the household could provide the childcare include the person's age, ability, role in the household, and availability.

See the definition of "person in the claimant's household" in the *Glossary* at **section E-1** of this manual.

22. The adjudicator must be satisfied that the childcare benefit is reasonable and necessary. In making these determinations, the adjudicator should consider the following factors:
- the claimant's abilities, living circumstances, and employment and other demands on time;
  - the age, abilities, and needs of the child(ren) for which childcare has been requested;
  - the periods of time for which childcare is needed;
  - whether there is a family member or other person with whom childcare responsibilities were shared before the offence and continue to be shared;
  - whether childcare services were obtained before the offence and, if so, during what times of the day/week;
  - whether the amount of the benefit is reasonable (see also *Amount of the Benefit* below);
  - for a spouse, whether services are obtained, or expenses are incurred, within the five-year time limit for this benefit (see *Amount of the Benefit* below).

**CVA (General) Regulation**, section 27(1)(a).

**CVA (General) Regulation**, section 27(1)(a).

**CVAA**, sections 4(2) and 1(1) (definition of victim).

**CVA (General) Regulation**, sections 16(3)(b) and 27(1)(b).

**CVA (General) Regulation**, section 16(1).

**CVA (General) Regulation**, section 16(3)(c).

**CVA (General) Regulation**, sections 16(3)(d) and 27(1)(d).

23. The claimant may hire a relative or friend to provide childcare services if the relative or friend:

- did not share childcare responsibilities with the claimant prior to the offence (unless a loss will be incurred by providing the childcare, such as having to take time off work);
- is not the perpetrator;
- has the appropriate abilities, skills, and experience to provide the services;
- will be providing the services in compliance with any applicable employment standards and insurance requirements in the jurisdiction;
- submits invoices to the claimant that meet standard invoicing requirements.

Normally, payment is provided directly to the service provider. However, in this situation, the Crime Victim Assistance Program reimburses the claimant for eligible costs (upon submission of original invoices or receipts), rather than making payments directly to the relative or friend providing the services.

### **Types of Eligible Services or Expenses**

24. Eligible childcare costs include services provided or expenses incurred to care for the claimant's child or children.

### **Types of Ineligible Services or Expenses**

25. Services or expenses that should not be considered reasonable and/or necessary for the purpose of the childcare benefit include, but are not limited to:

- travel time for the service provider;
- purchase of groceries or meals;
- purchase of clothing or the cost of diaper cleaning services;
- fees for recreation, education, or entertainment activities;
- house cleaning, except clean up directly associated with childcare activities.

Other benefits (e.g., homemaker, income support, or lost earning capacity benefits) may cover some of these costs for eligible claimants.

### **Amount of the Benefit<sup>16</sup>**

**CVA (General) Regulation,**  
sections 16(5) and 27(2).

26. The maximum amount that may be awarded for childcare services or expenses for a victim or spouse is \$800.00 per month.

This does not include the amount of a transportation-related childcare benefit, for which the claimant may also be eligible (see **section D-17** of this manual, *Transportation and Transportation-Related Childcare*).

<sup>16</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

27. Where the childcare benefit is for a victim, it may be provided for as long as the claimant continues to meet the eligibility criteria for the benefit.

This includes (among other things) criteria related to the ages of any children for whom childcare is requested. Note that the benefit is not provided for the care of a child who is 19 or older unless the child is unable to live independently because of a disability.

**CVA (General) Regulation,**  
section 16(1).

28. Where the childcare benefit is for a spouse, it may only be provided for services obtained, or expenses incurred, within five years of the date of the victim's death.

Note that the benefit is not provided for the care of a child who is 19 or older unless the child is unable to live independently because of a disability.

**CVA (General) Regulation,**  
section 27(1)(c).

29. In determining whether the cost of a childcare benefit is reasonable, the adjudicator should consider:

- the standard community rates for the services;
- the availability of qualified service providers;
- whether the nature of the services required warrants a departure from the standard community rates.

30. The fact that the claimant hires a relative or friend to provide the childcare services should not, in itself, affect the rate that will be paid for the services.

The criteria in provision no. 28 above apply to all service providers, including those who are relatives or friends of claimants.

#### Deductions or Reductions

31. In calculating the amount of the benefit, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

### **Conditions or Limitations of the Benefit**

32. Subject to the regulations, provision of a childcare benefit may be dependent on conditions or limitations the adjudicator considers appropriate.

**CVAA,** sections 4(1) and 4(2).

## **Personal Care Services or Expenses**

(Victims Only)

### **Eligibility Criteria**

33. The claimant must have a disability as a result of the offence, and be unable to perform one or more personal care tasks because of the disability.

**CVA (General) Regulation,**  
sections 16(8)(a) and 16(8)(b).

This benefit applies to victims with either a short-term or long-term disability as a result of the offence.

See the definitions of "disability" and "personal care" in the *Glossary* at **section E-1** of this manual.

**CVA (General) Regulation,**  
section 16(8)(c).

34. The adjudicator must be satisfied that the services or expenses are reasonable and necessary to assist the claimant in daily living and in retaining independence. In making these determinations, the adjudicator should consider the following factors:

- the nature of the claimant's disability and needs;
- the claimant's home and work circumstances;
- how the personal care services compare with other options to meet the claimant's needs;
- whether the amount of the benefit is reasonable (see also *Amount of the Benefit* below).

35. The claimant may hire a relative or friend to provide personal care services if the relative or friend:

- is not the perpetrator;
- has the appropriate abilities, skills, and experience to provide the services required;
- will be providing the services in compliance with any applicable employment standards and insurance requirements in the jurisdiction;
- submits invoices to the claimant that meet standard invoicing requirements.

Normally, payment is provided directly to the service provider. However, in this situation, the Crime Victim Assistance Program reimburses the claimant for eligible costs (upon submission of original invoices or receipts), rather than making payments directly to the relative or friend providing the services.

36. Where a claimant requires more extensive personal care services than those provided under this benefit category (see *Types of Eligible/ Ineligible Services or Expenses* and *Amount of the Benefit* below), such services will generally constitute medical rehabilitation under the medical services or expenses benefit. The adjudicator should refer to the policy in **section D-2** of this manual, *Medical Services or Expenses*.

See the definition of "medical rehabilitation" in the *Glossary* at **section E-1** of this manual. A personal care services or expenses benefit is typically for situations involving shorter-term and less extensive services or expenses than medical rehabilitation.

## Types of Eligible Services or Expenses

37. Eligible personal care costs include services provided and expenses incurred to assist the claimant with bathing, dressing, toileting, and other daily tasks related to personal care. This may include assistance with exercise to facilitate personal care (e.g., range of motion exercises).

**CVA (General) Regulation,**  
section 16(1).

## Types of Ineligible Services or Expenses

38. Services or expenses that should not be considered reasonable and/or necessary for the personal care benefit include, but are not limited to:

- homemaker costs;
- childcare costs.

Homemaker and/or childcare benefits may be provided to eligible claimants in conjunction with personal care benefits.

## Amount of the Benefit<sup>17</sup>

39. The maximum amount that may be awarded for personal care services or expenses is \$1,600.00 per month.

**CVA (General) Regulation,**  
section 16(9).

40. In determining whether the cost of a personal care benefit is reasonable, the adjudicator should consider:

- the standard community rates for the services;
- the availability of qualified service providers;
- whether the nature of the services required warrants a departure from the standard community rates.

41. The fact that the claimant hires a relative or friend to provide personal care services should not, in itself, affect the rate that will be paid for the services.

The criteria in provision no. 40 above apply to all service providers, including those who are relatives or friends of claimants.

## Deductions or Reductions

42. In calculating the amount of the benefit, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

## Conditions or Limitations of the Benefit

43. Subject to the regulations, provision of a personal care benefit may be dependent on conditions or limitations the adjudicator considers appropriate.

**CVAA,** section 4(1).

<sup>17</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

## SECTION D-12. MAINTENANCE FOR A CHILD BORN AS A RESULT OF A PRESCRIBED OFFENCE

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### Purpose

The purpose of this benefit, "maintenance for a child born as a result of a prescribed offence," is to help offset the costs that a victim will incur for the maintenance of a child conceived and born as a result of violent crime.

### Eligible Category of Claimant

CVAA, section 4(1)(k).

- Victim

### Eligibility Criteria

CVA (General) Regulation, section 17(1)(a).

1. The adjudicator must be satisfied that the child was born as a result of a prescribed offence. In determining whether an offence could have resulted in the conception of a child, the adjudicator should look at all the circumstances of the incident, not only the specific charges laid.

"Born" is intended to mean conceived and born.

The offence will typically involve a sexual offence or an assault. The determination of whether a child was born as a result of the offence is separate from, and secondary to, the determination that the claimant was a victim of a prescribed offence.

2. Evidence to consider in determining whether the child was conceived as a result of the offence may include:
  - paternity testing;
  - medical evidence such as the approximate date of conception and whether the baby was full term at birth;

- evidence concerning whether, at the time of the offence, the claimant was in an intimate relationship that may have resulted in conception.

Paternity testing is sometimes conducted as part of the police investigation. The Crime Victim Assistance Program will pay for DNA testing where this evidence is required by the Program to determine paternity.

3. The adjudicator must be satisfied that the child resides with the claimant or that the child resides with someone else but is financially supported by the claimant.

**CVA (General) Regulation,**  
section 17(1)(b).

See the definition of “financially supported by the victim” in the *Glossary* at **section E-1** of this manual.

Evidence that the claimant is financially supporting the child in full or in part may include, for example, a court order or separation agreement, cancelled cheques, bank statements, or receipts for purchases or services for the child.

4. The adjudicator should consider whether the claimant may be eligible for other benefits in relation to the pregnancy and birth, such as medical services or expenses, or prescription drug expenses.

See **section D-2** of this manual for policy on medical services and expenses, and **section D-4** for policy on prescription drug expenses.

### Transitional Claims

5. A claimant is not eligible for this benefit if, in relation to the same injury, the claimant was awarded compensation under the former act (the Criminal Injury Compensation Act) for:
  - maintenance of a child born as a result of rape (section 2(4)(d)); or
  - pain and suffering (section 2(4)(f)).

**CVA (General) Regulation,**  
sections 36(1)(d) and 36(2).

### Types of Eligible/Ineligible Services or Expenses

6. This benefit consists of monthly payments as indicated under *Amount of the Benefit* below. There are no other eligible services or expenses.

### Amount of the Benefit<sup>18</sup>

7. The maximum amount of the benefit is \$300.00 per month, payable to the claimant.

**CVA (General) Regulation,**  
section 17(2).

<sup>18</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.



**CVA (General) Regulation,**  
section 17(2)(a).

8. If the child is residing with the claimant, either full time or at least half of the time, the claimant should be paid \$300.00 per month.

**CVA (General) Regulation,**  
section 17(2)(b).

9. If the child is residing with a person other than the claimant, either full time or more than half of the time, and the claimant is paying child support to that person, the claimant should be paid either

- \$300.00 per month, or
- the amount of financial support per month the claimant provides to the other person on the child's behalf,

*whichever is less.*

10. Evidence of the amount being paid by the claimant on the child's behalf may include, for example, a court order or separation agreement, cancelled cheques, bank statements, or receipts for purchases or services for the child.

Where there is irregularity in payments, a pattern of the amount paid over time may be considered; evidence of the amount paid over the preceding 12 months should generally be sought in these circumstances. Evidence of the amount paid in preceding years may also be considered if the claimant does not believe that the payment pattern could be adequately ascertained without considering that evidence.

Amounts paid on the child's behalf may take various forms, such as: payments to a custodial parent or to the child directly; payments to education or recreation service providers; purchases for the child such as clothing or school supplies or recreational equipment.

**CVA (General) Regulation,**  
section 17(3).

11. The benefit should be paid to the claimant for the period that the claimant's child:

- is under 19 years of age;
- is under 23 years of age if the child is attending an educational institution on a full-time basis;
- is financially supported by the claimant if the child, because of a disability, is unable to live independently.

*This is the maximum duration permitted by regulation.*

12. Where the benefit is paid to a claimant whose child is attending an educational institution full time during the "school year" with summers or other periods off, the benefit should continue to be paid during the periods off if the child will be attending the educational institution full time during the following school year.

See the definitions of "educational institution" and "full time" in the *Glossary* at **section E-1** of this manual.

13. In accordance with the policy on providing benefits retroactively, benefits should not be awarded retroactively for a period of more than one year from the date the claimant applied for benefits in relation to the offence.

### **Deductions or Reductions**

14. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

Income from another source is considered to be for the same or a similar purpose as this benefit only if the income is provided directly to the claimant (not to the child or to another caregiver).

### **Transfer of the Benefit to the Legal Guardian**

15. If a claimant who was awarded this benefit dies, the director may provide the benefit to the legal guardian of the claimant's child on the request of that legal guardian. This should be done if the child is living with the guardian.

**CVAA**, section 4(5).

The guardian is then deemed to have the rights and responsibilities of the claimant under the Crime Victim Assistance Act, in relation to this benefit.

**CVAA**, section 4(6).

### **Conditions or Limitations of the Benefit**

16. Subject to the regulations, provision of this benefit may be dependent on conditions or limitations the adjudicator considers appropriate.

**CVAA**, section 4(1).

## SECTION D-13. VOCATIONAL SERVICES OR EXPENSES

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### Purpose

The “vocational services or expenses” benefit provides a financial contribution for vocational courses and programs needed to assist injured victims of violent crime, and spouses of deceased victims, in increasing their employability or earning capacity.

The vocational benefit for victims is primarily intended for victims who, because of the injury, will have to make some form of career change to re-enter the workforce, and need training or education to do so. It also assists victims who were not in the workforce and whose injury has affected their career prospects. The vocational benefit for victims is not intended for victims whose injury will have only a short-term impact on their employability, since they will not need training or education to re-enter (or enter) the workforce.

The vocational benefit is also provided to spouses of deceased victims who need vocational training or education to assist them in preparing for employment or enhancing their earning capacity.

Victims and spouses awarded a vocational benefit may be eligible for assistance with the costs of transportation and childcare necessary to attend a vocational course or program (see **section D-17** of this manual, *Transportation and Transportation-Related Childcare*).

Victims may be eligible for an income support transition benefit upon completion of their vocational training or education (see the provisions on *Transition to Employment* in **section D-14** of this manual, *Income Support*).

## Eligible Categories of Claimants

- Victim
- Immediate family member who is the spouse of a deceased victim

**CVAA**, sections 4(1)(e) and 4(2)(c).

Where there are differences in eligibility criteria for different categories of claimants, this is indicated in the eligibility criteria below. Otherwise, the criteria apply to all claimants.

## Eligibility Criteria

### Victim

1. The adjudicator must be satisfied that the victim's injury from the offence resulted in the need for vocational services or expenses.

The victim did not have to be working at the time of the injury—there is no requirement that loss of employment be demonstrated. However, the victim must have been employable (for more information, see provision no. 8 below).

**CVAA**, section 4(1)(e); **CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 2(1)(a).

2. Since vocational rehabilitation after an injury is not necessary if the injury has a short-term impact on employability, a vocational benefit for a victim should be provided only if the injury has resulted in a long-term loss of employability. Verification of this should be obtained from a medical practitioner, a Crime Victim Assistance Program vocational rehabilitation consultant, an occupational therapist, or another appropriate expert.

See the definition of "long-term loss of employability" in the *Glossary* at **section E-1** of this manual.

3. The vocational services or expenses must be reasonable and necessary to enhance the victim's employability by:
  - assisting the victim to return to employment with remuneration at the level at which the victim was employed before the injury; or
  - improving the victim's earning capacity.

See the definition of "earning capacity" in the *Glossary* at **section E-1** of this manual.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 2(1)(b).

4. In determining whether one of the above criteria has been met, the adjudicator should consider:
  - if the victim was working at the time of the injury, the likelihood of the victim being able to return to the job or occupation he or she held at that time;

See the definition of "job or occupation the victim held at the time of the injury" in the *Glossary* at **section E-1** of this manual.

- the victim's employment or other status (e.g., employed adult, young child, university student, caregiver) at the time of the injury;
  - any available information on the victim's vocational path or vocational plans at the time of the injury;
  - what types of employment the victim is now capable of, and interested in, undertaking.
5. In addition, in determining if a vocational benefit for a victim is reasonable and necessary, the adjudicator should consider whether:
- the victim is committed to entering or re-entering the workforce;
  - the victim meets the entry requirements of the vocational program or course;
  - the victim wishes to undertake the program or course and has a reasonable likelihood of completing it successfully;
  - the victim's medical condition is stable and his or her doctor has approved the victim's participation in the vocational program or course;
  - providing the benefit will contribute to the victim's employment prospects;
  - the cost of the benefit is reasonable.
6. While the victim's eligibility for an income support benefit or a lost earning capacity benefit should be considered, a vocational benefit may be awarded whether or not an income support benefit or a lost earning capacity benefit is awarded. There is no requirement that the victim be eligible for or receiving an income-related benefit.
7. A victim of any age may be eligible for a vocational benefit—there is no lower or upper age limit.

For example, vocational benefits may be provided, where necessary and reasonable, to school-aged children and to seniors.

Vocational services for children are not meant to replace services available through the educational system.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 2(3).

8. The following persons are not eligible for a vocational benefit:
- a victim who has retired from the workforce;
  - an adult victim who was unemployable at the time of the injury.

See the definitions of "retired" and "unemployable" in the *Glossary* at **section E-1** of this manual.

Being unemployable at the time of injury generally means unlikely to be able to work again, or for the foreseeable future. This criterion does not exclude victims who were temporarily unemployable at the time (e.g., because of short-term illness or injury).

### Transitional Claims

9. A victim is not eligible for a vocational benefit if, in relation to the same injury/offence, the victim was:
- awarded compensation for pain and suffering under section 2(4)(f) of the former act, the Criminal Injury Compensation Act; and
  - unemployed at the time of the injury/offence.

**CVA (General) Regulation**, section 36(1)(e).

### **Spouse of a Deceased Victim**

10. For the spouse of a deceased victim to be eligible, the need for the benefit must have arisen from the victim's death as a result of the offence.

The victim or spouse did not have to be working at the time of the victim's death, and the spouse's current income or financial position is not relevant. Employment loss and financial need are not among the eligibility criteria for this benefit.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 7(1);  
**CVAA**, section 4(2)(c).

11. The spouse must also be eligible for an income support benefit under the Crime Victim Assistance Act. This means that, at the time of the victim's death, the spouse:

- was married to the victim and did not have an order for judicial separation;
- was living and cohabiting with the victim in a marriage-like relationship for a period of at least two years, and was not separated from the victim for more than one year; or
- was in receipt of spousal support under a court order or written separation agreement.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, sections 7(2)(a), 8(1), and 8(3).

While the spouse must meet the eligibility criteria for an income support benefit, there is no requirement that the spouse be receiving income support.

See **section D-14** of this manual, *Income Support*, for more information on these eligibility criteria.

12. The adjudicator must be satisfied that the vocational services or expenses are reasonable and necessary to:

- prepare the spouse to be employed if he or she is not employed; or
- improve the spouse's earning capacity to a level that is reasonable given the spouse's skills, qualifications, and abilities.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 7(1).

See the definition of “earning capacity” in the *Glossary* at **section E-1** of this manual.

13. In determining whether one of the above criteria has been met, the adjudicator should consider:

- the spouse’s current or past career path;
- the length of time the spouse has been out of the labour force;
- if applicable, the impact of new technology on the spouse’s former occupation.

For example, if the spouse had a career path in the past (e.g., prior to marrying the victim) and has the qualifications to return to that career path, a benefit may be considered necessary if the spouse has to update or upgrade his or her qualifications to return to that career path.

14. In addition, in determining if a vocational benefit for a spouse is reasonable and necessary, the adjudicator should consider whether:

- the spouse is committed to entering or re-entering the workforce;
- the spouse meets the entry requirements of the vocational program or course;
- the spouse wishes to undertake the program or course and has a reasonable likelihood of completing it successfully;
- providing the benefit will contribute to the spouse’s employment prospects;
- the cost of the benefit is reasonable.

15. A spouse of any age may be eligible for a vocational benefit—there is no lower or upper age limit.

For example, vocational benefits may be provided, where necessary and reasonable, to spouses under 19 and spouses who are seniors.

## **Types of Eligible Services or Expenses<sup>19</sup>**

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, sections 2(2) and 7(3).

16. The claimant may be awarded costs for, or contributions to, one or more of the following:

- education, training, and skill development courses;
- programs to improve the claimant’s existing skills and qualifications or to develop new skills and qualifications;
- programs to prepare for employment or find employment.

<sup>19</sup> See *Transition to Employment* in **section D-14** of this manual for income support that may be provided to victims upon completion of vocational services.

Eligible expenses may include supplies or equipment required to participate in the vocational services (e.g., books, work boots, tools).

Where the claimant wishes to undertake a form of vocational training or education that is more costly, or in a different occupational direction, than that recommended by the Crime Victim Assistance Program, a contribution may be made to the claimant's desired form of vocational training or education.

## Types of Ineligible Services or Expenses

17. The following costs should not be considered necessary and/or reasonable for the purpose of this benefit:
- the cost of starting a business (although courses or programs to prepare a claimant for starting a business may be eligible);
  - the cost of a course or program that is significantly more expensive than comparable courses or programs for achieving the same vocational objective (although a reasonable contribution may be made to the cost).

## Amount of the Benefit<sup>20</sup>

18. The nature and extent of vocational services or expenses will depend on many factors, including:
- the claimant's age, experience, abilities, and vocational goals;
  - the available training courses and programs;
  - the likelihood of the claimant obtaining employment in particular sectors of the labour market.
19. If the claimant is a spouse of a deceased victim, the vocational training or education must be completed within five years of the date of the victim's death.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 7(2)(b).

## Deductions or Reductions

20. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

## Conditions or Limitations of the Benefit

21. Subject to the regulations, provision of a benefit may be dependent on conditions or limitations the adjudicator considers appropriate. For a vocational services or expenses benefit, this

**CVAA**, sections 4(1) and 4(2).

<sup>20</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.



includes, but is not necessarily limited to, the condition set out below.

22. A vocational benefit should be conditional on the claimant's active participation in the course(s), program(s), or vocational plan on which they are based, as well as satisfactory completion of vocational objectives.

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## SECTION D-14. INCOME SUPPORT

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## Purpose

The primary purpose of income support benefits is to provide a source of income for victims of violent crime who were employed at the time of the injury and have experienced a loss of employability (and thus income) as a result of the injury.

For many victims the loss is a short-term one, and they are able to return to the same job or occupation when they recover from their injury. The "income support: short-term loss of employability" benefit is intended for these victims.

Some victims sustain long-term or permanent injuries that affect the work they are able to do. The "income support: long-term loss of employability" benefit is intended for these victims.

Victims eligible for income support for long-term loss of employability may also be eligible for a vocational benefit, with the ultimate aim of assisting them to enter or re-enter the workforce and regain their independence (see **section D-13** of this manual, *Vocational Services or Expenses*). Upon completion of their vocational training or education, victims may be eligible for an income support transition benefit (see the provisions on *Transition to Employment* below).

Another purpose of income support benefits is to provide a source of income for spouses, children, and other immediate family members of deceased victims ("income support: spouse," "income support: child," and "income support: immediate family member" benefits). For these benefits, there is no requirement that the victim have been employed at the time of the offence/injury.

- Benefits for spouses are provided for up to five years, to assist them during a difficult time of transition.  
Spouses may also be eligible for childcare and homemaker benefits (see **section D-11** of this manual) and vocational benefits (see **section D-13**).
- Benefits for children are provided until they reach 19 years of age, or for a longer period if they are full-time students or unable to live independently because of a disability, recognizing that parents have financial responsibility for dependent children.
- Benefits for financially dependent family members other than spouses or children are provided for up to two years, to assist them in adjusting to the loss of financial support.

## Eligible Categories of Claimants

- Victim
- Immediate family member of a deceased victim:
  - spouse

**CVAA**, sections 4(1)(l) and 4(2)(e).

- dependent child
- other immediate family member if financially dependent on the victim

Where there are differences in eligibility criteria for different categories of claimants, this is indicated in the eligibility criteria below. Otherwise, the criteria apply to all claimants.

## Victim: Loss of Employability

### Eligibility Criteria

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, sections 3(1), 4(1), and 1(1) (definitions).

1. If the claimant is a victim, the adjudicator must be satisfied that:
  - the victim was employed at the time of the injury from the offence;
  - the injury from the offence resulted in a psychological or physical condition, or both, leading to the victim's loss of employability.

See the definitions of "employed" and "employability" in the *Glossary* at **section E-1** of this manual.

2. A victim is considered to have been employed at the time of the injury if the victim had a job or was self-employed, including where:
  - the victim was on temporary leave (e.g., maternity leave, sick leave); or
  - the victim had accepted but not yet started a job (i.e., the victim had accepted a definite job offer with a specific start date).
3. In determining whether the offence resulted in the victim's physical or psychological condition, the adjudicator should use the test of "causative significance."

See *Injury as a Direct Result of an Offence/Event* in **section C-6** of this manual for the meaning of causative significance.

4. In determining whether the victim's physical or psychological condition led to a loss of employability, and the degree and duration of loss of employability, it will usually be necessary to obtain verification from a medical practitioner or other appropriate professional.

### Short-Term Loss of Employability

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 3(1).

5. A victim may be eligible for an income support benefit for *short-term loss of employability* if the victim's condition led to a short-term loss of employability at the job or occupation the victim held at the time of the injury.

See the definitions of "short-term loss of employability" and "job or occupation the victim held at the time of the injury" in the *Glossary* at **section E-1** of this manual.

6. In some circumstances, the adjudicator may be satisfied that short-term loss of employability resulted from the injury based on the police report or initial medical information (e.g., ambulance or hospital records). For example:
  - for physical injury, where the injury was relatively minor and the information on file is consistent with the victim needing to be off work for a short period of time;
  - for psychological injury, where the nature of the offence was such that it would be unreasonable to expect the victim to return to work immediately and the victim was off work for only a short period of time.
7. In circumstances other than the above, verification concerning the cause and duration of short-term loss of employability should be obtained from a medical practitioner or, in the case of psychological injury, from a medical practitioner or a psychologist.

#### Long-Term Loss of Employability

8. A victim may be eligible for an income support benefit for *long-term loss of employability* if the victim's condition led to a long-term loss of employability and the victim was employed at the time of the injury.

See the definitions of "long-term loss of employability" and "employed" in the *Glossary* at **section E-1** of this manual.

9. In cases involving severe physical injury, the adjudicator may be satisfied that the injury resulted in a long-term loss of employability where police or medical (e.g., hospital) information concerning the injury is consistent with the victim being unable to work for the foreseeable future. Otherwise, information on the victim's loss of employability should initially be sought from a medical practitioner.

In either circumstance, if the victim's condition in relation to employability has not stabilized, updates on the victim's condition should be obtained from a medical practitioner at appropriate intervals.

10. In cases involving psychological injury, a psychological or vocational assessment should be carried out to examine the effect of the offence on the victim's psychological functioning and, in turn, how that affects his or her long-term employability.

Determining the nature, cause(s), and effects of psychological injury, particularly over the longer term, is more challenging than for physical

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 4(1).

injury. The complaints are generally more subjective and may not be easily diagnosed by medical practitioners without qualifications or training in psychology or psychiatry. It may be more difficult to determine the effect of the offence versus other factors on the victim's psychological status.

The psychological treatment provided to the victim, and the response to treatment, are key factors in determining the victim's likelihood of recovery from psychological injury and whether significant impairment from psychological injury is expected to persist over the longer term.

#### Victims who are Minors

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, sections 3(4), 3(5), 4(4), and 4(5).

11. If the victim is a minor, an income support benefit can be provided only if the minor was living independently at the time of the injury. Otherwise, the victim is eligible for an income support benefit on becoming 19 years old, payable from that date, if he or she is still affected by a loss of employability.
12. In determining whether a minor was living independently at the time of the injury, the adjudicator should consider the following factors:
  - whether the victim resided with a parent/guardian;
  - whether the victim paid for some of his or her living expenses;
  - how many hours per week the victim was working;
  - whether the victim had any other source of income (excluding income from a parent/guardian);
  - whether the victim was receiving assistance to live independently through a Youth Agreement with the BC Ministry of Children and Family Development.

It is important to examine the whole context of the minor's living situation. For example, a minor who resided with a parent, but worked 20 or more hours per week and was responsible for some living expenses, could be characterized as living independently.

See also the definition of "living independently" in the *Glossary* at **section E-1** of this manual.

#### Transition to Employment

13. A victim who has received a vocational services or expenses benefit may be eligible for an income support benefit for transition to employment (income support transition benefit).

This provides for up to three months of income support while the victim is making the transition to employment following the expiry of a vocational services or expenses benefit.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 5.

14. To award an income support transition benefit, the adjudicator must be satisfied that the following criteria are met:
  - the benefit is reasonable and necessary;

- the victim is actively seeking to be employed;
- the victim is not otherwise eligible for an income support benefit or a lost earning capacity benefit.

15. A victim who was retired prior to the offence is not eligible for a vocational services or expenses benefit and, therefore, would not be eligible for an income support transition benefit should he or she decide to return to the workforce.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, sections 2(3)(a) and 5(1).

See the definition of "retired" in the *Glossary* at **section E-1** of this manual. For information on the vocational services or expenses benefit, see **section D-13** of this manual.

### Types of Eligible/Ineligible Services or Expenses

16. The income support benefit for victims consists of monthly payments calculated as indicated under *Amount of the Benefit* below. There are no other eligible services or expenses.

### Amount of the Benefit<sup>21</sup>

See also **appendix C to section D-14** of this manual, which outlines monthly calculations and maximum amounts.

17. The maximum amount of income support benefit is the equivalent of 40 hours per week at minimum wage.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 1(1).

See the definition of "minimum wage" in the *Glossary* at **section E-1** of this manual.

A victim who worked 40 hours or more per week before the injury, and became completely unemployable as a result of the injury, would be eligible for the maximum amount.

### Short-Term Loss of Employability

18. The income support benefit for short-term loss of employability is calculated as follows:

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 3(2).

- Determine the average number of hours per week the victim was working at the job or occupation he or she held at the time of the injury, to a maximum of 40.
- Determine the average number of hours per week the victim is capable of working ("employable") at that job or occupation after the injury, to a maximum of 40.
- Subtract (b) from (a) to get the average loss of hours per week.

average hours per week working at job/occupation before injury –  
average hours per week employable at job/occupation after injury  
= average loss of hours per week

<sup>21</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.



- (d) Multiply the average loss of hours per week by the minimum wage to get the maximum income support benefit for which the victim may be eligible.

average loss of hours per week x minimum wage = maximum income support benefit

- (e) Subtract the victim's income from other sources to get the payable income support benefit for the victim.

maximum income support benefit – income from other sources = payable income support benefit

See provisions no. 20 and 21 below on income from other sources.

19. Subject to the provisions in relation to minors, the victim is eligible for the benefit from the date he or she first became affected by the short-term loss of employability, as determined by the adjudicator.

20. Income should not be considered "income from other sources" in this context unless it is employment income.

See the definition of "income from other sources" in the *Glossary* at **section E-1** of this manual. See **appendix A to section D-14** for examples of types of income that should and should not be considered income from other sources.

Deduction of other amounts may be required on the basis of the "same or similar" provision under section 9(4)(c) of the Crime Victim Assistance Act. See provision no. 28 below and **appendix B to section D-14** of this manual.

21. Income earned by victims who are capable of part-time work should not be considered "income from other sources" if the average number of hours worked does not exceed the average number of hours the victim is considered employable.

Example: a victim who worked 40 hours per week before the injury is now assessed as employable for an average of 10 hours per week. If the victim works no more than 10 hours per week, his or her employment income should not be deducted. The income support benefit would be based on the remaining 30 hours per week: the loss of employability.

22. If information on the average number of hours per week the victim worked before the injury is not readily available (e.g., in cases of self-employment, commission sales, or seasonal work), the adjudicator should seek evidence on which to base the average number of hours worked, such as:
- a statement from the victim indicating the average number of hours he or she had been working per week;
  - a recent income tax return showing the victim's annual income from employment or self-employment;

- records kept by the victim that illustrate hours worked or a work pattern or history.

#### Long-Term Loss of Employability

23. The income support benefit for long-term loss of employability is calculated as follows:

- (a) Start with 40 hours per week.
- (b) Determine the average number of hours per week the victim is capable of working ("employable") after the injury, to a maximum of 40.

- (c) Subtract (b) from (a) to get the average loss of hours per week.

40 hours per week – average employable hours per week after the injury = average loss of hours per week

- (d) Multiply the average loss of hours per week by the minimum wage to get the maximum income support benefit for which the victim may be eligible.

average loss of hours per week x minimum wage = maximum income support benefit

- (e) Subtract the victim's income from other sources to get the payable income support benefit for the victim.

maximum income support benefit – income from other sources = payable income support benefit

See provisions no. 20 and 21 above on income from other sources.

24. Subject to the provisions in relation to minors, the victim is eligible for the benefit from the date he or she first became affected by the long-term loss of employability, as determined by the adjudicator.

**CVA (Income Support and Vocational Services or Expenses Benefits)**  
Regulation, section 4(2).

**CVA (Income Support and Vocational Services or Expenses Benefits)**  
Regulation, section 4(3).

#### Transition to Employment

25. The income support transition benefit (see provisions no. 13 to 15 above) may be provided for up to three months.

- If the victim secures full-time employment, the benefit ceases at that time.
- If the victim secures part-time employment, the benefit may continue to be provided but the amount of income the victim earns from employment is deducted.

This is consistent with the deduction of "income from other sources" (i.e., employment income) from benefits for short-term and long-term loss of employability.

**CVA (Income Support and Vocational Services or Expenses Benefits)**  
Regulation, section 5(1).

26. Where the victim had been receiving an income support or a lost earning capacity benefit, the income support transition benefit

should be provided at the same rate as the income support or lost earning capacity benefit the victim received.

27. Where the victim had not been receiving an income support or a lost earning capacity benefit, the income support transition benefit should be provided at the same rate as the maximum income support benefit.

See provision no. 17 above for the maximum income support benefit.

#### Deductions or Reductions

28. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

See **appendix B to section D-14** for sources of "same or similar" benefits (benefits provided for the same or a similar purpose as crime victim assistance income support benefits).

#### **Conditions or Limitations of the Benefit**

**CVAA**, section 4(1).

29. Subject to the regulations, provision of a benefit may be dependent on conditions or limitations the adjudicator considers appropriate. For an income support benefit for a victim, these include, but are not necessarily limited to, the conditions set out below.
30. Where appropriate to the victim's circumstances, an income support benefit should be conditional on the victim's participation in services provided to aid in his or her physical or psychological recovery.
31. Where the victim's employability is likely to increase if the victim receives vocational services, an income support benefit for long-term loss of employability should be conditional on the victim's participation in vocational services specified by the adjudicator (as permitted by regulation). This condition should not be attached to a benefit for a victim who is 65 years of age or older.

**CVA (Income Support and Vocational Services or Expenses Benefits)**  
**Regulation**, section 4(6).

### **Spouse of a Deceased Victim**

#### **Eligibility Criteria**

**CVA (Income Support and Vocational Services or Expenses Benefits)**  
**Regulation**, sections 8(1) and 8(3).

32. To be eligible for an income support benefit as a spouse, the claimant must be a spouse of a deceased victim who, at the time of the victim's death:
- was married to the victim and did not have an order for judicial separation;
  - was living and cohabiting with the victim in a marriage-like relationship for a period of at least two years (a "common

law” relationship), and was not separated from the victim for more than one year; or

“Separated” means no longer in a marriage-like relationship, whether or not the spouse and victim were still residing in the same residence. It does not mean physical separation for a period of time because circumstances (e.g., work, education, health, or family commitments) required the spouses to be in different communities.

- was in receipt of spousal support under a court order or written separation agreement.

This includes spouses entitled to support payments under a court order or written separation agreement who were not receiving support at the time of the victim’s death if there was a reasonable expectation of receiving support (e.g., the offence occurred near the time when support payments were to commence; or there was a history of payments and the payments were likely to resume).

33. If it is unclear whether the spouse meets one of the criteria in provision no. 32 above, Crime Victim Assistance Program personnel should obtain information to verify the relationship between the spouse and victim at the time of the victim’s death.
34. A spouse’s marital or relationship status during the period for which an income support benefit may be paid (i.e., up to five years following the victim’s death) has no bearing on the spouse’s eligibility for the income support benefit.

### **Types of Eligible/Ineligible Services or Expenses**

35. The income support benefit for spouses of deceased victims consists of monthly payments calculated as indicated under *Amount of the Benefit* below.

### **Amount of the Benefit<sup>22</sup>**

See also **appendix C to section D-14** of this manual, which outlines monthly calculations and maximum amounts.

36. With the exception of a spouse in receipt of spousal support under a court order or written agreement, a spouse who is eligible for income support should be provided 75% of the maximum income support benefit. The benefit is provided for five years following the death of the victim.

This is the maximum amount permitted by regulation, which provides for up to 75%.

See the definition of “income support benefit” in the *Glossary* at **section E-1** of this manual for the maximum income support benefit on which the 75% calculation is based.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, sections 8(2) and 1(1) (definition of income support benefit).

<sup>22</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 8(4).

37. The amount of income support benefit for a spouse in receipt of spousal support under a court order or written agreement is either

- the actual maintenance, support, or alimony *that was required to be paid by the victim* under a court order or written separation agreement, or

- 35% of the maximum income support benefit,

*whichever is less*. The benefit may be provided for up to five years following the death of the victim.

38. If a spousal support order or agreement required payment of support for a limited time only, the duration of the income support benefit should not exceed the period for which the victim was to have paid spousal support.

#### Deductions or Reductions

39. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

See **appendix B to section D-14** for sources of "same or similar" benefits (benefits provided for the same or a similar purpose as crime victim assistance income support benefits).

#### **Conditions or Limitations of the Benefit**

**CVAA**, section 4(2).

40. Subject to the regulations, provision of an income support benefit for a spouse may be dependent on conditions or limitations the adjudicator considers appropriate.

### **Child of a Deceased Victim**

#### **Eligibility Criteria**

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, sections 9(1)(a), 9(1)(b), 9(2)(a), and 9(2)(b).

41. To be eligible for an income support benefit as a child, the claimant must be a dependent child of a deceased victim who, at the time of the victim's death:

- resided with the victim; or
- did not reside with the victim but was financially supported by the victim.

See the definitions of "dependent child" and "financially supported by the victim" in the *Glossary* at **section E-1** of this manual.

42. A child is deemed to have resided with the victim if the child lived with the victim at least 50% of the time, including a child involved in a joint custody arrangement.

43. Where income support benefits are to be provided on the basis of a child's attendance at an educational institution (see *Duration of the Benefit* below), verification that the child is in full-time attendance at an educational institution should be obtained, in writing, from the child and a school official each school year or semester, as applicable.

The Proof of School Attendance form is used for this purpose. See the definitions of "full time" and "educational institution" in the *Glossary* at **section E-1** of this manual.

### **Types of Eligible/Ineligible Services or Expenses**

44. The income support benefit for children of deceased victims consists of monthly payments calculated as indicated under *Amount of the Benefit* below. There are no other eligible services or expenses.

### **Amount of the Benefit<sup>23</sup>**

See also **appendix C to section D-14** of this manual, which outlines monthly calculations and maximum amounts.

#### Child who Resided with the Victim

45. Dependent children who resided with the victim at the time of the victim's death should be provided 15% of the maximum income support benefit for one child in a household, and 10% of the maximum income support benefit for each additional child in the household.

This is the maximum amount permitted by regulation, which provides for up to 15% for one child and up to 10% for each additional child.

See the definition of "income support benefit" in the *Glossary* at **section E-1** of this manual for the maximum income support benefit on which the 15% and 10% calculations are based.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, sections 9(1)(c), 9(1)(d), and 1(1) (definition of income support benefit).

46. Where there is more than one dependent child in a household, the oldest child should be provided with the higher percentage of income support benefit (15% of the maximum income support benefit). When the oldest child is no longer eligible for the benefit (e.g., the child reaches the age of 19), the next oldest child should then be provided with the higher percentage of income support benefit.
47. Where dependent children of a victim live in different households, the amount of income support benefit per child should be determined separately for each household. That is, the oldest dependent child in each household should be provided with 15% of the maximum income support benefit, and any other

<sup>23</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

dependent children in the household should be provided with 10% of the maximum income support benefit.

For example, if there were two dependent children of the victim, living in different households, each one would be provided with 15% of the maximum income support benefit.

**CVA (Income Support and Vocational Services or Expenses Benefits)**

**Regulation**, sections 9(2)(c), 9(2)(d), and 1(1) (definition of income support benefit).

Child who Did Not Reside with the Victim

48. The amount of income support benefit for a dependent child who did not reside with the victim at the time of the victim's death, but who was financially supported by the victim, is either

- the actual maintenance or support *paid by the victim* on the child's behalf while the victim was alive, or
- 15% of the maximum income support benefit, *whichever is less.*

See the definition of "income support benefit" in the *Glossary* at **section E-1** of this manual for the maximum income support benefit on which the 15% calculation is based.

49. Evidence of the amount paid by the victim on the child's behalf may include, for example, a court order or separation agreement, cancelled cheques, bank statements, or receipts for purchases or services for the child. Where there is irregularity in payments, a pattern of the amount paid over time may be considered; evidence of the amount paid over the 12 months preceding the victim's death should generally be sought in these circumstances. Evidence of the amount paid in preceding years may also be considered if the payment pattern cannot be adequately ascertained without considering that evidence.

Amounts paid on the child's behalf may take various forms, such as: payments to the custodial parent or to the child directly; payments to education or recreation service providers; purchases for the child such as clothing, school supplies, or recreational equipment.

Duration of the Benefit

**CVA (Income Support and Vocational Services or Expenses Benefits)**

**Regulation**, section 1(1) (definition of dependent child).

50. An income support benefit for a child should generally be provided:

- until the child turns 19;
- while the child is between the ages of 19 and 23 if the child is attending an educational institution on a full-time basis; or,
- if the child has a disability, for as long as the child cannot live independently because of the disability.

This is the maximum duration permitted by regulation, based on the definition of "dependent child" (see the *Glossary* at **section E-1** of this manual).



An exception may be where there is a child support order or agreement with an end date for the support, in which case the duration of the income support benefit should not exceed the period for which the victim was to have paid child support.

51. Where income support benefits are provided to a child attending an educational institution during the "school year" with summers or other periods off, benefits should continue to be paid during the periods off if the child will be attending the educational institution on a full-time basis during the following school year.

#### *Transitional Claims*

52. The duration of income support payments provided to children under the former act, the Criminal Injury Compensation Act, is not extended merely by transfer of their claims to the Crime Victim Assistance Program. The transition provisions of the Crime Victim Assistance (General) Regulation indicate that the terms and conditions of periodic payments awarded under the former act do not change upon reassessment or reconsideration under the Crime Victim Assistance Act.

**CVA (General) Regulation**, section 34(8).

Under the former act, income support benefits were awarded to dependent children until the age of 18 or, if they were attending an educational institution, until the age of 21. Under the current act and regulations, income support benefits for dependent children continue until the age of 19 or, if they are attending an educational institution, until the age of 23.

#### Deductions or Reductions

53. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

See **appendix B to section D-14** for sources of "same or similar" benefits (benefits provided for the same or a similar purpose as crime victim assistance income support benefits).

#### **Conditions or Limitations of the Benefit**

54. Subject to the regulations, provision of an income support benefit for a child may be dependent on conditions or limitations the adjudicator considers appropriate.

**CVAA**, section 4(2).

### **Other Immediate Family Member of a Deceased Victim**

#### **Eligibility Criteria**

55. To be eligible for an income support benefit as an immediate family member other than a spouse or child, the claimant must have been financially dependent on the victim.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 10.



See the definitions of “financially dependent” and “financially supported by the victim” in the *Glossary* at **section E-1** of this manual.

56. The manner in which the immediate family member used the financial contributions provided by the victim should not be considered a relevant factor in determining eligibility.

For example, there is no requirement that the financial support had to have been used for necessities.

### **Types of Eligible/Ineligible Services or Expenses**

57. The income support benefit for immediate family members other than spouses or children consists of monthly payments calculated as indicated under *Amount of the Benefit* below. There are no other eligible services or expenses.

### **Amount of the Benefit<sup>24</sup>**

See also **appendix C to section D-14** of this manual, which outlines monthly calculations and maximum amounts.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, sections 10 and 1(1) (definition of income support benefit).

58. The amount of income support benefit for an immediate family member other than a spouse or child is either

- the actual financial support *that was provided by the victim* on the immediate family member's behalf while the victim was alive, or
- 15% of the maximum income support benefit,

*whichever is less.* The benefit may be provided for up to two years from the date of the victim's death.

See the definition of “income support benefit” in the *Glossary* at **section E-1** of this manual for the maximum income support benefit on which the 15% calculation is based.

59. If there is evidence that the victim would have financially supported the family member for a limited time only, the duration of the income support benefit should not exceed the period for which the victim would have provided support.
60. Verification of the amount of financial support paid by the victim to, or on behalf of, the immediate family member may include, for example: bank statements and cancelled checks, receipts for purchases made by the victim, and information on whether or not the immediate family member lived with the victim or in a residence provided by the victim.

<sup>24</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

#### Deductions or Reductions

61. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

See **appendix B to section D-14** for sources of “same or similar” benefits (benefits provided for the same or a similar purpose as crime victim assistance income support benefits).

#### **Conditions or Limitations of the Benefit**

62. Subject to the regulations, provision of an income support benefit for an immediate family member other than a spouse or child may be dependent on conditions or limitations the adjudicator considers appropriate. **CVAA**, section 4(2).

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## **SECTION D-14(A). APPENDIX A: INCOME FROM OTHER SOURCES**

### **Requirement to Deduct “Income From Other Sources”**

When income support and lost earning capacity benefits for victims are calculated, “income from other sources” is deducted in accordance with sections 3(2), 4(2), and 6(2) of the Crime Victim Assistance (Income Support and Vocational Services or Expenses Benefits) Regulation (referred to here as the income support regulation).

Because these benefits are based on loss of employability, deduction of income from other sources is limited to employment-related or earned income. If a victim has other types of supplementary income, such as investment or rental property income, this is generally not considered employment income. An exception would be where the claimant’s primary employment involved managing such investments.

### **Types of Income Considered Employment Income**

Wages and salaries are the most obvious types of employment income. However, employment income may include any form of money, goods, services, commissions, favours, or bonuses, or the value of accommodation, obtained in exchange for work or the provision of a service.

These types of income are deducted as income from other sources under sections 3(2), 4(2), and 6(2) of the income support regulation, with one significant exception. Where an income support benefit or a lost earning capacity benefit is based on a claimant’s partial loss of employability (e.g., 25 hours per week), money that the claimant earns for his or her “employable” hours (e.g., the remaining 15 hours per week) is not deducted.

### **Types of Income Not Considered Employment Income**

Types of income not considered employment income for the purpose of deducting income from other sources include, for example:

- money, annuities, stocks, bonds, shares, and interest-bearing accounts or properties;
- rental income from land, suites, or other property;

- employment income earned during a previous period of time (e.g., commission for the sale of real estate six months previously);
- money or other property derived from lotteries or games of chance;
- money or other property obtained as gifts or an inheritance;
- benefits from other public and private sources.

These types of income are not considered employment income and, therefore, are not deducted as income from other sources under sections 3(2), 4(2), and 6(2) of the income support regulation.

However, it is important to note that benefits from other public or private sources may be deducted under section 9(4)(c) of the Crime Victim Assistance Act if they are for the same or a similar purpose as an income support benefit or a lost earning capacity benefit—see **appendix B to section D-14** of this manual for more information.

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## **SECTION D-14(B). APPENDIX B: "SAME OR SIMILAR" BENEFITS OR AMOUNTS**

### **Requirement to Deduct "Same or Similar" Benefits or Amounts**

Section 9(4)(c) of the Crime Victim Assistance Act requires deduction of "compensation or an amount or a service that the victim, immediate family member or witness has received, or is or may be eligible or would have been eligible to receive, from a source other than this Act for the same or a similar purpose for which the benefit was provided."

When determining section 9(4)(c) deductions for any benefit category, the purpose of providing the crime victim assistance benefit should be considered first, then the purpose of the other benefit or amount should be considered. *This appendix is on determining whether benefits or amounts from other sources are for the same or a similar purpose as income support and lost earning capacity benefits.*

### **Purpose of Income Support and Lost Earning Capacity Benefits under the Crime Victim Assistance Act**

The purpose of income support benefits is to provide a source of income for victims of violent crime who were working at the time of the injury and have experienced a loss of employability (and thus income) as a result of the injury. Another purpose of these benefits is to provide a source of income for spouses, children, and other immediate family members of deceased victims.

The purpose of lost earning capacity benefits is to provide a source of income for victims of violent crime who were not working at the time of the injury and are expected to have a long-term loss of employability as a result of the injury.

### **Benefits or Amounts from Other Sources**

#### **Determining the Purpose of the Benefit or Amount**

These questions may help in determining if a benefit or an amount from another source is provided for the same or a similar purpose as an income support benefit or a lost earning capacity benefit.

- Is the other benefit or amount intended to provide a source of general income (i.e., as opposed to specific costs such as education/training or funeral expenses)?

- Is the other benefit or amount provided because the victim was injured or killed as a result of the offence?
- Is the other benefit or amount provided to assist the victim or immediate family member because the victim has experienced a loss of employability?

### **Examples of “Same or Similar” Benefits or Amounts**

Beyond employment income,<sup>25</sup> benefits or amounts from other sources that may be provided for the same or a similar purpose as income support or lost earning capacity benefits include, for example:

- sick leave benefits from an employer;
- income assistance and disability benefits administered by the BC Ministry of Housing and Social Development;
- employment insurance benefits administered by Human Resources Development Canada;
- disability benefits and survivor benefits administered by the Canada Pension Plan;
- private disability insurance payments that commence because of the injury due to the offence;
- life insurance payments where the insurance policy indicates that their purpose is income replacement;
- amounts from restitution or legal action (in relation to the injury from the offence) identified as income replacement.

### **Examples of Benefits or Amounts that are Not “Same or Similar”**

Benefits or amounts from other sources that are not the same or similar in purpose as income support or lost earning capacity benefits include, for example:

- annual leave or vacation time from an employer;
- Old Age Pension benefits;
- public (government) or private retirement pensions;
- death benefits administered by the Canada Pension Plan;
- union or lodge benefits;
- tax refunds;

<sup>25</sup> Employment income (i.e., “income from other sources”) is required to be deducted from income support and lost earning capacity benefits in accordance with sections 3(2), 4(2), and 6(2) of the Crime Victim Assistance (Income Support and Vocational Services or Expenses Benefits) Regulation. See **section D-14, appendix A to section D-14**, and **section D-15** of this manual for more information.

- war disability pensions, military pensions, and veteran's allowances;
- money obtained through investments, rental property, lotteries, games of chance, gifts, or inheritance;
- private or other insurance that covers specific losses, such as mortgage or credit card insurance;
- life insurance payments where the policy does not indicate that their purpose is income replacement;
- amounts from restitution or legal action (in relation to the injury from the offence) that are not identified as income replacement.

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## SECTION D-14(C). APPENDIX C: MAXIMUMS FOR INCOME SUPPORT AND LOST EARNING CAPACITY BENEFITS

Income support and lost earning capacity benefits are calculated at the following *maximum*:

$$40 \text{ hours/week} \times \$8/\text{hour} = \$320/\text{week} \text{ or } \$1,386.67/\text{month}$$

(The monthly calculation is based on \$320/week multiplied by 52 weeks divided by 12 months.)

The table below outlines types of income support and lost earning capacity benefits, how they are calculated, their duration, and the maximum amounts payable per month. The section numbers in the first column refer to sections of the Crime Victim Assistance (Income Support and Vocational Services or Expenses Benefits) Regulation.

When calculating these benefits, amounts provided for the same or a similar purpose must be deducted (see [appendix B to section D-14](#)).

Type of Benefit	Calculation	Duration	Max./mo.
income support—victim—short-term loss of employability (s. 3(2))	average hours/week employed before the injury (to a maximum of 40) minus the average hours/week employable after the injury, multiplied by minimum wage, minus income from other sources	for as long as the victim is affected by the loss of employability; if expected to last 2 years or more, becomes long-term loss of employability	\$1,386.67
income support—victim—long-term loss of employability (s. 4(2))	40 hours per week minus the average hours/week employable after the injury, multiplied by minimum wage, minus income from other sources	for as long as the victim is affected by the loss of employability	\$1,386.67
lost earning capacity—victim (s. 6(2))			
income support transition—victim—after vocational services benefit (s. 5(1))	same rate as income support or lost earning capacity benefit provided; if no such benefit provided, rate is the maximum income support benefit	for up to 3 months	\$1,386.67

Type of Benefit	Calculation	Duration	Max./mo.
income support—spouse—married or common law who meets the criteria in section 8(1) (s. 8(2))	75% of the maximum income support benefit	for 5 years from the date of the victim's death	\$1,040.00
income support—spouse—in receipt of spousal support (s. 8(4))	amount of spousal support in the court order or separation agreement or 35% of the maximum income support benefit, <i>whichever is less</i>	for up to 5 years from the date of the victim's death	\$455.33
income support—custodial child—only one child in a household (s. 9(1)(c))	15% of the maximum income support benefit	until age 19, or age 23 if in school, or longer if unable to live independently because of a disability	\$208.00
income support—custodial child—more than one child in a household (ss. 9(1)(c) & (d))	<ul style="list-style-type: none"> <li>first child: 15% of the maximum income support benefit</li> <li>additional children: 10% of the maximum income support benefit for each child</li> </ul>	until age 19, or age 23 if in school, or longer if unable to live independently because of a disability	<ul style="list-style-type: none"> <li>first child: \$208.00</li> <li>additional children: \$138.67</li> </ul>
income support—non-custodial child (ss. 9(2)(c) & (d))	amount of child support paid or 15% of the maximum income support benefit, <i>whichever is less</i>	for up to age 19, or age 23 if in school, or longer if unable to live independently because of a disability	\$208.00
income support—immediate family member other than spouse or child (s. 10)	amount of support paid or 15% of the maximum income support benefit, <i>whichever is less</i>	for up to 2 years from the date of the victim's death	\$208.00

## SECTION D-15. LOST EARNING CAPACITY

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### Purpose

The purpose of the "lost earning capacity" benefit is to provide a source of income for victims of violent crime who were not working at the time of the injury but were likely to work in the future, and whose injury has affected their ability to do so.

This benefit recognizes that many people who are not in the workforce because of their stage of life or responsibilities—for example, children, students, caregivers, and homemakers—are likely to join the workforce in the future. It is intended to assist such victims whose injury has adversely affected their prospects for earning income through employment.

Victims eligible for a lost earning capacity benefit may also be eligible for a vocational benefit, with the ultimate aim of assisting them to enter or re-enter the workforce and regain their independence (see **section D-13** of this manual, *Vocational Services or Expenses*). Upon completion of their vocational training or education, victims may be eligible for an income support transition benefit (see the provisions on *Transition to Employment* in **section D-14** of this manual, *Income Support*).

The lost earning capacity benefit is not intended for victims whose future earning capacity would not be affected because their injury:

- has only a short-term impact on their employability; or
- has a long-term impact on their employability but they were unlikely to have worked in the future had the injury not occurred.

## Eligible Category of Claimant

- Victim

**CVAA**, section 4(1)(m).

## Eligibility Criteria

### All Claimants

1. The adjudicator must be satisfied that the injury from the offence resulted in a loss of employability for the claimant—that, as a result of the injury, the claimant is not able to work or is not able to work on a full-time basis.
2. The adjudicator must be satisfied that, at the time of the injury, the claimant was:
  - a minor; or
  - an adult who was employable but not employed.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 6(1)(b).

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 6(1)(a).

An adult who was temporarily or partially unemployable at the time of the injury may be eligible for a lost earning capacity benefit if there is evidence that he or she was generally employable before the injury.

See the definitions of “employable” and “unemployable” in the *Glossary* at **section E-1** of this manual.

Adults who were permanently unemployable at the time of the injury are not eligible since they will not have experienced a loss of employability as a result of the offence. Minors are treated differently where their employability at the time of the injury was due to their age rather than disability.

3. A claimant is considered to have been employed at the time of the injury if he or she was on temporary leave from a job (e.g., maternity leave, sick leave) or was about to start a job (i.e., had accepted a definite job with a specific start date). The claimant is therefore not eligible for a lost earning capacity benefit but may be eligible for an income support benefit.

See *Income Support*, **section D-14** of this manual, for more information.

4. Since the purpose of the lost earning capacity benefit is to assist victims whose injury will affect their ability to earn employment income in the future, it is not reasonable to award the benefit where:
  - the impact of the injury on the claimant’s employability is short term—it has not resulted, or will not result, in a long-term loss of employability; or
  - the injury has resulted in a long-term loss of employability but the evidence supports a finding that the claimant was

unlikely to have worked in the future even if the injury had not occurred.

In either case, if there is a change in circumstances indicating a likelihood of loss of future employment income, it may be reasonable to award the benefit.

See the definitions of “short-term loss of employability” and “long-term loss of employability” in the *Glossary* at **section E-1** of this manual.

A change in circumstances could involve: an injury worsening or the recovery period becoming longer than anticipated, so that a short-term loss of employability turns into a long-term one; a change in life circumstances such that the claimant would have been more likely to join the paid workforce had the injury not occurred.

5. Where the prior employability of an adult claimant is in question, additional information should be sought concerning the claimant’s previous mental or physical capacity to be employed, such as medical and employment records prior to the injury. Before concluding that a claimant was unemployable at the time of the injury, the adjudicator should request that the file be reviewed by the medical consultant or a psychological consultant.

Many factors may affect an individual’s capacity to be employed. It is important to avoid making generalizations based on diagnostic or other categories (e.g., disability, addiction), but rather to look at evidence regarding the individual’s capacity to be employed over a period of time.

A person’s capacity for employment includes, among other things, the ability to prepare for, accept, and maintain employment (see the definitions of “employability” and “unemployable” in the *Glossary* at **section E-1** of this manual). For example, having a significant history (e.g., five years or more) of unemployment because of health or social problems indicates that employability is unlikely.

6. In determining whether the offence resulted in the claimant’s physical or psychological condition, the adjudicator should use the test of “causative significance.”

See *Injury as the Direct Result of an Offence/Event* in **section C-6** of this manual for the meaning of causative significance.

7. In determining whether the claimant’s physical or psychological condition led to a loss of employability, and the degree and duration of loss of employability, it will usually be necessary to obtain verification from a medical practitioner or other appropriate professional.
8. In cases involving severe physical injury, the adjudicator may be satisfied that the injury resulted in a long-term loss of employability where police or medical (e.g., hospital) information concerning the injury is consistent with the claimant being unable to work for the foreseeable future. Otherwise, information on the

claimant's loss of employability should initially be sought from a medical practitioner.

In either circumstance, if the claimant's condition in relation to employability has not stabilized, updates on the claimant's condition should be obtained from a medical practitioner at appropriate intervals.

9. In cases involving psychological injury, a psychological or vocational assessment should be carried out to examine the effect of the offence on the claimant's psychological functioning and, in turn, how that affects his or her long-term employability.

Determining the nature, cause(s), and effects of psychological injury, particularly over the longer term, is more challenging than for physical injury. The complaints are generally more subjective and may not be easily diagnosed by medical practitioners without qualifications or training in psychology or psychiatry. It may be more difficult to determine the effect of the offence versus other factors on the claimant's psychological status.

The psychological treatment provided to the claimant, and the response to treatment, are key factors in determining the claimant's likelihood of recovery from psychological injury and whether significant impairment from psychological injury is expected to persist over the longer term.

### **Claimants who are Minors**

10. If the claimant is a minor, a lost earning capacity benefit can be provided only if the minor was living independently at the time of the injury. Otherwise, the claimant is eligible for a lost earning capacity benefit on becoming 19 years old, payable from that date, if he or she is still affected by a loss of employability.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, sections 6(4) and 6(5).

11. In determining whether a minor was living independently at the time of the injury, the adjudicator should consider whether the minor:
  - resided with a parent/guardian;
  - paid for some of his or her living expenses;
  - was part of the workforce in the past;
  - had any other source of income (excluding income from a parent/guardian);
  - was receiving assistance to live independently through a Youth Agreement with the BC Ministry of Children and Family Development.

It is important to examine the whole context of the minor's living situation. For example, a minor who resided with a parent, but paid his or her own living expenses or contributed to the family's finances, could be characterized as living independently.

See also the definition of "living independently" in the *Glossary* at **section E-1** of this manual.

**CVA (General) Regulation,**  
section 36(1)(b).

## Transitional Claims

12. A claimant is not eligible for a lost earning capacity benefit if, in relation to the same injury/offence, the claimant was awarded compensation for pain and suffering under section 2(4)(f) of the former act, the Criminal Injury Compensation Act.

## Types of Eligible/Ineligible Services or Expenses

13. The lost earning capacity benefit consists of monthly payments calculated as indicated under *Amount of the Benefit* below. There are no other eligible services or expenses.

## Amount of the Benefit<sup>26</sup>

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation,** section 1(1).

14. The maximum amount of lost earning capacity benefit is the equivalent of 40 hours per week at minimum wage.

See the definition of "minimum wage" in the *Glossary* at **section E-1** of this manual.

A claimant who became completely unemployable as a result of the injury would be eligible for the maximum amount.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation,** section 6(2).

15. The lost earning capacity benefit is calculated as follows:

(a) Start with 40 hours per week.

(b) Determine the average number of hours per week the claimant is capable of working ("employable") after the injury, to a maximum of 40.

(c) Subtract (b) from (a) to get the average loss of hours per week.

40 hours per week – average employable hours per week after the injury = average loss of hours per week

(d) Multiply the average loss of hours per week by the minimum wage to get the maximum lost earning capacity benefit for which the claimant may be eligible.

average loss of hours per week x minimum wage = maximum lost earning capacity benefit

(e) Subtract the claimant's income from other sources to get the payable lost earning capacity benefit for the claimant.

maximum lost earning capacity benefit – income from other sources = payable lost earning capacity benefit

See provisions no. 17 and 18 below on income from other sources.

<sup>26</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

16. Subject to the provisions in relation to minors, the claimant is eligible for the benefit from the date he or she first became affected by the loss of employability, as determined by the adjudicator.
17. Income should not be considered "income from other sources" in this context unless it is employment income.

See the definition of "income from other sources" in the *Glossary* at **section E-1** of this manual. See **appendix A to section D-14** of this manual for examples of types of income that should and should not be considered income from other sources.

Deduction of other amounts may be required on the basis of the "same or similar" provision under section 9(4)(c) of the Crime Victim Assistance Act. See provision no. 20 below and **appendix B to section D-14** of this manual.

18. Income earned by claimants who are capable of part-time work should not be considered "income from other sources" if the average number of hours worked does not exceed the average number of hours the claimant is considered employable.

Example: a claimant is assessed as employable for an average of 10 hours per week after the injury. If the claimant works no more than 10 hours per week, the claimant's employment income should not be deducted. The claimant would receive a lost earning capacity benefit based on the remaining 30 hours per week: the loss of employability.

19. The process of calculating weekly and monthly amounts, and the maximum allowable amounts, of lost earning capacity benefits are set out in **appendix C to section D-14** of this manual.

### Deductions or Reductions

20. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

See **appendix B to section D-14** for sources of "same or similar" benefits (benefits provided for the same or a similar purpose as crime victim assistance lost earning capacity benefits).

### Conditions or Limitations of the Benefit

21. Subject to the regulations, provision of a benefit may be dependent on conditions or limitations the adjudicator considers appropriate. For a lost earning capacity benefit, these include, but are not necessarily limited to, the conditions set out below.
22. Where appropriate to the claimant's circumstances, a lost earning capacity benefit should be conditional on the claimant's

CVAA, section 4(1).



participation in services provided to aid in his or her physical or psychological recovery.

**CVA (Income Support and Vocational Services or Expenses Benefits)**  
**Regulation**, section 6(6).

23. Where the claimant's employability is likely to increase if the claimant receives vocational services, a lost earning capacity benefit should be conditional on the claimant's participation in vocational services specified by the adjudicator (as permitted by regulation). This condition should not be attached to a benefit for a claimant who is 65 years of age or older.

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## SECTION D-16. LOSS OF PARENTAL GUIDANCE FOR A MINOR CHILD

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Eligible Category of Claimant	1
Eligibility Criteria	1
• Transitional Claims	2
Types of Eligible/Ineligible Services or Expenses	2
Amount of the Benefit	2
• Deductions or Reductions	2
Payment of the Benefit	2
Conditions or Limitations of the Benefit	2

### Purpose

The “loss of parental guidance for a minor child” benefit provides a financial contribution to children of deceased victims of violent crime, recognizing that loss of parental guidance may result in financial loss. Parental guidance contributes to a child’s values and life skills, particularly during the developmental stages preceding adulthood. Where a child has not yet developed a relationship with the parent, the child loses the possibility of being guided by that parent.

See also [section D-14](#) of this manual, *Income Support*, regarding income support benefits for children of deceased victims.

### Eligible Category of Claimant

**CVAA**, section 4(2)(g).

- Immediate family member who is a minor child of a deceased victim

### Eligibility Criteria

**CVA (General) Regulation**, section 24(1)(a).

1. The claimant must be the child of a victim who died as a result of the offence.

See the definition of “child of a victim” in the *Glossary* at [section E-1](#) of this manual.

**CVA (General) Regulation**, section 24(1)(b).

2. The claimant must be under 19 years of age, or have been under 19 when his or her parent died.

3. With the exception of some transitional claims (see next provision), claimants who meet these criteria are automatically eligible for a benefit for loss of parental guidance.

### Transitional Claims

4. A claimant is not eligible for this benefit if, in relation to the same death, the claimant was awarded compensation for loss of love, guidance, and affection under section 2(4)(c) of the former act, the Criminal Injury Compensation Act.

**CVA (General) Regulation,**  
section 36(3).

## Types of Eligible/Ineligible Services or Expenses

5. This benefit is a set amount for loss of parental guidance, as indicated under *Amount of the Benefit* below. There are no other eligible services or expenses.

### Amount of the Benefit

6. Subject to provision no. 7 below, the amount of the benefit is \$3,000.00.
7. If more than one parent of the claimant died as a result of a prescribed offence, \$3,000.00 should be awarded for each deceased parent (as permitted by regulation).

**CVA (General) Regulation,**  
section 24(1).

**CVA (General) Regulation,**  
section 24(2).

### Deductions or Reductions

8. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

### Payment of the Benefit<sup>27</sup>

9. The benefit should be paid, as a lump sum, to the Public Guardian and Trustee of BC in trust for the claimant, unless the claimant is living independently. This applies whether the claimant lives in BC or another jurisdiction.

### Conditions or Limitations of the Benefit

10. Subject to the regulations, provision of this benefit may be dependent on conditions or limitations the adjudicator considers appropriate.

**CVAA,** section 4(2).

<sup>27</sup> See **section C-10** of this manual, *Payment*, for additional policy on payment of benefits.

## SECTION D-17. TRANSPORTATION AND TRANSPORTATION-RELATED CHILDCARE

Purpose	1
Eligible Categories of Claimants	2
Transportation Allowance	2
• Eligibility Criteria	2
• Types of Eligible/Ineligible Services or Expenses	4
• Amount of the Benefit	5
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• Conditions or Limitations of the Benefit	5
Transportation and Related Expenses	5
• Eligibility Criteria	5
• Transitional Claims	7
• Types of Eligible Services or Expenses	7
• Types of Ineligible Services or Expenses	7
• Amount of the Benefit	8
• Deductions or Reductions	9
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Transportation-Related Childcare	9
• Eligibility Criteria	9
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• Types of Ineligible Services or Expenses	11
• Amount of the Benefit	11
• Deductions or Reductions	11
• Conditions or Limitations of the Benefit	11

### Purpose

Transportation benefits help offset the transportation costs that victims, immediate family members, and witnesses incur as a result of violent crime.

Benefits in this section include:

- a **transportation allowance** for victims who have a long-term disability as a result of the crime and need the benefit to increase their level of independence;

- **transportation and related expenses** for:
  - victims who need to travel to access medical, dental, counselling, or vocational benefits awarded under the Crime Victim Assistance Act;
  - immediate family members who need to travel to:
    - access counselling or vocational benefits awarded under the Crime Victim Assistance Act; or
    - attend legal proceedings related to the death of the victim;
  - witnesses who need to travel to access counselling benefits awarded under the Crime Victim Assistance Act;
- **transportation-related childcare** for victims, immediate family members, and witnesses who need childcare to travel for the above purposes.

Other types of childcare benefits are covered under *Homemaker, Childcare, or Personal Care Services or Expenses* in **section D-11** of this manual: childcare benefits for victims with disabilities and for spouses of deceased victims.

## Eligible Categories of Claimants

- Victim
- Immediate family member
- Witness

Where there are differences in eligibility criteria for different categories of claimants, this is indicated in the eligibility criteria below. Otherwise, the criteria apply to all claimants.

**CVAA**, sections 4(1)(n), 4(2)(f), and 4(3)(c); **CVA (General) Regulation**, sections 5(2)(a) and 5(3), which prescribe childcare services or expenses as an additional benefit category under sections 4(2)(i) and 4(3)(d) of the act.

## Transportation Allowance

(Victims with disabilities only)

### Eligibility Criteria

1. The adjudicator must be satisfied that:
  - the victim has a long-term disability as a result of the offence and, because of that disability, is unable to operate a motor vehicle or use public transportation;  
 See the definition of "long-term disability" in the *Glossary* at **section E-1** of this manual.
  - the transportation expenses are reasonable and necessary to provide greater independence to the victim.
2. For the purpose of this benefit, being unable to use public transportation means that a person cannot, on his or her own,

**CVA (General) Regulation**, section 18(3)(a).

**CVA (General) Regulation**, section 18(3)(b).

reasonably access mass transit available to the general public (e.g., bus system or rapid transit system).

Where a transportation allowance is requested by a claimant who uses a wheelchair, the adjudicator should consider this criterion to be met.

Access to public transportation can be limited by physical or cognitive disabilities, including difficulties getting on or off transit vehicles, getting to transit stations, waiting at transit stops, or understanding directions or routes.

3. Being able to use HandyDart or a similar service should not be considered the same as being able to use public transportation, as it generally cannot provide a comparable level of independence.

There may be considerable variation in the level of service provided by publicly subsidized transportation services for persons with disabilities. For example, bookings may need to be made days in advance, travel times may be restricted, or services may be prioritized for specific purposes (e.g., medical appointments).

4. A transportation allowance may be provided on a short- or long-term basis, depending on the claimant's needs and abilities. However, since it is a monthly allowance, the benefit should generally not be provided unless it is needed for one month or longer.

There may be situations where claimants with a long-term disability require a transportation allowance for a short time only. For example, a claimant may be able to use public transportation most of the time, but not when recovering from surgery or other medical treatments. Or, a claimant may usually be driven places by a family member, but may need a transportation allowance if the family member is away or unable to drive for a period of time.

**CVA (General) Regulation,**  
sections 18(5) and 15(2).

5. A claimant who receives a transportation allowance is not eligible to receive a vehicle modification or acquisition benefit in relation to the same injury/offence.

The purpose of this provision is to preclude the simultaneous award of two benefits for similar purposes, which is neither necessary nor reasonable. However, over the course of a claim, changes in the claimant's circumstances may affect his or her eligibility for these benefits. For example, if the claimant has been receiving a transportation allowance but is no longer able to use it, that benefit may be terminated and it may be appropriate to award a vehicle modification or acquisition benefit. Note that the claimant would not be eligible for a transportation allowance after a vehicle modification or acquisition benefit has been awarded.

6. Where appropriate, the adjudicator should seek advice from an occupational therapist, industry specialist, or other expert in determining which type of benefit (transportation allowance,

vehicle modification, or vehicle acquisition) should be awarded. The following factors should be considered:

- the nature of the claimant's disability and any special needs affecting transportation;
- the claimant's living circumstances and interests;
- where applicable, the family's circumstances (e.g., the need to transport other family members when transporting the claimant);
- whether the claimant's disability has stabilized, and the length of time the claimant will likely need the benefit;
- whether the claimant or claimant's family has a vehicle that could be modified, and the age and condition of the vehicle;
- if the claimant is unable to drive, whether there is someone involved in the claimant's life who could drive a vehicle for the claimant on a regular basis;
- whether the claimant can cover the cost of using a vehicle (e.g., insurance, gas, maintenance);
- the "one-time only" nature of the vehicle modification or acquisition benefits;
- if each type of benefit would provide a similar degree of independence to the claimant, which is the most economically reasonable.

See **section D-10** of this manual for information on the vehicle modification or acquisition benefit.

7. If the claimant is awarded a transportation allowance and is subsequently unable to use it for a period of time (e.g., several months), the benefit should be suspended until such time as the claimant is able to use it.

For example, this may occur where the claimant's condition worsens, or the claimant is undergoing a particular type of treatment, which prevents the claimant from getting out in the community or using taxis or other standard forms of transportation.

### **Types of Eligible/Ineligible Services or Expenses**

8. A transportation allowance is a standard allowance paid to victims whose disability prevents them from operating a motor vehicle or using public transportation. It is not necessary to itemize costs or submit receipts.



### Amount of the Benefit<sup>28</sup>

**CVA (General) Regulation,**  
section 18(3).

9. The transportation allowance is \$200.00 per month, payable directly to the claimant.

### Deductions or Reductions

10. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

### Conditions or Limitations of the Benefit

**CVAA,** section 4(1).

11. Subject to the regulations, provision of a transportation allowance may be dependent on conditions or limitations the adjudicator considers appropriate.

## Transportation and Related Expenses

(Victims, Immediate Family Members, and Witnesses)

### Eligibility Criteria

**CVA (General) Regulation,**  
section 18(4).

12. If the claimant is a victim, the transportation and related expenses must be necessary for the claimant to access benefits for medical, dental, counselling, or vocational services awarded to the claimant under the Crime Victim Assistance Act.

**CVA (General) Regulation,**  
section 23(3).

13. If the claimant is an immediate family member, the transportation and related expenses must be necessary for the claimant to:
  - access counselling or vocational services awarded to the claimant under the Crime Victim Assistance Act; or
  - attend legal proceedings related to the offence that resulted in the death of the victim.

See the definition of "legal proceedings" in the *Glossary* at **section E-1** of this manual.

**CVA (General) Regulation,**  
section 23(4).

14. An immediate family member must not be awarded a transportation and related expenses benefit to attend legal proceedings:
  - for any days the immediate family member is required to attend legal proceedings in accordance with a subpoena; or
  - where the legal proceedings take place within 100 kilometres of the immediate family member's residence.

**CVA (General) Regulation,**  
section 31(3).

15. If the claimant is a witness, the transportation and related expenses must be necessary for the claimant to access

<sup>28</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

counselling services awarded to the claimant under the Crime Victim Assistance Act.

16. The claimant's eligibility for a transportation and related expenses benefit is not affected if the services to be accessed are awarded under the Crime Victim Assistance Act but paid for by another source.

Note that where there is a limit on the services that may be awarded, such as a maximum number of counselling sessions, the number of trips that will be covered is limited accordingly (see provision no. 30 below).

17. A transportation and related expenses benefit may be deemed necessary, and awarded, where the claimant requires (and is otherwise eligible for) a transportation-related childcare benefit.

See *Transportation-Related Childcare* below—by regulation, it may be awarded only if a transportation and related expenses benefit is awarded. Both of these benefits are intended to assist claimants in accessing other specified crime victim assistance benefits awarded to them.

**CVA (General) Regulation,**  
sections 16(4)(a), 23(7)(a), and  
31(5)(a).

Awarding a transportation and related expenses benefit in conjunction with a transportation-related childcare benefit does not necessarily mean that transportation expenses will be paid whenever childcare expenses are paid. Specific transportation expenses should be examined to determine if they are eligible expenses (see *Types of Eligible/Ineligible Services or Expenses* below).

For example, childcare expenses may be paid when a claimant needs to attend an appointment less than 32 kilometres away, but transportation expenses are generally not paid.

18. The adjudicator must be satisfied that the transportation and related expenses benefit is reasonable. All relevant circumstances should be considered, including:

**CVA (General) Regulation,**  
sections 18(4), 23(3), and  
31(3).

- the age and abilities of the claimant;
- if the claimant is a victim, the nature of the injury;
- whether the claimant is able to travel on his or her own or requires a companion;
- the distance to be travelled;
- whether there are alternative modes of transportation that will meet the claimant's needs at a lower cost;
- where appropriate, the availability of any similar services within the claimant's community.

See also *Types of Eligible/Ineligible Services or Expenses* for this benefit.

**CVA (General) Regulation,**  
section 36(1)(c).

#### Transitional Claims

19. An immediate family member is not eligible for a transportation and related expenses benefit for the purpose of attending legal proceedings if, in relation to the same death, he or she was awarded compensation for pain and suffering under section 2(4)(f) of the former act, the Criminal Injury Compensation Act.

#### **Types of Eligible Services or Expenses**

20. Transportation expenses include travel costs for the claimant and, in some cases, for a companion (see provision no. 22 below).

Transportation expenses for victims may also include transportation of their belongings where they need to move to access any of the specified benefits (e.g., medical services).

*In some cases, a victim may need to move to or from a residential facility, or from one facility to another, for medical rehabilitation or other services.*

**CVA (General) Regulation,**  
sections 18(1), 23(1), and  
31(1).

21. "Related expenses" include the costs of meals and accommodation.
22. Where a claimant cannot travel on his or her own (e.g., because of medical issues or age), a transportation and related expenses benefit may include expenses for a companion to accompany the claimant. If the claimant needs to stay overnight, it is expected that the companion will stay with the claimant (and thus separate overnight accommodation for the companion is generally not included).
23. Prior approval of transportation expenses such as airfare, long distance bus fare, or ferry transportation, and related expenses such as overnight accommodation, should generally be required.
24. Where services are available in the claimant's community, any transportation costs for obtaining services outside the community should generally be pre-approved.

#### **Types of Ineligible Services or Expenses**

25. The following services or expenses should not be considered necessary and/or reasonable for the purpose of this benefit:
- transportation for a trip of less than 32 kilometres, unless:
    - the claimant has a medical condition that requires transportation by taxi;  
*If travel by ambulance is required, that is considered a medical expense; see **section D-2** of this manual.*
    - it would be unreasonable for the claimant to take the bus or other mass transit because of scheduling or routes

- (and thus the time it would take to travel) or safety concerns; or
- it would cause undue hardship to the claimant to deny a transportation benefit on this basis.
- expenses incurred because the claimant chooses to access services outside the claimant's community, unless:
  - adequate services do not exist in the community; or
  - the services outside the community are considered more appropriate in the circumstances.
- loss of wages while travelling.

### **Amount of the Benefit<sup>29</sup>**

26. The maximum amount that may be awarded for immediate family members to attend legal proceedings related to the death of a victim is \$3,000.00, regardless of the number of eligible claimants or the number of legal proceedings.

**CVA (General) Regulation,**  
section 23(5).

Where there is more than one claimant, the amount awarded to each claimant may take into account:

- the amount paid by the claimant in relation to the amount paid by the other claimant(s) or the total cost;
  - the type of expenses the claimant paid for;
  - any arrangements or agreement made by the claimants about apportioning costs.
27. Amounts paid for transportation and related expenses should not exceed the rates set for group I public service employees (under the government's Financial Administration Procedures Manual) in effect at the time the expenses are incurred.
- The amount paid for mileage is set by the Crime Victim Assistance Program and reviewed annually.
28. Transportation costs should be based on the most economical mode of transportation that the adjudicator believes is appropriate. If the claimant would prefer another mode of transportation at a higher cost, a contribution may be made towards the cost.
29. Where the claimant's travel to access benefits will involve frequent trips over a period of time, it may be most economical and practical to provide a monthly bus pass.
30. Where the benefit is provided for the claimant to attend counselling sessions and the number of sessions that may be

**CVA (General) Regulation,**  
sections 18(6), 23(6), and  
31(4).

<sup>29</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

awarded is limited by regulation, the number of round trips for which transportation costs are provided should not exceed this limit.

See *Counselling Services or Expenses*, **section D-6** of this manual, for information on the maximum number of counselling sessions that may be awarded in various circumstances.

### Deductions or Reductions

31. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

### **Conditions or Limitations of the Benefit**

32. Subject to the regulations, provision of a transportation and related expenses benefit may be dependent on conditions or limitations the adjudicator considers appropriate.

## **Transportation-Related Childcare**

(Victims, Immediate Family Members, and Witnesses)

### **Eligibility Criteria**

33. A transportation-related childcare benefit may be awarded only when:

- a transportation and related expenses benefit is awarded; and
- the childcare is required for the same purpose, that is:
  - if the claimant is a victim, to access medical, dental, counselling, or vocational benefits;
  - if the claimant is an immediate family member, to access counselling or vocational benefits or attend legal proceedings (subject to the limitations in provision no. 14 above);
  - if the claimant is a witness, to access counselling benefits.

See also provision no. 17 above.

34. This benefit applies only to childcare for children who are under 19 or unable to live independently because of a disability.

35. There must be no other person in the claimant's household who is reasonably able to perform the childcare necessary for the claimant to travel. Factors to consider in determining whether another person in the household could perform the childcare include the person's age, ability, role in the household, and availability.

**CVAA**, section 4.

**CVA (General) Regulation**, sections 16(4)(a), 23(7)(a), and 31(5)(a).

**CVA (General) Regulation**, sections 16(4)(c), 23(7)(c), and 31(5)(c).

**CVA (General) Regulation**, sections 16(4)(b), 23(7)(b), and 31(5)(b).

See the definition of "person in the claimant's household" in the *Glossary* at **section E-1** of this manual.

36. The adjudicator must be satisfied that the benefit is reasonable and necessary for the claimant to be able to travel. In making this determination, the adjudicator should consider the following factors:

**CVA (General) Regulation**, sections 16(4)(c), 23(7)(c), and 31(5)(c).

- the claimant's abilities, living circumstances, and employment and other demands on time;
- the age, abilities, and needs of the child(ren) for which childcare has been requested;
- the periods of time for which childcare is needed;
- whether there is a family member or other person with whom childcare responsibilities were shared before the offence and continue to be shared;
- whether childcare services were obtained before the offence and, if so, during what times of the day/week;
- whether the amount of the benefit is reasonable (see also *Amount of the Benefit* below).

For example, a claimant who works outside the home may have childcare services provided on the days he or she works, but may need to travel (for the purposes indicated in provisions no. 12, 13, or 15 above) on his or her days off.

A claimant who is receiving a monthly benefit for childcare under the Crime Victim Assistance Act (see **section D-11** of this manual) may still be eligible for a transportation-related childcare benefit if the monthly benefit is for childcare services provided at different times than the childcare required for travel (e.g., different days of the week, daytime versus overnight).

37. The claimant may hire a relative or friend to provide the childcare services if the relative or friend:

- did not share childcare responsibilities with the claimant prior to the offence (unless a loss will be incurred by providing the childcare, such as having to take time off work);
- is not the perpetrator;
- has the appropriate abilities, skills, and experience to provide the services;
- will be providing the services in compliance with any applicable employment standards and insurance requirements in the jurisdiction;
- submits invoices to the claimant that meet standard invoicing requirements.

Normally, payment is provided directly to the service provider. However, in this situation, the Crime Victim Assistance Program

reimburses the claimant for eligible costs (upon submission of original invoices or receipts), rather than making payments directly to the relative or friend providing the services.

### **Types of Eligible Services or Expenses**

38. Eligible childcare costs include services provided or expenses incurred to care for the claimant's child or children.

### **Types of Ineligible Services or Expenses**

39. Services or expenses that should not be considered reasonable and/or necessary for the purpose of this benefit include, but are not limited to:

- travel time for the service provider;
- purchase of groceries or meals;
- purchase of clothing or the cost of diaper cleaning services;
- fees for recreation, education, or entertainment activities;
- house cleaning, except clean up directly associated with childcare activities.

### **Amount of the Benefit<sup>30</sup>**

40. In determining whether the cost of a transportation-related childcare benefit is reasonable, the adjudicator should consider:

- the standard community rates for the services;
- the availability of qualified service providers;
- whether the nature of the services required warrants a departure from the standard community rates.

41. The fact that the claimant hires a relative or friend to provide the service should not, in itself, affect the rate that will be paid for the service.

The criteria in provision no. 40 above apply to all service providers, including those who are relatives or friends of claimants.

### **Deductions or Reductions**

42. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

### **Conditions or Limitations of the Benefit**

43. Subject to the regulations, provision of a transportation-related childcare benefit may be dependent on conditions or limitations the adjudicator considers appropriate.

CVAA, section 4.

<sup>30</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

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## SECTION D-18. FUNERAL EXPENSES

Purpose	1
Eligible Category of Claimant	1
Eligibility Criteria	1
Types of Eligible Services or Expenses	2
Types of Ineligible Services or Expenses	2
Amount of the Benefit	2
• Deductions or Reductions	3
Payment of the Benefit	3
Conditions or Limitations of the Benefit	3

### Purpose

The purpose of the “funeral expenses” benefit is to help offset funeral and related costs incurred by immediate family members of deceased victims of violent crime.

### Eligible Category of Claimant

**CVAA**, section 4(2)(d).

- Immediate family member of a deceased victim

### Eligibility Criteria

**CVA (General) Regulation**, section 22(1)(b).

1. The adjudicator must be satisfied that the expenses are related to a funeral service, burial, cremation, or related ceremony.

**CVAA**, sections 4(2) and 1(1) (definition of victim).

2. The adjudicator should verify that the victim’s death (or presumed death) occurred as a result of the offence.

Police information will often provide sufficient verification.

In some cases, the victim’s body has not yet been found but the victim’s death can be presumed from the evidence.

**CVA (General) Regulation**, section 22(1)(a).

3. The adjudicator must be satisfied that the funeral expenses are reasonable and necessary.

## Types of Eligible Services or Expenses

4. Eligible expenses may include, but are not necessarily limited to, the following:
  - a death certificate;
  - newspaper notices;
  - flower arrangements;
  - burial clothes for the deceased;
  - contribution to clergy for performing the service;
  - burial or cremation;
  - transportation of the body;
  - casket or urn;
  - monument;
  - hall rental;
  - musical accompaniment;
  - refreshments other than alcohol;
  - travel, including meals and accommodation during travel.

## Types of Ineligible Services or Expenses

5. Expenses that should not be considered necessary and/or reasonable funeral expenses include, but are not necessarily limited to, the costs of:
  - alcoholic beverages;
  - legal or probate services;
  - travel before or after the funeral that is unconnected with the funeral (e.g., a separate trip to take care of the deceased's estate);
  - storing the deceased's belongings;
  - cleaning the deceased's residence.

If the death occurred in the victim's or immediate family member's residence or motor vehicle, the claimant may be eligible for a crime scene cleaning benefit (see **section D-20** of this manual).

## Amount of the Benefit

6. The maximum amount that may be awarded for funeral expenses in relation to the death of a victim is \$5,000.00, regardless of the number of eligible claimants.
7. Where there is more than one claimant, the amount awarded to each claimant may take into account:
  - the amount paid by the claimant in relation to the amount paid by the other claimant(s) or the total cost;

**CVA (General) Regulation,**  
section 22(2).

- the type of expenses the claimant paid for;
  - any arrangements or agreement made by the claimants about apportioning costs.
8. If the claim includes travel and related expenses, these expenses should not exceed rates paid for group I public service employees (under the government's Financial Administration Procedures Manual) in effect at the time the expenses are incurred.

### **Deductions or Reductions**

9. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

A benefit or an amount provided for the same or a similar purpose ("same or similar" benefit) is deducted from the total funeral costs, not from the \$5,000 maximum for this crime victim assistance benefit. For example, if the funeral costs were \$7,000, and the "same or similar" deduction is \$3,000, the claimant would be entitled to an award of \$4,000 (subject to any reduction because of contribution).

Note that the Canada Pension Plan death benefit is not considered a "same or similar" benefit and is therefore not deducted in calculating the amount of funeral expenses benefit to award.

### **Payment of the Benefit<sup>31</sup>**

10. Payment of some or all of the awarded amount may be made to a third party who paid for funeral costs on behalf of the claimant(s).

This may include someone close to a claimant who made the payment on the claimant's behalf (e.g., a friend who helped arrange the funeral and paid the bill for the claimant). For information on ways in which payments may be made, see **section C-10** of this manual, *Payment*.

11. If funeral costs were paid from the victim's estate, the benefit awarded to the claimant(s) may be paid to the victim's estate on behalf of the claimant(s).

### **Conditions or Limitations of the Benefit**

12. Subject to the regulations, provision of this benefit may be dependent on conditions or limitations the adjudicator considers appropriate.

CVAA, section 4(2).

<sup>31</sup> See **section C-10** of this manual, *Payment*, for additional policy on payment of benefits.

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## SECTION D-19. EARNINGS LOSS DUE TO BEREAVEMENT LEAVE

Purpose	1
Eligible Category of Claimant	1
Eligibility Criteria	1
Types of Eligible/Ineligible Services or Expenses	2
Amount of the Benefit	2
• Deductions or Reductions	2
Conditions or Limitations of the Benefit	3

### Purpose

The “earnings loss due to bereavement leave” benefit is intended to help offset loss of earnings when immediate family members of deceased victims of violent crime have to take unpaid bereavement leave from work because of the death of the victim.

“Bereavement leave” is defined in the *Glossary* at **section E-1** of this manual.

### Eligible Category of Claimant

**CVAA**, section 4(2)(h).

- Immediate family member of a deceased victim

### Eligibility Criteria

**CVAA**, sections 4(2) and 1(1) (definition of victim); **CVA (General) Regulation**, section 25(1)(a).

1. The claimant’s need for the benefit must be the result of the victim’s death from the offence, and the claimant’s absence from work must fall within two weeks of the victim’s death.

If the victim’s death was not discovered, or the claimant was not notified of the death, for some time after the death, the adjudicator should consider the two-week period to commence at the time the claimant became aware of the death.

**CVA (General) Regulation**, section 25(1)(b).

2. The adjudicator must be satisfied that the claimant had a loss of earnings because of the absence from work.

Since this benefit focuses on loss of earnings, a claimant who was not working but was about to start a job (i.e., had accepted a definitive job offer), would be eligible if there is evidence that the bereavement period prevented the claimant from starting work when planned and resulted in a loss of earnings.

3. There is no age restriction for claimants to receive this benefit.

While young people are not eligible to receive other benefits related to loss of earnings or earning capacity until they reach 19, there is no age restriction for claimants who have lost earnings because of unpaid bereavement leave from work.

## Types of Eligible/Ineligible Services or Expenses

4. This benefit applies to loss of earnings only and is calculated as indicated under *Amount of the Benefit* below. There are no other eligible services or expenses.

## Amount of the Benefit<sup>32</sup>

5. The benefit is provided for the working days the claimant was absent from work without pay, for up to five calendar days.

The benefit is calculated as follows: the number of days the claimant was absent from work without pay (up to a maximum of five), multiplied by eight, multiplied by the minimum wage in effect at the time the award is made.

**CVA (General) Regulation,**  
section 25(2).

For example, a claimant who was absent from work without pay for four days would receive a benefit of 4 days x 8 x \$8.00 (minimum wage in effect) = \$256.00.

See the definition of "minimum wage" in the *Glossary* at **section E-1** of this manual.

6. Since this benefit is based on the number of days (not hours) the claimant was absent from work, the number of hours per day the claimant was scheduled to work is not relevant.
7. The five calendar days do not have to be consecutive but all must fall within the two-week period indicated in provision no. 1 above.

## Deductions or Reductions

8. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

Where a claimant received paid bereavement leave from his or her employer, the claimant is still eligible for a bereavement leave benefit if he or she had additional earnings loss because of time off work for bereavement.

For example, if a claimant was absent from work for ten days and received five days of paid bereavement leave from his or her employer,

<sup>32</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

the claimant would be eligible for a benefit in relation to the five unpaid days: 5 days x 8 x \$8.00 (minimum wage in effect) = \$320.00.

### **Conditions or Limitations of the Benefit**

**CVAA**, section 4(2).

9. Subject to the regulations, provision of this benefit may be dependent on conditions or limitations the adjudicator considers appropriate.

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## SECTION D-20. CRIME SCENE CLEANING

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### Purpose

When exceptional and specialized cleaning of residences or vehicles is required because of violent crime, the “crime scene cleaning” benefit helps offset the costs that victims, immediate family members, and witnesses incur for such cleaning.

This benefit is intended to facilitate the use of professional crime scene cleaning services where required. This protects victims, immediate family members, and witnesses from the physical health risks and additional emotional trauma that may result from cleaning the crime scene.

### Eligible Categories of Claimants

**CVAA**, sections 4(1)(o), 4(2)(i), and 4(3)(d); **CVA (General) Regulation**, section 5(1), which prescribes crime scene cleaning as an additional benefit category under the above sections of the act.

- Victim
- Immediate family member of a deceased victim
- Witness in relation to a deceased victim

Where there are differences in eligibility criteria for different categories of claimants, this is indicated in the eligibility criteria below. Otherwise, the criteria apply to all claimants.

### Eligibility Criteria

**CVA (General) Regulation**, sections 19(1)(a), 26(1)(b)(i), and 32(1)(b)(i).

1. The adjudicator must be satisfied that the crime scene is:
  - if the claimant is a victim, at the victim’s residence or in a motor vehicle owned or leased by the victim;
  - if the claimant is an immediate family member, at the victim’s or immediate family member’s residence, or in a motor

vehicle owned or leased by the victim or immediate family member;

- if the claimant is a witness, at the witness's residence or in a motor vehicle owned or leased by the witness.

"Crime scene" is defined in the *Glossary* at **section E-1** of this manual.

2. For an immediate family member or a witness to be eligible for a crime scene cleaning benefit, the victim's death must have resulted from an eligible offence.
3. The adjudicator must be satisfied that the crime scene requires "exceptional and specialized cleaning" (defined in the *Glossary* at **section E-1** of this manual).

**CVA (General) Regulation**, sections 26(1)(a) and 32(1)(a).

**CVA (General) Regulation**, sections 19(1)(b), 26(1)(b)(ii), and 32(1)(b)(ii).

This determination should be made when there are biohazardous materials, such as human blood (from anyone involved), or hazardous chemicals at the crime scene. It may also be made when there are persistent odours from the crime, or substances or stains from crime scene processing.

Biohazardous materials are biological agents or substances that present, or may present, a hazard to the health or well being of a person. Biohazards include pathogens such as bacteria, viruses, fungi, parasites, and toxins. Human waste is biohazardous, as are all items contaminated with human waste.

Hazardous chemicals are chemicals that, if released or misused, can pose a significant risk to human or environmental health. Some types of hazardous chemicals may quickly dissipate, making it unnecessary to use exceptional and specialized cleaning methods.

4. If the crime scene has not already been cleaned, the claimant should be encouraged to use a specialized cleaning company with appropriate qualifications to clean up the particular substances or materials at the crime scene (e.g., biohazards, chemicals, fire/smoke damage).

Using a specialized cleaning company ensures that health risks are minimized and facilitates the process of verifying the eligibility of crime scene cleaning expenses. However, if the claimant has already had the crime scene cleaned and a specialized cleaning company was not used, crime scene cleaning expenses may still be paid if they meet the eligibility criteria.

5. The cleaning expenses must be directly related to the offence.

For example, if only a particular area of a residence required exceptional and specialized cleaning, the cost of services provided to clean the rest of residence would not be an eligible expense.

Under section 4 of the **CVAA**, the need for the benefit must have arisen as a result of the offence or event that resulted in the victim's injury or death.

6. The adjudicator must be satisfied that the expense is reasonable and necessary. In making this determination, the adjudicator should consider that the aim is to restore the residence or motor vehicle to the condition it was in before the offence.

**CVA (General) Regulation**, sections 19(1)(c), 26(1)(b)(iii), and 32(1)(b)(iii).

If the types of services provided by a specialized crime scene cleaning company, and any directly related expenses incurred by the claimant, fall within the eligible expense categories (below), the adjudicator can assume that the expenses are reasonable and necessary unless there is cause to believe otherwise.

Some crime scene cleaning companies provide a full range of services, for example, from cleaning and disinfecting floors or walls to any necessary refinishing work such as installing replacement carpeting, upholstery, or dry wall. Other companies provide specialized cleaning services only, in which case the claimant may have additional expenses to restore the residence or motor vehicle to the condition it was in before the offence.

## **Types of Eligible Services or Expenses**

7. Services and expenses must be related to exceptional and specialized crime scene cleaning as defined in this policy. Eligible costs include, but are not necessarily limited to, those required to:
  - clean, decontaminate, and deodorize areas or items, and remove and dispose of unusable items;
  - repair or replace furnishings (e.g., bedding, mattresses, furniture, area rugs or car mats, curtains) or appliances that are damaged or destroyed;
  - repair or replace walls, “wall-to-wall” flooring, or other built-in features;
  - treat for insect or rodent infestation (e.g., that resulted from a decomposing body);
  - provide temporary accommodation or vehicle rental for the claimant and family, if necessary while the crime scene cleaning is underway.

## **Types of Ineligible Services or Expenses**

8. The following types of costs should not be considered reasonable and/or necessary for the purpose of this benefit:
  - ordinary housecleaning services or expenses;
  - upgrading of furnishings, appliances, or materials where equivalent items to those being replaced are available at a lesser cost (although a reasonable contribution may be made to the cost of the upgrades);
  - reimbursement of lost wages for time taken off work to clean the crime scene;

- repair or replacement of furnishings or appliances that were damaged or destroyed during the offence but do not require exceptional and specialized cleaning as defined in this policy.

Expenses related to damaged or destroyed items that are ineligible under this benefit category may be eligible under another benefit category. For example, if protective measures are required, the cost of damaged or destroyed doors, windows, and security devices may be covered under the protective measures, services, or expenses benefit (see **section D-7** of this manual). If specific types of personal property have been damaged or destroyed, they may be eligible expenses under the benefit for repair or replacement of damaged or destroyed personal property (see **section D-8** of this manual).

## Amount of the Benefit<sup>33</sup>

9. The maximum amount that may be awarded for crime scene cleaning is \$2,500.00 per victim/death. The maximum applies as follows:
  - to a victim, for cleaning of the victim's residence and/or motor vehicle;
  - to an immediate family member, for cleaning of the victim's or immediate family member's residence and/or motor vehicle;
  - to a witness, for cleaning of the witness's residence and/or motor vehicle.
10. Where a claim involves more than one victim, the adjudicator should consider each victim/death separately in determining the maximum allowable benefit.

**CVA (General) Regulation**, sections 19(2), 26(2), and 32(2).

## Deductions or Reductions

11. In calculating the amount of benefit to award, the adjudicator should make any applicable deductions or reductions in accordance with the provisions under *Deductions and Reductions* in **section C-9** of this manual.

## Conditions or Limitations of the Benefit

12. Subject to the regulations, provision of this benefit may be dependent on conditions or limitations the adjudicator considers appropriate.

**CVAA**, section 4.

<sup>33</sup> See **section C-10** of this manual, *Payment*, for policy on payment of benefits.

## **SECTION E. MAJOR APPENDICES**

**E-1. Glossary**

**E-2. Crime Victim Assistance Act**

**E-3. Crime Victim Assistance (General) Regulation**

**E-4. Crime Victim Assistance (Income Support and Vocational Services or Expenses Benefits) Regulation**

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## SECTION E-1. GLOSSARY

### Explanatory Note

This glossary includes key terms used in administering the Crime Victim Assistance Program. Where definitions are based on definitions in the Crime Victim Assistance Act or regulations, this is indicated in the margin beside the definition.

### Definitions

**Act** means the Crime Victim Assistance Act.

**Action**, or legal action, refers to a civil action against any person arising out of the prescribed offence or the event that resulted in the death or injury of the victim.

**Activities of daily living** are things people normally do in daily living including self-care (e.g., feeding, bathing, dressing, grooming, toileting) and other activities required to live independently (e.g., communicating with others, working within or outside the home, getting around within and outside the home, participating in social and leisure activities).

**Adjudicator** means a person responsible for determining claimants' eligibility for benefits under the act. The adjudicator has been delegated all the powers, duties, and functions of the director under the act that are necessary for the adjudication process.

**Administrative error** means an error made in implementing a decision about benefits. It does not include a decision about a claimant's eligibility for benefits. Administrative errors are often computer, mathematical, and similar types of errors. For example, an administrative error is made when a cheque is issued in excess of the amount awarded in the decision.

CVAA, section 1(1).

**Adult** means a person who is 19 years of age or older.

CVAA, sections 1(1) and 3(1).

**Applicant** means a person who makes an application under section 3(1) of the act, or on whose behalf an application has been made by a legal representative or an immediate family member. See also **claimant**.

CVAA, sections 1(1) and 4;  
CVA (General) Regulation,  
section 5.

**Benefit** is the term used for a specific type of financial award—such as for medical services or expenses, counselling services, protective measures, vocational services, income support, funeral

expenses, etc.—under the Crime Victim Assistance Act. The benefit categories are set out in section 4 of the act, with additional categories prescribed in the Crime Victim Assistance (General) Regulation.

**Bereavement leave** means absence from work to arrange or attend a funeral or other ceremony, take care of other matters related to the victim's death, or deal with the initial effects of grief.

**Bodily harm** means any hurt or injury to a person, whether physical or psychological, that interferes with the health or comfort of the person and is more than merely transient or trifling in nature.

**Child of the victim** includes a person who, at the time of the offence, was:

**CVAA**, sections 1(1)(a)(ii) and 1(2).

- a biological or an adopted child of the victim;
- a biological child of the victim born after the death of the victim;
- a step child of the victim;
- a child to whom the victim was standing in the place of a parent; or
- an adult to whom the victim stood in the place of a parent when the adult was a child.

It also includes a person recognized by the director as a child of the victim because that person, at the time of the victim's death or injury, was:

- qualified as a child of the victim under an enactment of BC or Canada to apply for maintenance or support from the victim; or
- entitled to maintenance or support from the victim under an order or agreement enforceable under such an enactment.

**Childcare**, for the purpose of the homemaker, childcare, or personal care services or expenses benefit category, refers to care for a **minor child** of the victim, or care for an adult child of the victim who, because of a disability, is unable to live independently from the victim.

**CVA (General) Regulation**, section 16(1).

**Claim** means a request for a benefit or benefits from a claimant, including an application for benefits and any subsequent requests for benefits. "Claim" is also used to refer generally to the entitlements of claimants who have been awarded benefits, and, for case management purposes, to the claimant's case or file.

**Claimant** means a person who has made a claim for benefits under the Crime Victim Assistance Act. There are three categories of claimants: victims, immediate family members, and witnesses.



"Claimant" includes a person who has applied for benefits on his/her own behalf or on whose behalf an application has been made, a person whose claim is in the process of being adjudicated, and a person whose claim has been adjudicated (whether or not benefits are awarded).

When the word "claimant" is used in policy regarding the provision or receipt of information, it is intended to include a legal representative or other person communicating with the Program on the claimant's behalf. See also **applicant** and **recipient**.

**Claims coordinator** is a person designated by the director as being responsible for gathering relevant information to prepare claims for adjudication, and for ongoing case management and coordination once decisions have been rendered.

**Common law** is a type of relationship where two people have lived and cohabitated in a marriage-like relationship for at least two years.

**Commutation** means conversion of all or part of a series of **periodic payments** into one or more lump sum payments.

**Counselling** means a professional clinical service to assist the claimant to recover from the psychological harm caused by the offence.

**CVA (General) Regulation,**  
schedule 2, sections 1 to 3.

**Counsellor** refers to someone who provides counselling and is a registered psychologist, registered social worker, or a practitioner who meets the education, training, and experience requirements outlined in sections 1-3 of schedule 2 of the Crime Victim Assistance (General) Regulation.

**Crime scene** means the location of an **offence**, including the immediate aftermath of an offence. For the purpose of crime victim assistance benefits, crime scenes are limited to residences and vehicles of victims, immediate family members, and witnesses.

**Damaged or destroyed**, for the purpose of the benefit to repair or replace damaged or destroyed personal property, means no longer usable in terms of function or aesthetics, or for emotional/psychological reasons (e.g., because the clothing brings back memories of the offence).

**Decisional error** means an error in a decision about a claimant's eligibility for benefits. For example, the adjudicator makes a decisional error if the Crime Victim Assistance Act or regulations are incorrectly applied/interpreted, if available information that is relevant and significant to the decision is overlooked, or if the decision is outside the statutory authority of the Crime Victim

Assistance Program. A decisional error may also be made if a decision is based on inaccurate information because of misrepresentation or fraud by the claimant.

**Delivered by mail** means deemed, under section 24 of the act, to have been delivered on the 14<sup>th</sup> day after the date it is mailed.

**CVAA**, section 24.

**Dental consultant** refers to the dentist contracted by the Crime Victim Assistance Program to review dental information and treatment plans, and provide opinions and recommendations on claimants' eligibility for dental services and expenses.

**Dependent child** means a person who is:

- under 19 years old;
- 19 years old or older, but under 23 years old, and attending an educational institution on a full-time basis; or
- 19 years old or older but unable to live independently because of a mental or physical disability.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 1(1).

**Director** means the director designated under section 18 of the act and anyone who has been delegated to exercise powers, duties, or functions of the director under the act (see also **adjudicator**).

**CVAA**, sections 1(1), 18(1), and 18(2).

The Director has made specific delegations of authority to program management, adjudicators, and claims coordinators responsible for administration of the Crime Victim Assistance Program.

**Disability** means a functional limitation or restriction of an individual's ability to perform an activity.<sup>34</sup>

**Disability aids** include equipment, devices, appliances, prostheses, orthoses, specialized clothing, and supplies—used on the person, at home or the workplace, or in a vehicle—that improve the ability of an individual with a disability to perform an activity. For the purpose of crime victim assistance benefits, disability aids (**section D-5** of this manual) are distinguished from home modifications (**section D-9**) and vehicle modifications (**section D-10**).

**Drug** means a substance (or combination of substances) used, or for use, in or on the body of a person to: prevent, diagnose, treat, or mitigate a disease, disorder, or abnormal physical or mental state, or a symptom of one of these; or, restore, correct, or modify organic functions.<sup>35</sup>

<sup>34</sup> From: Social Development Canada. (2002). *A Way with Words and Images—Suggestions for the Portrayal of Persons with Disabilities*.

<sup>35</sup> Adapted from the definition in the Pharmacists, Pharmacy Operations and Drug Scheduling Act.

**Earning capacity** means a person's capacity to earn employment income, which is affected by the person's education, training, qualifications, and physical and mental capabilities for employment.

**CVA (General) Regulation,**  
section 1.

**Economically reasonable** means the most economical alternative that is appropriate in the circumstances.

**Educational institution** means a school, university, college, or vocational or technical institution that provides a recognized diploma, certificate, or degree.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation,** section 1(1).

**Eligible injury** means an injury that has resulted from a prescribed offence, and includes, in the case of a victim or an immediate family member of a victim, an injury that has resulted from an event that is described in section 3(1)(a)(ii) of the act.

**CVA (General) Regulation,** section 1; **CVA (Income Support and Vocational Services or Expenses Benefits) Regulation,** section 1(1).

**Eligible offence** means a prescribed offence and includes, in the case of a victim or an immediate family member of a victim, an event that is described in section 3(1)(a)(ii) of the act.

**Empirically validated,** in the context of therapy or treatment, refers to methods or techniques for which efficacy has been demonstrated in at least two independent, evidence-based, and well-controlled clinical studies.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation,** section 1(1).

**Employability** means the physical and mental capability of being employed or self-employed. See **employable** for more information.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation,** section 1(1).

**Employable** means physically and mentally capable of being employed or self-employed. The terms "employable" and "employability" refer to a person's capacity for employment, not to how much the person is or was working. Capacity for employment includes the ability to prepare for, accept, and maintain employment.

Employable does not necessarily mean capable of full-time employment; a person may be employable on a part-time basis. A person who is deemed employable should be capable of performing tasks that would generally be remunerated at the equivalent of minimum wage or better.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation,** section 1(1).

**Employed** means working for wages, salary, profit, or commission. It does not include earning money through unlawful occupations or activities.

**Exceptional and specialized cleaning,** for the purpose of the crime scene cleaning benefit, means cleaning that generally requires specialized training, protective gear, decontamination products, or disposal methods. It may include removal of

biohazardous substances, hazardous chemicals, persistent odours, or substances or stains remaining after crime scene processing.

**Financially dependent**, used in relation to immediate family members other than spouses or children, means that the family member was being **financially supported by the victim**.

**Financially supported by the victim**, used in relation to immediate family members other than spouses or children, means that the victim was paying full or partial financial maintenance or support for the family member. This will usually mean that the victim was providing regular or periodic financial contributions (e.g., monthly or semi-annually), which the family member expected to receive and came to depend on. Financial maintenance/support does not include gifts that are traditionally given on holidays, birthdays, or other special occasions.

**Former act** means the Criminal Injury Compensation Act, R.S.B.C. 1996, c. 85.

CVAA, section 1(1).

**Former applicant** means an applicant under the **former act**.

CVA (General) Regulation, section 33(1).

**Full time**, in relation to attendance at an educational institution, means:

- for primary and secondary schools, full time as defined by the school;
- for post-secondary institutions such as colleges and universities, and other educational institutions where applicable, a minimum of three courses per term.

For other types of educational institutions, full-time attendance is determined on a case-by-case basis.

**Good Samaritan** means a person who is injured or killed while preserving the peace, or attempting to preserve the peace, by either arresting a suspected offender or preventing the commission of a crime—someone who meets the criteria set out in section 3(1)(a)(ii) of the act. A Good Samaritan falls within the definition of **victim**.

CVAA, section 3(1)(a)(ii).

**Grandchild of the victim** includes a person who, at the time of the offence, was:

- a biological or an adoptive grandchild of the victim;
- a step grandchild of the victim.

See also the definition of **immediate family member**. A grandchild who was standing in the place of a child to the victim would fall within the definition of **child of the victim**.

**Grandparent of the victim** includes a person who, at the time of the offence, was:

- a biological or an adoptive grandparent of the victim;
- a step grandparent of the victim.

See also the definition of **immediate family member**. A grandparent who was standing in the place of a parent to the victim would fall within the definition of **parent of the victim**.

**Half sibling of the victim** – see the definition of **sibling of the victim**.

**Hardship** means extreme adversity and may include physical, mental, emotional, or financial hardship.

**CVA (General) Regulation,**  
section 2.

**Health professional** refers to any of the following:

- a chiropractor entitled to practise under the Chiropractors Act;
- a dentist entitled to practise under the Dentists Act;
- an optometrist entitled to practise under the Optometrists Act;
- a podiatrist entitled to practise under the Podiatrists Act;
- a registered nurse entitled to practise under the Nurses (Registered) Act;
- an emergency medical assistant licensed under the Health Emergency Act;
- a person entitled to practise as any of the following under the Health Professions Act: dental hygienist; dental technician; denturist; licensed practical nurse; massage therapist; naturopathic physician; occupational therapist; optician; physical therapist; psychologist; registered psychiatric nurse; traditional Chinese medicine practitioner; acupuncturist.

**CVA (General) Regulation,**  
section 16(1).

**Homemaker tasks** include shopping, cleaning, cooking, and other household tasks.

**CVAA**, sections 1(1) and 1(2).

**Immediate family member** means a person who, at the time of the prescribed offence or the event that resulted in the death or injury of a victim, was a **spouse, child, sibling, step sibling, half sibling, or parent** of the victim—see the definitions of those terms. A **grandchild** or **grandparent** of the victim also falls within the definition of “immediate family member” if that person was, in whole or in part, dependent on the victim for financial support (see **financially dependent**).

**CVAA**, section 3(1)(b).

To apply for benefits as an immediate family member, a person must have experienced psychological harm or economic loss

because of the death or injury of the victim, or be a minor child of a deceased victim.

***Income from other sources***, to be deducted in the calculation of income support and lost earning capacity benefits for victims, means employment income. Employment or earned income means total income from wages or a salary paid by an employer, or net income from a business, professional practice, or other self-employment. "Income from other sources" does not include income earned by claimants who are capable of part-time work if the average number of hours worked does not exceed the average number of hours the claimant is considered employable.

***Income support benefit*** means an amount calculated hourly that is equal to the higher minimum wage under the Employment Standards Act at the time the benefit is awarded, up to a maximum of 40 hours per week.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation**, section 1(1).

***Injury*** means bodily harm, including psychological harm, or pregnancy. See also **bodily harm** and **psychological harm**.

**CVAA**, section 1(1).

In this manual, the word "injury" is intended to:

- mean injury that resulted from the offence only;
- include "death" (and "injured" to include "killed") where applicable.

***Interim benefit*** means a benefit provided on a temporary basis prior to adjudication of a claim. Provision of an interim benefit does not mean that the claim has been approved.

***Job or occupation the victim held at the time of the injury*** refers to either the specific job, or the general type of work, the victim was doing before the injury affected his or her employability. This will usually be the victim's job or occupation when the offence occurred, but not always. For example, if the condition resulting from the injury had a delayed onset, the victim may have been working at a different job when the injury affected his or her employability.

***Judgment***, or settlement, as used in section 8 of the act, means:

**CVAA**, section 8(1).

- a judgement in, or settlement of, a legal action taken by a claimant against a person for damages arising out of the offence; or
- an amount ordered under section 738 of the Criminal Code to be paid to the victim as restitution for the injury to the victim or damage to the victim's personal property as a result of the offence.

**Law enforcement authorities** include police, Crown counsel, and other authorities with responsibility for apprehension, investigation, or prosecution in relation to federal or provincial laws.

**Legal action** has the same meaning as **action**.

**CVA (General) Regulation,**  
section 1.

**Legal proceedings** means any of the following criminal proceedings related to an offence that are held or conducted in BC:

- a preliminary inquiry;
- a trial;
- a sentence hearing or review;
- an appeal hearing;
- a parole hearing;
- a hearing of the review board established for BC under section 672.38 of the Criminal Code.

Civil proceedings are not included.

**CVAA,** section 1(1).

**Legal representative** means a person who has the legal authority to act on behalf of a victim, an immediate family member, or a witness in relation to a matter that is the subject of an application under section 3(1) of the act or an award of a benefit under this act.

**Living independently,** in relation to a victim who is a minor, generally means that the minor does not reside with a parent/guardian and does not rely on a parent/guardian for the necessities of life. There may be some exceptions, for example, where the minor resides with a parent but is financially self-supporting.

**Long-term disability** means a physical or mental **disability** that has stabilized and is likely to be permanent, or that has not stabilized but is likely to last at least two years.

**Long-term loss of employability** means a reduction in the victim's physical or mental capability for employment, resulting from the victim's injury, that:

- has stabilized and its effects on the victim's employability are likely to be permanent; or
- has not stabilized but has affected, or is likely to affect, the victim's employability for at least two years.

**CVA (Income Support and Vocational Services or Expenses Benefits) Regulation,** section 1(1).

**Lost earning capacity benefit** means an amount calculated hourly that is equal to the higher minimum wage under the Employment Standards Act at the time the benefit is awarded, up to a maximum of 40 hours a week.



**Medical consultant** refers to the physician contracted by the Crime Victim Assistance Program to provide opinions and recommendations on the eligibility of medical services and expenses, prescription drug expenses, and other services and expenses related to health care.

**Medical practitioner** means a person registered to practise medicine or osteopathic medicine under the Medical Practitioners Act.

**Medical rehabilitation** means the provision of specialized health care on a daily or regular basis to claimants with disabilities whose care requirements include, but are more complex than, personal care.

**Medical service provider** refers to a service provider who provides any of the types of medical services referred to under the medical services or expenses benefit category. It includes medical practitioners and health professionals, and may include other persons providing medical services.

**Medical services** include assessment, diagnosis, management, or care of a person's injury by a medical practitioner, health professional, or other authorized service provider.

**Minimum wage** means the higher of the two minimum hourly wages set out in the Employment Standards Act (i.e., not the hourly wage for employees with little or no paid employment experience, commonly known as the training wage).

**Minor** refers to a person under the age of majority, which, in BC, means a person under 19 years of age.

**Minor child** means a child of the victim who is under 19 years of age. See also **child of the victim**.

**New information** refers to information that was not available or provided to the Crime Victim Assistance Program at the time of the **original decision**.

**Offence** is used throughout the policy as meaning either a **prescribed offence** or a **Good Samaritan** event (i.e., reflecting the provisions of section 3(1)(a) of the act), except where "offence" refers specifically to an offence under section 19 of the act.

**Original decision**, for the purpose of the reassessment and reconsideration sections of this manual (**section C-11** and **section C-12**), means the decision that is the subject of review—that is open to review, is being reviewed, or has been reviewed. It is not necessarily the first decision on a claim.



An **overpayment** is declared when the amount of a benefit provided to a claimant exceeds the amount for which the claimant was eligible because of:

- an administrative error;
- a decisional error based on fraud or misrepresentation by the claimant;
- a decisional error with respect to the statutory authority of the Crime Victim Assistance Program.

CVAA, section 1(1).

**Parent of the victim** includes a person who, at the time of the offence, was:

- a biological or an adoptive parent of the victim;
- a step parent of the victim; or
- standing in the place of a parent of the victim (whether the victim was a child or an adult).

**Periodic payments** are a series of regularly occurring payments, generally on a monthly basis, such as payments for income support and lost earning capacity benefits.

**Perpetrator** means the person who committed the offence, whether or not that person has been identified. Where the perpetrator has been identified, it means the suspect, accused, or offender.

**Person in the claimant's household** means a person who lives in the same home as the claimant and shares family or household responsibilities with the claimant.

CVA (General) Regulation, section 16(1).

**Personal care** means assisting a person with bathing, dressing, toileting, and other daily care tasks.

**Personal property**, for the purpose of the benefit to repair or replace damaged or destroyed personal property, means eyeglasses or contacts, clothing, or specified types of disability aids that were being used by the victim at the time of the offence.

CVAA, section 6(1)(f).

**Police force**, as used in the act, is defined under section 1.1 of the Police Act, which provides that the following are police forces in BC: the provincial police force; a municipal police department; and, if prescribed by the minister as a police force, a designated policing unit.

**Pre-existing condition** means a physical or psychological/mental condition that affected the claimant prior to the injury from the offence.

**Prescribed offence** means an offence under the Criminal Code prescribed for the purposes of section 3(1)(a)(i) of the act, and set out in schedule 1 of the Crime Victim Assistance (General) Regulation.

**CVAA**, section 1(1); **CVA (General) Regulation**, sections 1 and 4, and schedule 1.

**Prescription** means an authorization from a person authorized to practice medicine, dentistry, or podiatry to dispense a specified drug or device for use by a designated individual.<sup>36</sup>

**Psychiatric services** include a variety of measures—psychotherapeutic, social, physical, and pharmacological—used to relieve, ameliorate, or prevent the appearance of psychiatric disorder (as recognized by either the International Classification of Diseases or the American Psychiatric Association Diagnostic and Statistical Manual).<sup>37</sup> For the purpose of crime victim assistance benefits, psychiatric services provided as medical services are distinguished from counselling services (see **section D-6** of this manual).

**Psycho-educational session** refers to a **session** with a counsellor that involves a person in the victim's life (e.g., a parent, spouse, or other relative, close friend, caregiver, teacher), with the purpose of helping that person understand the impact of the offence on the victim and how to support the victim in his or her psychological recovery. A psycho-educational session may involve more than one support person, but may not involve the perpetrator. The victim may or may not attend a psycho-educational session.

**Psychological consultant** refers to a psychologist requested by the Crime Victim Assistance Program to provide opinions and recommendations on the eligibility of services and expenses related to mental health.

**Psychological harm** means a psychological condition that interferes with the health or comfort of a person and is more than merely transient or trifling in nature.

**CVAA**, section 1(1).

**Psychological injury** has the same meaning as **psychological harm**.

**Psychologically traumatized** means psychologically harmed to the extent that fear of re-victimization is significantly jeopardizing psychological recovery or is restricting day-to-day activities so that it is impossible to lead a normal life.

<sup>36</sup> As above (footnote 2).

<sup>37</sup> Adapted from "Insurability of the Psychiatrically Ill or Those with a Past History of Psychiatric Disorder: The Position of the Canadian Psychiatric Association" by P.C.S. Hoaken and S.K. Sishta, 1988.

CVAA, section 1(1).

**Public service employee** means an employee as defined in section 1 of the Public Service Act.

**Real and substantial risk** means a risk that is substantiated by objective means (e.g., police report, risk assessment), not merely the claimant's apprehension of risk.

**Reassessment** means review of a claimant's eligibility for a benefit or benefits, usually because **new information** is received that appears to affect the claimant's eligibility. A reassessment is generally conducted by the adjudicator who made the **original decision**. It is not intended to challenge the appropriateness of the decision, but recognizes that the impact of an injury or other circumstances may change over time, or that all relevant information may not have been available at the time of the decision.

**Recipient** is sometimes used to identify a person who has received or been awarded a benefit under the Crime Victim Assistance Act. More commonly, this person would be called a **claimant** throughout his or her involvement with the Crime Victim Assistance Program.

**Reconsideration** means review of a decision by another decision maker to determine whether there was an error in the decision. Information that was not available at the time of the **original decision** cannot be considered in this review process.

**Reconsideration adjudicator** means a person assigned to conduct a reconsideration under the Crime Victim Assistance Act. A reconsideration adjudicator cannot be a person who participated in the original decision.

**CVA (General) Regulation**, sections 18(1), 23(1), and 31(1).

**Related expenses**, within the context of "transportation and related expenses," means the costs of meals and accommodation incurred by the claimant in conjunction with transportation undertaken by the claimant.

**Rental security deposit** generally means the same thing as a "damage deposit" for rental accommodation—a deposit paid by the tenant to the landlord to cover damage to the premises beyond that expected from normal use. If no such damage occurs, the deposit is to be returned to the tenant when the tenant moves out. Specific definitions can be found in BC's Residential Tenancy Act and similar legislation of other jurisdictions (where applicable). For the purpose of this policy, a rental security deposit does not include co-op shares or rent-to-own payments.

**Residing in a care facility** means residing in, and receiving care from, a hospital, a long-term care facility, an assisted living

facility, or other similar facility, generally on a permanent or long-term basis. It is not intended to cover short stays in a hospital or treatment facility that a claimant might have to undergo for the purpose of surgery or other treatment.

**Restitution** means that the offender is ordered by the court to reimburse some or all of the monetary costs that resulted from the crime.

**Retired** means that a person has permanently left the paid workforce.

A **session**, in relation to a counselling session or a psycho-educational session, is one hour. Generally, only one session is taken at a time. If the circumstances require more than one hour of counselling on a particular occasion, taking combined sessions may be approved.

**Settlement** – see the definition of **judgment**.

**Sexual assault**, for the purpose of section 3(4)(b) of the Crime Victim Assistance Act, has the same meaning as **sexual offence**.

**Sexual misconduct**, for the purpose of section 3(4)(a) of the Crime Victim Assistance Act, has the same meaning as **sexual offence**.

**Sexual offence** includes an offence under any of the following sections of the **Criminal Code**: 151, 152, 153, 153.1, 155, 163.1, and 170 (see part V); 212 (see part VII); 271, 272, 273, and 273.3 (see part VIII).

**Short-term loss of employability** means a temporary reduction in the victim's physical or mental capability for employment, resulting from the victim's injury, which lasts less than two years.

The **sibling of the victim** category includes:

- a sibling of the victim, which means a brother or sister of the victim and includes a biological or an adoptive brother or sister;
- a step sibling of the victim, which is a sibling by marriage or marriage-like relationship of the parents;
- a half sibling of the victim, which is a sibling with only one common birth or adoptive parent.

It also includes a person who has or had a sibling-like relationship with the victim.

CVAA, sections 1(1) and 1(2).

**Spouse of the victim** includes a person who, at the time of the offence, was:

- married to the victim; or
- living and cohabiting with the victim in a marriage-like relationship.

It also includes a person recognized by the director as a spouse of the victim because that person, at the time of the victim's death or injury, was:

- qualified as a spouse of the victim under an enactment of BC or Canada to apply for maintenance or support from the victim; or
- entitled to maintenance, support, or alimony from the victim under an order or agreement enforceable under such an enactment.

**Step sibling of the victim** – see the definition of **sibling of the victim**.

**Transitional claim** means a claim that was made under the former act, the Criminal Injury Compensation Act, and is now being administered under the Crime Victim Assistance Act.

**Unemployable** means physically or mental incapable of being employed or self-employed. However, it is not intended to include minors who are unemployable solely because of age.

Since being **employable** includes the ability to maintain employment, a person may be deemed unemployable if he or she is clearly unable to maintain employment (for reasons other than labour market or economic conditions). This may be demonstrated, for example, by a significant history of unemployment because of health or social problems.

**Vehicle** means a motor vehicle only.

**Vehicle acquisition** means the purchase or lease of a motor vehicle in a state that is ready for use by the claimant. This includes modification of a purchased or leased vehicle to meet the disability-related needs of the claimant.

**Vehicle modification** means adaptation of the claimant's vehicle to enable the claimant to drive it or be transported in it.

CVAA, section 1(1).

**Victim** means a person, other than a witness, who is killed or injured as a direct result of:

- a prescribed offence, or
- an event referred to in section 3(1)(a)(ii) of the act.

See also **injury**, **prescribed offence**, and **Good Samaritan**.

***Victim's proposed residence***, for the purpose of the home modifications benefit, means the place where the victim is planning to reside. In other respects, it has the same meaning as **victim's residence**.

***Victim's residence***, for the purpose of the home modifications benefit, means the place where the victim currently resides. It usually refers to the victim's principal place of residence but may also refer to a secondary residence where the victim spends time on a regular basis (e.g., the residence of a family member or close friend). It may be a residence rented or owned by the victim or another person, but it does not include a care facility.

***Victim's vehicle***, for the purpose of the vehicle modification or acquisition benefit, means a **vehicle** that is owned by the victim, or a vehicle that is owned by another person but is primarily used by the claimant.

***Vocational rehabilitation consultant*** means a person contracted by the Crime Victim Assistance Program to provide opinions and recommendations on the eligibility of vocational services and expenses.

***Witness*** means a person who satisfies the requirements of section 3(1)(c) of the act. To be eligible for benefits, a claimant applying as a witness must:

**CVAA**, sections 1(1) and 3(1)(c).

- have a strong emotional attachment to the victim (but not necessarily be related to the victim);
- have witnessed in close proximity a prescribed offence that caused a life-threatening injury to, or the death of, the victim, or the immediate aftermath of a prescribed offence that caused the death of the victim;
  - in circumstances that were sufficient to alarm, shock, and frighten a reasonable person with that emotional attachment to the victim; and
- suffer psychological harm that is diagnosed, by a registered psychologist or a medical practitioner, as a recognized psychological or psychiatric condition and that, in the opinion of the person who makes the diagnosis, is a result of being a witness to the offence.

## SECTION E-2. CRIME VICTIM ASSISTANCE ACT

This section provides the text of the Crime Victim Assistance Act [SBC 2001] Chapter 38, assented to on August 27, 2001.

For the web version with a hyperlinked table of contents, go to:  
[www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_01038\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_01038_01).

### Part 1 — Interpretation and Application of Act

#### Definitions and interpretation

**1** (1) In this Act:

**“adult”** means a person who has reached 19 years of age;

**“applicant”** means a person who makes an application under section 3 (1);

**“benefit”** means a benefit in a category set out in section 4;

**“director”** means the director designated under section 18;

**“former Act”** means the *Criminal Injury Compensation Act*, R.S.B.C. 1996, c. 85;

**“immediate family member”** means a person who, at the time of the prescribed offence or the event that resulted in the death or injury of a victim, was

(a) a spouse, child, sibling, step sibling, half sibling or parent of the victim, and, for this purpose,

(i) **“spouse”** means a person who

(A) is married to the victim,

(B) is living and cohabiting with the victim in a marriage-like relationship, or

(C) is recognized under subsection (2) as the spouse of the victim,

(ii) **“child”** includes

(A) a child to whom the victim stands in the place of a parent,

(B) a person recognized under subsection (2) as the child of the victim,

(C) a child of the victim born after the death of the victim, or

(D) an adult to whom the victim stood in the place of a parent when the adult was a child, and

(iii) **"parent"** includes

(A) a person who stands in the place of a parent to the victim, or

(B) a person who stood in the place of a parent to the victim when the victim was a child, or

(b) if dependent in whole or in part on the victim for financial support, a grandparent or grandchild of the victim;

**"injury"** means bodily harm, including psychological harm, or pregnancy;

**"legal representative"** means a person who has the legal authority to act on behalf of a victim, an immediate family member or a witness in relation to a matter that is the subject of an application under section 3 (1) or an award of a benefit under this Act;

**"prescribed offence"** means an offence under the *Criminal Code* prescribed for the purposes of section 3 (1) (a) (i);

**"psychological harm"** means a psychological condition that

(a) interferes with the health or comfort of a person, and

(b) is more than merely transient or trifling in nature;

**"public service employee"** means an employee as defined in section 1 of the *Public Service Act*;

**"victim"** means a person, other than a witness, who is killed or injured as a direct result of

(a) a prescribed offence, or

(b) an event referred to in section 3 (1) (a) (ii);

**"witness"** means a person who satisfies the requirements of section 3 (1) (c).

(2) The director may recognize a person as the spouse or child of a victim for the purposes of this Act if, at the time of the death or injury of the victim, the person

(a) was qualified as a spouse or child of the victim under an enactment of British Columbia or Canada to apply for maintenance or support from the victim, or

(b) was entitled to maintenance, support or alimony from the victim under an order or agreement enforceable under such an enactment.

## Application of Act

**2** This Act does not apply with respect to

(a) the death or injury of a victim that is the result of

(i) an offence or event that occurred on or before July 1, 1972, or

(ii) the operation of a motor vehicle, other than an assault using a motor vehicle, or

(b) the death or injury of a person that arises out of, and occurs in the course of, that person's employment, if compensation



under the *Workers Compensation Act*, the *Government Employees Compensation Act* (Canada) or a similar Act in another jurisdiction is payable with respect to the death or injury.

## Part 2 — Benefits

### Application for benefits

**3** (1) The following persons may apply to the director for a benefit in accordance with the regulations:

- (a) a person who is injured as a direct result of
  - (i) a prescribed offence committed in British Columbia, or
  - (ii) an event in British Columbia in which the person was
    - (A) lawfully arresting or attempting to arrest a person, or assisting or attempting to assist a peace officer to arrest a person, in respect of a criminal offence, or
    - (B) lawfully preventing or attempting to prevent an offence, or a suspected offence, under the *Criminal Code* or assisting or attempting to assist a peace officer to do so;
- (b) an immediate family member who
  - (i) experiences economic loss or psychological harm as a result of the death or injury of a victim, or
  - (ii) is a minor child of a deceased victim;
- (c) a person who, although not necessarily related to a victim, has a strong emotional attachment to the victim, and who
  - (i) witnesses in close proximity
    - (A) a prescribed offence that causes a life threatening injury to, or the death of, the victim, or
    - (B) the immediate aftermath of a prescribed offence that causes the death of the victim,in circumstances that are sufficient to alarm, shock and frighten a reasonable person with that emotional attachment to the victim, and
  - (ii) suffers psychological harm that
    - (A) is diagnosed by a registered psychologist or a medical practitioner as a recognized psychological or psychiatric condition, and
    - (B) in the opinion of the person who makes the diagnosis, is a result of the circumstances in subparagraph (i);
- (d) on behalf of a person referred to in paragraphs (a) to (c),
  - (i) a legal representative, or
  - (ii) if the person does not have a legal representative and is physically or mentally incapable of making the application, an immediate family member.

(2) An application under subsection (1) must be made within one year from the date of the prescribed offence or the event to which it relates.

(3) If the victim, immediate family member or witness is a person who has not reached 19 years of age, the time limit under subsection (2) is extended until the date that is one year after the date the person reaches 19 years of age.

(4) Subsection (2) does not apply to a victim if the application relates to a prescribed offence and that offence

(a) is based on sexual misconduct that occurred while the victim was under 19 years of age, or

(b) is or includes a sexual assault.

(5) The director may extend the time limit for making an application if satisfied that the application could not reasonably have been made within the period specified under subsection (2) or (3).

(6) In the case of an applicant who makes one or more applications that relate to 2 or more prescribed offences, the director may treat 2 or more prescribed offences as one prescribed offence if the offences are, in the opinion of the director, related, connected or of a similar nature and involve the same persons.

### **Award of benefits**

**4** (1) Subject to the regulations, if an application for a benefit is made under section 3 (1) by or on behalf of a victim whose need for the benefit arose as a result of the prescribed offence or the event that resulted in the victim's injury, the director may award a benefit to that victim, in the circumstances and subject to the conditions and limitations that the director considers appropriate, in any of the following categories:

- (a) medical or dental services or expenses;
- (b) prescription drug expenses;
- (c) disability aids;
- (d) counselling services or expenses;
- (e) vocational services or expenses;
- (f) protective measures, services or expenses;
- (g) repair or replacement of damaged or destroyed personal property;
- (h) home modification, maintenance or moving expenses;
- (i) vehicle modification or acquisition;
- (j) homemaker, childcare or personal care services or expenses;
- (k) maintenance for a child born as a result of the prescribed offence;
- (l) income support;
- (m) lost earning capacity;

- (n) transportation and related expenses;
- (o) a prescribed category.

(2) Subject to the regulations, if an application for a benefit is made under section 3 (1) by or on behalf of an immediate family member whose need for the benefit arose as a result of the death or injury of the victim, the director may award a benefit to that immediate family member, in the circumstances and subject to the conditions and limitations that the director considers appropriate, in any of the following categories:

- (a) counselling services or expenses;
- (b) prescription drug expenses;
- (c) vocational services or expenses;
- (d) funeral expenses;
- (e) income support;
- (f) transportation and related expenses;
- (g) loss of parental guidance for a minor child;
- (h) earnings loss due to bereavement leave;
- (i) a prescribed category.

(3) Subject to the regulations, if an application for a benefit is made under section 3 (1) by or on behalf of a witness, the director may award a benefit to the witness, in the circumstances and subject to the conditions and limitations that the director considers appropriate, in any of the following categories:

- (a) counselling services or expenses;
- (b) prescription drug expenses;
- (c) transportation and related expenses;
- (d) a prescribed category.

(4) The director may reimburse a victim, an immediate family member or a witness for expenses that, before the director's decision is made in respect of an application, were reasonably and necessarily incurred to obtain an item or service that the victim, immediate family member or witness is awarded as a benefit under subsection (1), (2) or (3).

(5) If a benefit referred to in subsection (1) (k) is awarded to a victim, the director may provide that benefit to the legal guardian of the child on the death of the victim and on the request of that legal guardian.

(6) If the director provides a benefit to a guardian under subsection (5), that guardian is deemed to have the rights and responsibilities under this Act of a victim who made an application under section 3 (1) for a benefit referred to in subsection (1) (k).

(7) The director may provide a benefit

- (a) as a lump sum payment,
- (b) as periodic payments,

- (c) by commuting all or part of a lump sum payment into periodic payments,
- (d) by commuting all or part of periodic payments to one or more lump sum payments,
- (e) as a product or as a service, or
- (f) by a combination of methods described in paragraphs (a) to (e).

(8) The director may postpone a decision with respect to an application under section 3 (1)

- (a) until an applicant or a person for whom an application has been made under section 3 (1) has applied for compensation, an amount or a service from a source other than under this Act, for which the victim, immediate family member or witness is or may be eligible as a result of the death or injury of the victim, or
- (b) until the rights of the victim, immediate family member or witness in relation to an application referred to in paragraph (a) are determined and no appeal or further appeal is available from that determination.

### **Criminal law matters respecting the death or injury**

**5** (1) A benefit may be awarded whether or not any person is prosecuted for an offence in relation to the victim's death or injury.

(2) For the purposes of this Act, a person is deemed to have intended an act or omission that causes a death or injury whether or not the person is legally capable of forming intent.

(3) The director may postpone a decision with respect to an application under section 3 (1) until a prosecution or intended prosecution of an accused in relation to the death or injury of the victim is determined and no appeal or further appeal is available.

(4) For the purposes of this Act, proof that a person has been convicted, discharged under section 730 of the *Criminal Code* or found to be not criminally responsible on account of mental disorder for an offence in relation to the victim's death or injury, and that no appeal or further appeal of that verdict is available, is conclusive evidence that the offence was committed.

### **Information and verification**

**6** (1) For the purposes of determining whether a victim, an immediate family member or a witness is eligible for a benefit and, if so, its form, amount or duration, the director may do one or more of the following:

- (a) require the applicant to provide the director with the information, documents, statements, reports, books, papers or other evidence the director considers necessary;
- (b) require the applicant to disclose to the director any amounts that the victim, immediate family member or witness has

received, may be eligible to receive or would have been eligible to receive from a source other than under this Act;

(c) require the victim, immediate family member or witness to undergo an examination or assessment by a medical practitioner, a health professional or another expert specified by the director;

(d) require a medical practitioner, a health professional, an expert or another person to provide a report or information, if authorized by or on behalf of the individual to whom the report or information relates;

(e) seek verification of information provided by the applicant and require the applicant to provide the information or consent necessary for that verification;

(f) require a police force referred to in section 1.1 of the Police Act to provide copies of, or access to, a police incident report or a report to Crown counsel related to the prescribed offence or the event that caused the death or injury of the victim.

(2) A medical practitioner, a health professional, an expert or another person must provide the report required by the director in the form and within the time specified by the director.

(3) The director may accept and consider any evidence provided or obtained under subsection (1) or other evidence that the director considers may be of assistance, whether or not it would be admissible as evidence in a court of law.

(4) If an applicant fails to comply with a requirement under subsection (1) (a), (b) or (e), or if a victim, an immediate family member or a witness fails to comply with a requirement under subsection (1) (c), the director may declare that the victim, immediate family member or witness by or for whom the application under section 3 (1) was made is ineligible for any benefit until the requirement is satisfied.

### **Powers of director**

**6.1** (1) For the purposes of making a decision under this Act, the director, by summons, may require a person

(a) to attend at a place and time mentioned in the summons, which time must be a reasonable time from the date of the summons,

(b) to provide the director with all documents, statements, reports, books, papers or other evidence in the person's possession, custody or power in any way relating to the application, or

(c) to comply with both paragraphs (a) and (b).

(2) A person named in and served with a summons referred to in subsection (1)

(a) must comply with the summons, and

(b) if the summons requires the person to attend under subsection (1) (a), must attend before the director and answer on oath, unless the director orders otherwise, all questions relating to the subject matter of the application.

(3) When the director exercises a power under subsection (1), a person who fails or refuses to comply with subsection (2) is liable, on application to the Supreme Court, to be committed for contempt as if in breach of an order or a judgment of the Supreme Court.

### **Interim benefit**

**7** (1) Despite section 4 (1), (2) or (3), but subject to the regulations, the director may provide a benefit or a part of a benefit on an interim basis in the circumstances and subject to the conditions and limitations that the director considers appropriate if satisfied that

- (a) the applicant is making reasonable efforts to ensure that anything required by the director under section 6 (1) is provided,
- (b) the victim, immediate family member or witness is likely to be awarded the benefit, and
- (c) the victim, immediate family member or witness will suffer hardship if there is a delay in providing all or part of the benefit.

(2) [Repealed 2002-52-6.]

(3) A request for a reconsideration under section 13 (1) may not be made with respect to a decision under subsection (1).

### **Assignments of amounts owing under judgment or settlement**

**8** (1) In this section, “**judgment**” or “**settlement**” means

- (a) a judgment in or a settlement of a legal action taken by a victim, an immediate family member, a witness or a legal representative against a person for damages arising out of the prescribed offence or event that resulted in the death or injury of the victim, or
- (b) an amount ordered under section 738 of the *Criminal Code* to be paid to the victim as restitution with respect to the injury to the victim or damage to the victim’s personal property as a result of the prescribed offence or event that resulted in the victim’s injury.

(2) Before or after providing a benefit, the director may require that the victim, immediate family member, witness or legal representative assign to the director in a manner satisfactory to the director all or part of any right of the victim, immediate family member or witness

- (a) to receive payment of an amount owing under a judgment or settlement, or
- (b) to enforce a judgment or settlement

whether the judgment is given or filed, or the settlement agreed to, before or after the making of the assignment.

(3) The amount that may be recovered under an assignment referred to in subsection (2)

(a) with respect to a judgment that identifies the amount of damages or restitution in different categories, is the cost or value of benefits provided that have the same or similar purposes as the categories of damages or restitution identified, or

(b) with respect to a settlement or judgment that provides a global assessment of damages, is the cost or value of the benefits provided.

### **Refusal or reduction of benefits**

**9** (1) The director must not award a benefit

(a) to a victim or an immediate family member if the victim is a party to the prescribed offence, or

(b) to an immediate family member or a witness if the immediate family member or witness is a party to the prescribed offence.

(2) Subject to the regulations, the director may refuse to provide or may reduce the amount of, limit, suspend or terminate a benefit

(a) if an applicant or a person for whom an application is made refuses or fails to apply for compensation or for an amount or a service from a source other than under this Act for which the victim, immediate family member or witness is or may be eligible or would have been eligible as a result of the death or injury of a victim,

(b) if, in the opinion of the director, the conduct of the victim, immediate family member or witness directly or indirectly contributed to the victim's death or injury, or

(c) if, in the opinion of the director, the recipient of the benefit engages in conduct or an activity that

(i) is detrimental to the recipient's health or safety,

(ii) undermines the purpose of the benefit, or

(iii) is contrary to a condition imposed on the receipt of the benefit.

(3) Subject to the regulations, the director may refuse to provide or may reduce the amount of, limit, suspend or terminate a benefit awarded to

(a) the victim if the victim did not make a report to the appropriate law enforcement authority respecting the prescribed offence or the event that resulted in the injury, or

(b) the victim, an immediate family member or a witness if

(i) that victim,

(ii) that immediate family member, or

(iii) that witness

has not cooperated with law enforcement authorities in the investigation, apprehension or prosecution of a person whose act or omission resulted in the victim's death or injury.

- (4) In determining the benefit to be awarded to a victim, an immediate family member or a witness, the director must deduct
- (a) an amount received under a judgment or settlement defined in section 8 (1),
  - (b) a payment received from a restitution or compensation order related to the prescribed offence or to the event that resulted in the victim's death or injury, and
  - (c) compensation or an amount or a service that the victim, immediate family member or witness has received, or is or may be eligible or would have been eligible to receive, from a source other than under this Act for the same or a similar purpose for which the benefit is to be provided.
- (5) If a recipient of a benefit has received or is or may be eligible or would have been eligible to receive compensation or an amount or a service from a source other than under this Act for the same or a similar purpose for which the benefit was provided,
- (a) the recipient must, on the request of the director, repay all or a portion of the value of the benefit, up to the amount received from the other source or for which the recipient was eligible or would have been eligible to receive from the other source, or
  - (b) the director may deduct from any future benefit to be provided to the recipient the amount received from the other source or for which the recipient was eligible or would have been eligible to receive from the other source up to the amount of the benefit provided.

### **Payment of benefits to legal representative**

- 10** (1) If the director awards a benefit to an adult for whom a legal representative made an application, any benefit provided as a payment must be paid in trust for the adult to that legal representative.
- (2) If the director has concerns at any time about the ability of a person to manage a benefit provided as a payment, the director may pay the amount of the benefit to the Public Guardian and Trustee in trust for the victim, immediate family member or witness to or for whom the benefit was awarded.

### **Notice of decision**

- 11** (1) The director must deliver to the applicant written notice of
- (a) any decision for which a request for a reconsideration may be made under section 13 (1),
  - (b) the reasons for that decision, and



(c) the applicant's right under section 13 (1) to request that the director reconsider the decision.

(2) Subsection (1) does not apply with respect to a decision under section 7 about whether to provide a benefit on an interim basis.

### **Information and reassessment**

**12** (1) A person receiving a benefit or the applicant for that person must, in writing, notify the director as soon as practicable, if the person's circumstances have changed in a manner that affects or may affect the person's eligibility for the benefit.

(2) An applicant, or a person for whom an application has been made under section 3 (1), may at any time

(a) provide the director with new information that may affect the eligibility for a benefit, and

(b) after providing the new information under paragraph (a), request a reassessment of the eligibility for the benefit of the person by or for whom the application was made.

(3) On the director's own initiative or on receipt of information, the director may reassess a person's eligibility for a benefit.

(4) Subject to the regulations, the director may do any of the following on the basis of the reassessment:

(a) provide, refuse to provide, suspend or terminate the provision of a benefit;

(b) limit, increase or decrease a benefit;

(c) alter the amount, duration, nature, content or form of the benefit;

(d) impose or modify conditions for receipt of the benefit or any other benefit being provided.

(5) The director must notify an applicant, or a person for whom an application has been made under section 3 (1), in writing of the result of the reassessment.

## **Part 3 — Reconsideration**

### **Request for reconsideration**

**13** (1) A victim, an immediate family member, a witness or a person referred to in section 3 (1) (d) may request the director to reconsider any of the following decisions:

(a) refusing to

(i) allow the exemption described in section 3 (4) from the time for application under section 3 (2), or

(ii) extend the time for application under section 3 (5);

(b) refusing to award, provide, limit, suspend or terminate a benefit;

- (c) setting or altering the amount, duration, nature, content or form of a benefit awarded;
- (d) a decision made under section 9;
- (e) refusing to conduct a reassessment under section 12;
- (e.1) varying or rescinding a decision of the director under section 12 (4);
- (f) determining the amount a person is liable to repay under section 23 (1).

(2) A request under subsection (1) must

- (a) be in writing,
- (b) be delivered to the director within 60 days from the date that notice of the decision was delivered under section 11, and
- (c) identify
  - (i) the decision to be reconsidered, and
  - (ii) the error the person who makes the request believes was made in coming to the decision.

(3) The director may extend the time limit for making the request if satisfied on application that a request for a reconsideration could not reasonably have been delivered within the period specified in subsection (2) (b).

(4) If a person does not request a reconsideration within the time limit provided in subsection (2) (b) or, if an extension has been granted under subsection (3), within the time limit under that subsection,

- (a) the applicant is deemed to have accepted the decision, and
- (b) subject to section 12, the decision is final and conclusive and is not open to review in a court or to appeal to any body.

### **Conduct of reconsideration**

**14** (1) On receiving a request for reconsideration in accordance with section 13, the director must do one of the following:

- (a) if the director did not make the decision that is to be reconsidered, reconsider the decision;
- (b) delegate the reconsideration to one or more persons who did not participate in the decision to be reconsidered.

(2) A person reconsidering a decision must consider only the material that was considered in making that decision and that person may

- (a) confirm the decision,
- (b) vary or rescind the decision, effective from the date of the decision, or
- (c) dismiss the request if he or she considers it to be frivolous or vexatious.

(3) The director must deliver to the person who requested the reconsideration written notice of

- (a) the decision made in response to the request, and
- (b) the reasons for that decision.

(4) [Repealed 2002-52-11.]

### **Judicial review**

**14.1** (1) Subject to section 12, a decision under section 14 (2) and a decision that is not permitted to be reconsidered under section 13 (1) are final and conclusive and are not open

- (a) to review in a court, except on a question of law or excess of jurisdiction, or
- (b) to appeal to any body.

(2) An application for judicial review on a question of law or excess of jurisdiction must be brought not later than 60 days after the decision is made that is the subject of the application.

## **Part 4 — Action for Damages**

### **Legal action by victim, immediate family member or witness**

**15** (1) If, after the date an application is made under section 3 (1) and before an action has been commenced under section 16 (1), a victim, an immediate family member, a witness or a legal representative commences an action against any person arising out of the prescribed offence or the event that resulted in the death or injury of the victim, a copy of the writ of summons must be delivered to the director within 10 days after the date that writ was served on the defendant in the action.

(2) Subject to section 16 (3), the amount that the victim, immediate family member or witness may claim as damages in an action referred to in subsection (1) of this section is not reduced by the cost or value of a benefit provided or that may be provided under this Act.

(3) A settlement or release in respect of an action referred to in subsection (1) of this section that is made or given after the date a benefit is provided to or for the victim, immediate family member or witness in respect of whom the action was commenced does not bar the right of the director under section 16 (1) unless the director concurred in the settlement or release.

### **Legal action by the director**

**16** (1) The director may bring an action against any person arising out of the prescribed offence or the event that resulted in the death or injury of the victim in the name of the Director of Crime Victim Assistance if a benefit has been provided to or for the victim, immediate family member or witness, and

- (a) no action referred to in section 15 (1) has been commenced by that victim, immediate family member or witness, or
- (b) an action referred to in section 15 (1) has been commenced by the victim, immediate family member or witness and, without the concurrence of the director, a settlement was agreed to or a release was given in respect of the action after the date a benefit was provided under this Act.

(2) If the director commences an action under subsection (1), the director may claim and is deemed to be an assignee of, and is subrogated to, the rights of the victim, immediate family member or witness to damages in the action equal to the cost or value of the benefits provided, or that will be provided, under an award in the same or a similar category of benefits as the damages that may be claimed in the action.

(3) If the director commences an action under subsection (1), the amount that a victim, immediate family member or witness may claim in an action referred to in section 15 (1) that is commenced after the date that the director's action is commenced is reduced by the amount claimed by the director under subsection (2).

(4) If the director commences an action under subsection (1), the director must deliver to the victim, immediate family member, witness or legal representative a copy of the writ of summons within 10 days after it is served on the defendant in the action, and the victim, immediate family member, witness or legal representative must cooperate with the director as required in prosecuting the action.

(5) If a person fails to cooperate with the director as required under subsection (4), the director may suspend or rescind the decision with respect to the award, or reduce the award, to the victim, immediate family member or witness.

(6) If the director commences an action under this section, the court may award costs to the government.

### **Distribution of proceeds from an action**

**17** If the director brings an action referred to in section 16 (1), the amount recovered in the action from the defendant must be applied

- (a) first, to pay the costs of bringing the action, including the costs of execution,
- (b) second, to repayment of the amount claimed under section 16 (2), and
- (c) third, to the victim, immediate family member or witness.

## Part 5 — General Provisions

### Director

**18** (1) The minister may designate a public service employee as Director of Crime Victim Assistance.

(2) Subject to section 14 (1) (b), the director may delegate, with or without conditions, to any person, agency or body any power, duty or function of the director under this Act.

### Offences

**19** (1) A person must not make a false or misleading statement or provide false or misleading information in respect of an application or requirement to provide information under this Act.

(2) A person commits an offence who contravenes

- (a) subsection (1),
- (b) section 6 (2), or
- (c) section 12 (1).

(3) A person does not commit an offence under subsection (2) (a) if, at the time the statement was made or the information was provided, the person did not know, and with the exercise of reasonable diligence could not have known, that the statement or information was false or misleading.

(4) If a person is convicted of an offence under this section, in addition to a penalty that may be imposed under the *Offence Act*, the court may order the person to pay the government all or part of the cost of any benefit, including an interim benefit under section 7, the director provided to the person,

- (a) in the case of an offence under subsection (2) (a), in response to the application or the information, and
- (b) in the case of an offence under subsection (2) (b), from the date the person was required to report the change in circumstances.

### Other provisions relating to offences

**20** (1) Section 5 of the *Offence Act* does not apply in respect of this Act or the regulations.

(2) The time limit for laying an information respecting an offence under this Act is 2 years after the facts on which the information is based first come to the knowledge of the director.

(3) A certificate purporting to have been issued by the director certifying the day on which he or she became aware of the facts on which an information is based is admissible without proof of the signature or official character of the person appearing to have signed the document, and is proof of the certified facts unless there is evidence to the contrary.

## **No garnishment of benefit**

**21** (1) A benefit paid or payable under this Act is not subject to garnishment, attachment, seizure or another legal process except as authorized under the *Family Maintenance Enforcement Act*.

(2) A benefit paid or payable under this Act is not assignable except for the purpose of paying child or spousal maintenance or support.

## **Information-sharing agreements**

**22** (1) In this section, “**information-sharing agreement**” means an agreement or arrangement to exchange, by electronic data transmission, electronic data matching or any other means, personal information about a victim, immediate family member or witness.

(2) With the prior approval of the Lieutenant Governor in Council, the minister may enter into an information-sharing agreement with

- (a) the government of Canada or an agency of that government,
- (b) the government of a province or other jurisdiction in Canada or an agency of such a government,
- (c) a government outside Canada or an agency of a government outside Canada, or
- (d) a public body as defined in the *Freedom of Information and Protection of Privacy Act*.

(3) An information-sharing agreement under subsection (2) may only be entered into for a prescribed purpose.

(4) The Lieutenant Governor in Council may make regulations for the purposes of this section, including regulations

- (a) and (b) [Repealed 2002-52-15.]
- (c) prescribing purposes for the purpose of subsection (3), and
- (d) prescribing terms or conditions that must be included in an information-sharing agreement under subsection (2).

## **Powers of director**

**22.1** The director may

- (a) enter into agreements, assignments or arrangements for the purposes of this Act,
- (b) establish forms for use under this Act, and
- (c) subject to the regulations, establish a tariff of fees payable for information, assessments, examinations, documents and reports required under this Act.

## **Overpayments, repayments and assignments**

**23** (1) If under section 9, 12 or 14 a person is determined to have been entitled to benefits, the cost or value of which is less than the cost or value of benefits provided to the person, that person is liable

to repay to the government the cost or value of the benefits to which the person was not entitled, as determined by the director.

(1.1) Subsection (1) does not apply with respect to section 9, if the recipient of the benefits or the applicant for that person has requested a reassessment under section 12 or a reconsideration under section 13.

(2) Subject to the regulations, the director may enter into an agreement, or may accept any right assigned, for the repayment of benefits.

(3) An amount that a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) is a debt due to the government and may

- (a) be recovered by it in a court of competent jurisdiction, or
- (b) be deducted by it from any subsequent payment of a benefit.

### **Delivery**

**24** Anything that is delivered by mail under this Act is deemed to have been delivered on the 14th day after the date it is mailed.

### **Repealed**

**25** [Repealed 2002-52-18.]

### **Power to make regulations**

**26** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing offences under the *Criminal Code* for the purposes of section 3 (1) (a) (i);
- (b) prescribing additional categories of benefits;
- (c) prescribing health professionals or categories of health professionals and establishing different categories for different purposes;
- (d) respecting the eligibility of a victim, an immediate family member or a witness for a benefit category or an item of benefit and the manner in which applications are to be made;
- (e) respecting the amount, duration, frequency, nature, form, quality and type of a benefit or an item of benefit within each category of benefit;
- (f) respecting the conditions and limitations on receipt of a benefit or an item of benefit and the consequences for a person not complying with them;
- (g) respecting the alteration, increase, decrease, limiting, suspension and termination of benefits;

(h) respecting the establishment of different benefit categories or items of benefit, or benefits in different forms or amounts, among or within categories of victims, immediate family members, witnesses or applicants;

(i) respecting different eligibility requirements for different categories of victims, immediate family members, witnesses or applicants;

(j) respecting the means by which and the persons to whom benefits are to be provided;

(k) respecting the notification required and the circumstances under which notice is to be given to the director of a change in circumstances of a recipient of a benefit;

(l) respecting any particular circumstances that require the director to refuse, alter, increase, decrease, limit, suspend or terminate a benefit;

(m) respecting the reassessment and reconsideration of benefits and the manner of requesting or conducting a reassessment under section 12 or a reconsideration under section 14;

(n) respecting any power, duty or function of the director under this Act;

(o) defining any word or expression used but not defined in this Act.

(3) Regulations under subsections (1) and (2) may

(a) establish different eligibility requirements, different benefits or categories of benefits, different terms and conditions for receipt of benefits between the persons who applied under the former Act and applicants under this Act,

(b) prohibit applicants under this Act from receiving categories or items of benefit under this Act if they have received or are receiving categories or items of benefit under the former Act that are specified by the regulations, and

(c) adjust, limit, increase, decrease or alter the amount, duration or frequency of compensation awarded under the former Act, or terminate compensation.

(4) In making regulations under this section, the Lieutenant Governor in Council may do one or more of the following:

(a) delegate to the director any or all matters referred to in subsections (2) and (3), including a power to exercise control over any or those matters referred to in those subsections;

(b) confer a discretion on the director, another person or a class of persons;

(c) authorize the director, in circumstances that the director considers are exceptional, to vary a benefit or requirement set out in the regulations on the conditions set out in the regulations.



## Part 6 — Transitional and Consequential Provisions

### *Interpretation Act*

**27** Subject to sections 28 and 29 and any regulation made under section 26 (3) or 30 of this Act, sections 35 and 36 (1) of the *Interpretation Act* apply to all matters affected by the repeal of the former Act and its replacement by this Act.

### **Transitional**

**28** (1) In this section and section 29:

**“appeal committee”** means an appeal committee appointed under section 22 (2) of the former Act;

**“appeal division”** means the appeal division referred to in the former Act;

**“board”** means board as defined in the former Act;

**“final determination”** means a decision of the board that an applicant’s eligibility for compensation under the former Act has been determined under section 2 of that Act, whether all, part or none of the compensation awarded has been provided, and whether or not the compensation awarded continues to be provided;

**“former application”** means an application for compensation received by the board under the former Act before the date section 31 of this Act comes into force.

(2) If, on the date section 20 (6) of the former Act is repealed, the board under section 20 (6)

(a) has received a request to reopen, rehear or redetermine a matter, or

(b) is reopening, rehearing or redetermining a matter,

the board may continue to act under that section with respect to those matters.

(3) If, on the date section 22 (2) of the former Act is repealed, the appeal committee has made a decision to conduct a review under section 22 (2), the appeal committee may continue to act under that section with respect to that review.

(4) If, on the date section 22 (3) of the former Act is repealed,

(a) the appeal committee has received a request under section 22 (3) of the former Act, or

(b) a person is entitled to make a request under section 22 (3) of the former Act and subsequently the appeal committee receives the request within the period specified by section 22 (4) of the former Act,

the appeal committee may continue to act under section 22 of the former Act with respect to that request.

(5) If, on the date section 22 (5) of the former Act is repealed, the appeal division has received a request for a review under section 22 (5) of the former Act, the appeal division may continue to act under that section with respect to that request.

(6) If, on the date section 23 (3) of the former Act is repealed, the appeal division has received a direction from the chief appeal commissioner under section 23 (3) of the former Act, the appeal division may continue to act under that section with respect to the matter that was the subject of the direction.

(7) If the chief appeal commissioner makes a direction referred to in section 23 (3) (d) of the former Act, the direction has no effect unless the applicant to whom the direction applies has complied with the direction before the date section 23 (3) is repealed.

(8) The former Act continues to apply for the purposes of subsections (2) to (6).

### **Transfer of applications filed under the former Act**

**29** (1) The board must, as soon as practicable after this Act comes into force, make a final determination with respect to each former application.

(2) Subject to subsection (3) and the regulations under section 30, the former Act ceases to apply to a former application on the earlier of

- (a) the date the board makes a final determination with respect to that application, and
- (b) the repeal of the former Act.

(3) If a final decision is made under section 20 (6), 22 (2), (3) or (5) or 23 (3) of the former Act relating to a former application for which a final determination has been made by the board, the former Act ceases to apply to that application on the date the final decision is made.

(4) Subject to the regulations under sections 26 (3) and 30, on the date the former Act ceases to apply to a former application, subsections (5) to (9) of this section apply to that application.

(5) A former application is deemed to be an application under this Act, and the former application and compensation awarded under the former Act may be dealt with under this Act.

(6) Any compensation awarded under the former Act is deemed to be a benefit awarded under this Act.

(7) The person who made a former application is deemed to be an applicant under this Act.

(8) If an applicant under the former Act or the person for whom a former application was made has been determined to be a victim or an immediate family member under the former Act, this Act applies

as if the applicant or the person were a victim or an immediate family member under this Act.

(9) The director and any person, body or agency to whom the director has delegated his or her powers under this Act may perform all the powers and duties of the director under this Act with respect to a former application or compensation awarded under the former Act and, for purposes of sections 12 to 14, a decision under the former Act is deemed to be a decision under this Act.

### **Transitional regulations**

**30** Without limiting section 26 (1), the Lieutenant Governor in Council may make regulations respecting any matters that, in the opinion of the Lieutenant Governor in Council, are insufficiently provided for, or not provided for, in sections 27 to 29 and that are necessary for the orderly transition from the application of the former Act to its replacement by this Act.

### **Consequential Amendments**

*[Note: See Table of Legislative Changes for the status of these provisions.]*

<b>Section(s)</b>	<b>Affected Act</b>
31–32	<i>Criminal Injury Compensation Act</i>
33	<i>Freedom of Information and Protection of Privacy Act</i>
34	<i>Victims of Crime Act</i>
35	<i>Workers Compensation Act</i>

### **Commencement**

**36** This Act comes into force by regulation of the Lieutenant Governor in Council.

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## SECTION E-3. CRIME VICTIM ASSISTANCE (GENERAL) REGULATION

This section provides the text of the Crime Victim Assistance (General) Regulation, B.C. Reg. 161/2002, O.C. 519/2002.  
[Includes amendments up to B.C. Reg. 422/2008, April 3, 2009.]

For the web version with a hyperlinked table of contents, go to:  
[www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/10\\_161\\_2002](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/10_161_2002).

### Part 1 — Definitions, Prescribed Terms, Prescribed Offences and Prescribed Categories of Benefits

#### Definitions

**1** In this regulation:

**“Act”** means the *Crime Victim Assistance Act*;

**“economically reasonable”** means the most economical alternative that is appropriate in the circumstances;

**“eligible offence”** means a prescribed offence and includes, in the case of a victim or an immediate family member of a victim, an event that is described in section 3 (1) (a) (ii) of the Act;

**“legal proceedings”** means the following legal proceedings related to an eligible offence that are held or conducted in British Columbia:

- (a) a preliminary inquiry;
  - (b) a trial;
  - (c) a sentence hearing or review;
  - (d) an appeal hearing;
  - (e) a parole hearing;
  - (f) a hearing of the review board established for British Columbia under section 672.38 of the *Criminal Code*,
- but does not include civil proceedings;

**“prescribed offence”** means an offence set out in Schedule 1.

#### Health professionals prescribed

**2** The following persons are prescribed as health professionals for the purposes of the Act and this regulation:

- (a) Repealed. [B.C. Reg. 420/2008, App. s. 1.]
- (b) Repealed. [B.C. Reg. 421/2008, App. s. 1.]

- (c) Repealed. [B.C. Reg. 422/2008, App. s. 1.]
- (d) a podiatrist entitled to practise under the *Podiatrists Act*;
- (e) Repealed. [B.C. Reg. 232/2005, App. s. 1.]
- (f) an emergency medical assistant licensed under the *Health Emergency Act*;
- (g) a person entitled to practise as any of the following under the *Health Professions Act*:
  - (i) chiropractor;
  - (i.1) dental hygienist;
  - (ii) dental technician;
  - (ii.1) dentist;
  - (iii) denturist;
  - (iv) licensed practical nurse;
  - (v) massage therapist;
  - (vi) naturopathic physician;
  - (vii) occupational therapist;
  - (viii) optician;
  - (viii.1) optometrist;
  - (ix) physical therapist;
  - (x) psychologist;
  - (x.1) registered nurse;
  - (xi) registered psychiatric nurse;
  - (xii) traditional Chinese medicine practitioner;
  - (xiii) acupuncturist.

[am. B.C. Regs. 232/2005, App. s. 1; 420/2008, App., s. 1; 421/2008, App. s. 1; 422/2008, App. s. 1.]

### **Awarding of benefits**

#### **3** The director may award a benefit by

- (a) paying the person who has provided or is providing the benefit to a victim, immediate family member or witness, as the case may be,
- (b) reimbursing the victim, immediate family member or witness for expenses incurred by the victim, immediate family member or witness, as the case may be, in acquiring the benefit, if that expenditure is supported by evidence satisfactory to the director, or
- (c) directly providing the victim, immediate family member or witness with the benefit.

### **Prescribed offences**

#### **4** The offences under the *Criminal Code* listed in Schedule 1 are prescribed offences for the purpose of section 3 (1) (a) (i) of the Act.

### **Prescribed categories of benefits**

**5** (1) Crime scene cleaning is prescribed as an additional category of benefit under section 4 (1) (o), 4 (2) (i) and 4 (3) (d) of the Act.

(2) The following are prescribed as additional categories of benefit under section 4 (2) (i) of the Act:

- (a) childcare services or expenses;
- (b) homemaker services or expenses.

(3) Childcare services or expenses is prescribed as an additional category of benefit under section 4 (3) (d) of the Act.

### **Application for benefits**

**6** An application for benefits made under section 3 (1) of the Act must be in writing and in a form satisfactory to the director.

## **Part 2 — Victim's Benefits**

### **Medical services or expenses**

**7** (1) The director may award only the following types of benefits in the category of benefits described as medical services or expenses in section 4 (1) (a) of the Act:

- (a) diagnosis, treatment and care by a medical practitioner;
- (b) assessment, treatment and care by a health professional;
- (c) assessment, treatment and care by a person satisfactory to the director;
- (d) ambulance or emergency transportation;
- (e) health care services provided by or at a facility or institution satisfactory to the director;
- (f) equipment, devices, aids and supplies directly related to the diagnosis, assessment, treatment and care described in this subsection;
- (g) expenses directly related to diagnostic tools, tests and analysis respecting the diagnosis, assessment, treatment or care described in this section.

(2) The director may award a victim a benefit referred to in subsection (1), only if the director is satisfied that the benefit is necessary and reasonable and the cost of the providing the benefit is economically reasonable.

(3) If, as a result of a victim's injury from an eligible offence, the victim obtains medical services or prescription drugs outside of British Columbia, the maximum amount that the director may pay for

- (a) a type of medical service funded under the *Medicare Protection Act* is the amount payable under that Act for that type of medical service,

(b) a type of medical service funded under the *Hospital Insurance Act* is the amount payable under that Act for that type of medical service, and

(c) a prescription drug that is funded under the Pharmacare program operated by the Ministry of Health Services is the amount payable under that program for that type of prescription drug.

### **Dental services or expenses**

**8** (1) The director may award only the following types of benefits in the category of benefits described as dental services or expenses in section 4 (1) (a) of the Act:

(a) surgical or non-surgical dental diagnosis, assessment, treatment, or care by a dentist or health professional;

(b) design, construction, repair, alteration and fitting of a complete or partial denture, or dental appliances, equipment, aids, devices or supplies, by a dentist or health professional;

(c) expenses directly related to diagnostic tools and tests and analysis respecting the diagnosis, assessment, treatment, care or activity described in paragraphs (a) and (b).

(2) The director may award a victim a benefit referred to in subsection (1) only if the director is satisfied that the benefit is reasonable and necessary and the cost of providing the benefit is economically reasonable.

(3) In the case of a dental service referred to in subsection (1) that is performed by a dentist who is a general practitioner, the director may not pay more than the amount for that dental service set out in the "Fee guide for dental treatment services provided by general practitioners" published by the Association of Dental Surgeons of British Columbia and in effect at the time the dental service is provided.

(4) In the case of a dental service referred to in subsection (1) that is performed by a periodontist, the director may not pay more than the amount for that dental service set out in the "Specialist Fee Guide for Periodontics" published by the Association of Dental Surgeons of British Columbia and in effect at the time the dental service is provided.

### **Prescription drug expenses**

**9** Subject to section 7 (3), the director may award a victim a benefit referred to in section 4 (1) (b) of the Act only if

(a) the drugs are prescribed for the victim by a medical practitioner or a health professional authorized by law to prescribe those drugs, and



(b) the director is satisfied that the prescriptions drugs are necessary and reasonable and the cost of providing the benefit is economically reasonable.

### **Disability aids**

**10** (1) The director may award only the following types of benefits in the category of benefits described as disability aids in section 4 (1) (c) of the Act:

- (a) mobility aids;
- (b) communication aids;
- (c) vision aids;
- (d) specialized clothing to accommodate the disability of the victim;
- (e) prostheses and orthoses;
- (f) equipment, devices, appliances and supplies;
- (g) fittings, repairs, replacement and adjustment to the types of disability aids referred to in paragraphs (a) to (f).

(2) The director may award a victim a benefit referred to in subsection (1) only if the director is satisfied that the benefit

- (a) is reasonable and necessary to alleviate the effects of the injury from the eligible offence, help improve the quality of life of a victim and assist the victim in the activities of daily living, and
- (b) is economically reasonable.

### **Counselling services or expenses**

**11** (1) Subject to this section, the director may award a victim a benefit in the category of benefits described as counselling services and expenses in section 4 (1) (d) of the Act only if the director is satisfied that the counselling services or expenses are reasonable and necessary to assist the victim in his or her recovery from the psychological injury that resulted from an eligible offence.

(2) A benefit referred to in subsection (1) does not include the following:

- (a) stress management courses, self improvement seminars or self help books, tapes, audio or video displays or other similar materials;
- (b) counselling provided by a counsellor who does not have professional liability insurance that is satisfactory to the director;
- (c) counselling provided by a counsellor who has failed to provide to the director a criminal record check that is satisfactory to the director.

(3) The director may award a victim up to 48 one hour counselling sessions.

(4) If the victim was under 19 years old when he or she was injured as a result of an eligible offence, the director may award more than 48 counselling sessions to the victim if the director is satisfied that continued counselling is reasonable and necessary.

(5) For the purposes of subsection (6), counselling sessions means 4 one hour counselling sessions that

- (a) aid a person in understanding the impact of the commission of the eligible offence on a victim, and
- (b) discuss the methods of supporting a victim and helping a victim recover from this psychological injury.

(6) If the director considers that a victim may need help in developing or implementing a treatment plan to aid the victim in his or her recovery from the psychological injury caused by an eligible offence, the director may provide a benefit to a victim by paying for counselling sessions for a person who is willing and able to participate in the development or implementation of the treatment plan with the victim.

(7) The director may not pay, for a counselling session awarded under this section, more than the amount set out in Column 2 of Schedule 2 for that type of counselling session.

### **Protective measures, services or expenses**

**12** (1) The director may award only the following types of benefits in the category of benefits described as protective measures, services or expenses in section 4 (1) (f) of the Act:

- (a) the acquisition, rental, installation and maintenance of
  - (i) security devices, equipment and services, and
  - (ii) communication devices, equipment and services;
- (b) courses for personal protection or security;
- (c) one or more of the following relocation expenses:
  - (i) a relocation allowance of an amount determined under subsection (4);
  - (ii) actual moving expenses for the victim, his or her dependent children who reside with the victim and his or her household goods;
  - (iii) rental security deposit;
  - (iv) connection fees for telephone and utilities.

(2) The director may award a victim a benefit referred to in subsection (1) (a) or (b) if the director is satisfied

- (a) that the benefit is reasonable and necessary,
- (b) that
  - (i) there continues to be a real and substantial risk that the victim is likely to be harmed by the perpetrator or associates of the perpetrator of the eligible offence that caused the victim's injury, or

- (ii) the victim is so psychologically traumatized as a result of the eligible offence that the benefit is needed for his or her recovery, and
  - (c) that the provision of the benefit is economically reasonable.
- (3) The director may award a victim a benefit referred to in subsection (1) (c) if the director is satisfied that
  - (a) the benefit is reasonable and necessary,
  - (b) the benefits under subsection (1) (a) and (b) are not adequate in the circumstances,
  - (c) either of the following applies:
    - (i) there continues to be a real and substantial risk that the victim is likely to be harmed by the perpetrator or associates of the perpetrator of the eligible offence that caused the victim's injury, or
    - (ii) the victim is so psychologically traumatized as a result of the eligible offence that the benefit is needed for his or her recovery, and
  - (d) the provision of the benefit is economically reasonable.
- (4) A relocation allowance payable under subsection (1) is a weekly allowance that
  - (a) is paid for the period that the victim is unemployed following the relocation of the victim, up to a maximum period of 3 months, and
  - (b) equals the product of 40 times the higher hourly minimum wage established under the *Employment Standards Act*.
- (5) The director may not award a victim benefits referred to in subsection (1) (a) and (b) with a value that in total exceeds \$3 000.
- (6) The director may not award a victim benefits referred to in subsection (1) (c) with a value that in total exceeds \$7 000.

### **Repair or replacement of damaged or destroyed personal property**

- 13** (1) The director may award only the following types of benefits in the category of benefits described as repair or replacement of damaged or destroyed personal property in section 4 (1) (g):
- (a) repair or replacement of eye glass frames;
  - (b) replacement of eye glass lenses or contact lenses with lenses of a comparable kind and quality;
  - (c) repair of a disability aid referred to in section 10 (1) (a), (d), (e) or (f) or if repair of that disability aid is not, in the opinion of the director possible, replacement of that disability aid with a disability aid of a comparable kind and quality;
  - (d) repair of clothing, other than clothing referred to in section 10 (1) (d), or if the clothing is not, in the opinion of the

director, reasonably able to be repaired, replacement of the clothing with clothing of a comparable kind and quality.

(2) The director may not award a victim a benefit referred to in subsection (1) (a) or (d) with a value that exceeds \$150.

### **Home modification, maintenance or moving expenses**

**14** (1) The director may award a benefit in the category of benefits described in section 4 (1) (h) of the Act as home modification, maintenance or moving expenses to a victim on the conditions and subject to the limitations set out in this section.

(2) The director may award home modification expenses to a victim if the director is satisfied that

- (a) the victim is disabled as a result of an eligible offence, and
- (b) the modifications to the victim's residence or the victim's proposed residence are reasonable and necessary to assist the victim in his or her daily activities.

(3) The director may award a victim a monthly sum that does not exceed \$100 per month for home maintenance expenses, if the director is satisfied that

- (a) the victim is disabled as a result of an eligible offence,
- (b) the victim is unable to maintain and repair his or her residence or the land surrounding the residence, if any, due to the victim's disability, and
- (c) no other person in the victim's household is reasonably able to do this work.

(4) The director may pay a victim's moving expenses, up to a maximum of \$2 000, if

- (a) the victim has a long term disability as a result of an eligible offence,
- (b) the victim is not able to reside in his or her residence unless modifications are made to the residence, and
- (c) the director is satisfied that the residence in which the victim resides or will reside
  - (i) is not reasonably able to be modified, or
  - (ii) is not able to be modified at a reasonable cost.

(5) A victim described in subsection (4) may be awarded a benefit only once.

### **Vehicle modification or acquisition**

**15** (1) The director may award a benefit in the category of benefits described as vehicle modification or acquisition in section 4 (1) (i) of the Act to a victim only if the director is satisfied that

- (a) the victim has a long term disability as a result of an eligible offence,

- (b) a motor vehicle needs to be acquired or modified so that the victim is able to operate or use the motor vehicle, and
- (c) the benefit is reasonable and necessary to provide greater independence to the victim.

(2) A victim who receives a benefit under subsection (1) is not eligible for the benefits referred to in section 18.

(3) A victim may be awarded a benefit referred to in subsection (1) only once.

### **Homemaker, childcare and personal care**

**16** (1) In this section:

**"childcare services or expenses"** means services provided or expenses incurred to care for an immediate family member of the victim, if that immediate family member is a minor child of the victim or a child of the victim who, due to a disability, is unable to live independently from the victim;

**"homemaker services or expenses"** means services provided or expenses incurred to assist a person with shopping, cleaning, cooking and other household tasks;

**"personal care services or expenses"** means services provided and expenses incurred to assist a person with bathing, dressing, toileting and other daily tasks related to personal care.

(2) The director may award only the following types of benefits in the category of benefits described as homemaker, childcare or personal care services or expenses in section 4 (1) (j) of the Act:

- (a) childcare services or expenses;
- (b) homemaker services or expenses;
- (c) personal care services or expenses.

(3) Subject to subsection (4), the director may award a victim childcare services or expenses only if

- (a) the victim has a disability as a result of an eligible offence,
- (b) the victim is unable to perform some or all of the childcare services due to the victim's disability and the victim performed some or all of the childcare services before the eligible offence,
- (c) no other person in the victim's household is reasonably able to perform these childcare services, and
- (d) the director is satisfied that the benefit is reasonable and necessary.

(4) The director may award a victim childcare services or expenses if

- (a) the director is awarding the victim transportation and related expenses under section 18 (4),
- (b) no other person in the victim's household is reasonably able to perform the childcare services necessary for the victim to be

able to receive one or more of the benefits referred to in section 18 (4), and

(c) the director is satisfied that the benefit is reasonable and necessary for the victim to be able to receive one or more of the benefits referred to in section 18 (4).

(5) The director may not award a victim more than \$800 per month for childcare services.

(6) The director may award a victim homemaker services or expenses only if

(a) the victim is suffering from a disability as a result of an eligible offence,

(b) the victim is unable to perform homemaker tasks due to the victim's disability and performed some or all of those tasks before the injury,

(c) no other person in the victim's household is reasonably able to perform these homecare tasks, and

(d) the director is satisfied that the benefit is reasonable and necessary.

(7) The director may not award a victim more than \$400 per month for homemaker services.

(8) The director may award a victim personal care services or expenses only if

(a) the victim is suffering from a disability as a result of an eligible offence,

(b) the victim is unable to perform one or more personal care services due to the victim's disability, and

(c) the director is satisfied that the personal care services or expenses are reasonable and necessary to assist the victim in daily living and to help the victim retain his or her independence.

(9) The director may not award a victim more than \$1 600 per month for personal care services.

### **Maintenance for a child born as a result of a prescribed offence**

**17** (1) The director may award a victim a benefit described as maintenance payments for a child born as a result of a prescribed offence as in section 4 (1) (k) of the Act in the amount set out under subsection (2) and for the period set out in subsection (3) if the director is satisfied that

(a) the child is born as a result of a prescribed offence, and

(b) the child either resides with the victim or the child resides with someone other than the victim but the victim financially supports the child.

- (2) For the purposes of subsection (1), the director may pay a victim
- (a) \$300 per month for each month that the child resides with the victim at least 50% of the time, and
  - (b) for each month that the child resides with a person other than the victim at least 50% of the time and the victim provides child support to that person for the month, the lesser of
    - (i) \$300 for each month that the child resides with the other person, and
    - (ii) the amount of child support that the victim pays the person with whom the child resides.
- (3) For the purposes of subsection (1), the director may pay a victim
- (a) subject to paragraphs (b) and (c), for the period that the child is under 19 years of age,
  - (b) if the child is attending an educational institution full time, for the period that the child is under 23 years of age, and
  - (c) if the child, due to a disability, is unable to live independently, for the period that the victim financially supports the child.

### **Transportation and related expenses**

**18** (1) In this section, related expenses means the cost of meals and accommodation that are incurred by a victim as part of transportation undertaken by the victim.

(2) The director may award to a victim a benefit described as transportation and related expenses in section 4 (1) (n) of the Act on the conditions and subject to the limitations set out in this section.

(3) The director may award \$200 per month to a victim for transportation and related expenses if the director is satisfied that

- (a) the victim has a long term disability as a result of an eligible offence and is unable to operate a motor vehicle or to use public transportation as a result of this disability, and
- (b) the transportation expenses are reasonable and necessary to provide greater independence to the victim.

(4) The director may award a benefit referred to in subsection (2) to a victim if the director is satisfied that the service or expense is reasonable and necessary for the victim to be able to receive one or more of the following benefits awarded to the victim under the Act:

- (a) medical services;
- (b) dental services;
- (c) counselling services;
- (d) vocational services.

(5) Despite subsection (3), a victim is not eligible to receive both the benefit described in subsection (3) and the benefit described in section 15.

(6) The director may pay a victim for transportation and related expenses at the same rate as that set for group I public service employees under the Financial Administration Procedures Manual, published by the Ministry of Finance, that is in effect at the time the expense is incurred.

### **Crime scene cleaning expenses**

**19** (1) The director may award a victim the benefit of crime scene cleaning expenses only if the director is satisfied that

- (a) the eligible offence occurred at the victim's residence or in a motor vehicle owned or leased by the victim,
- (b) exceptional and specialized cleaning is required, and
- (c) the expense is reasonable and necessary.

(2) The director may not award a victim a benefit referred to in subsection (1) with a value that exceeds \$2 500.

## **Part 3 — Immediate Family Member's Benefits**

### **Counselling services or expenses**

**20** (1) Subject to this section, the director may award an immediate family member a benefit in the category of benefits described as counselling benefits or expenses in section 4 (2) (a) of the Act only if the director is satisfied that the counselling services or expenses are reasonable and necessary to assist the immediate family member in his or her recovery from the psychological injury that resulted from an eligible offence.

(2) A benefit referred to in subsection (1) does not include the following:

- (a) stress management courses, self improvement seminars or self help books, tapes, audio or video displays or other similar materials,
- (b) counselling provided by a counsellor who does not have professional liability insurance that is satisfactory to the director,
- (c) counselling provided by a counsellor who has failed to provide to the director a criminal record check that is satisfactory to the director.

(3) The director may award an immediate family member up to 36 one hour counselling sessions with a counsellor.

(4) If the immediate family member was under 19 years old when the eligible offence that resulted in the death or injury of the victim occurred, the director may award more than 36 counselling sessions to the immediate family member if the director is satisfied that continued counselling is reasonable and necessary.



(5) The director may not pay more than the amount set out in Column 2 of Schedule 2 for the type of counselling session that an immediate family member attends.

### **Prescription drug expenses**

**21** (1) The director may award an immediate family member a benefit referred to in section 4 (2) (b) of the Act only if

- (a) the drugs are prescribed for the immediate family member by a medical practitioner or a health professional authorized by law to prescribe those drugs,
- (b) the drugs are prescribed as a result of the psychological harm caused to the immediate family member by the victim's death or injury, and
- (c) the director is satisfied that the prescriptions drugs are necessary and reasonable and the cost of providing the benefit is economically reasonable.

(2) For the purposes of subsection (1), the director may not pay an amount for prescription drugs that an immediate family member obtains outside of British Columbia that is more than the amount payable under the Pharmacare Program operated by the Ministry of Health Services for that type of prescription drug.

### **Funeral expenses**

**22** (1) The director may award an immediate family member a benefit referred to as a funeral expense in section 4 (2) (d) of the Act only if

- (a) the director is satisfied that the funeral expenses are reasonable and necessary, and
- (b) the expenses are related to a funeral service, burial, cremation or related ceremonies.

(2) The director may not award more than \$5 000 under this section with respect to the death of a victim.

### **Transportation and related expenses, and child care expenses**

**23** (1) In this section, related expenses means the cost of meals and accommodation that are incurred by an immediate family member as part of transportation undertaken by the immediate family member.

(2) The director may award an immediate family member a benefit described as transportation and related expenses in section 4 (2) (f) of the Act on the conditions and subject to the limitations set out in this section.

(3) The director may award an immediate family member transportation and related expenses if the director is satisfied that the transportation and related expenses are reasonable and necessary for the immediate family member

- (a) to attend legal proceedings related to the eligible offence that resulted in the death of the victim, or
  - (b) to access the counselling benefits referred to in section 20 or vocational services referred to in the Crime Victim Assistance (Income Support and Vocational Services or Expenses Benefits) Regulation.
- (4) The director may not award a benefit under subsection (3) (a) if
- (a) the immediate family member is required to attend the legal proceedings in accordance with a subpoena, or
  - (b) the legal proceedings take place within 100 km of the immediate family member's residence.
- (5) The total amount that the director may award under subsection (3) (a) with respect to all legal proceedings related to the death of a victim must not exceed \$3 000.
- (6) The director may pay an immediate family member for transportation and related expenses at the same rate as that set for group I public service employees under the Financial Administration Procedures Manual, published by the Ministry of Finance, that is in effect at the time the expense is incurred.
- (7) The director may award an immediate family member childcare services or expenses if
- (a) the director is awarding the immediate family member transportation and related expenses referred to in this section,
  - (b) no other person in the immediate family member's household is reasonably able to perform the childcare services necessary for the immediate family member
    - (i) to be able to attend legal proceedings,
    - (ii) to receive the counselling benefits referred to in section 20, or
    - (iii) vocational services benefits referred to in the Crime Victim Assistance (Income Support and Vocational Services or Expenses Benefits) Regulation, and
  - (c) the director is satisfied that the benefit is reasonable and necessary for the victim
    - (i) to be able to attend legal proceedings, or
    - (ii) to receive the counselling benefits referred to in section 20, or vocational services benefits referred to in the Crime Victim Assistance (Income Support and Vocational Services or Expenses Benefits) Regulation.

### **Loss of parental guidance for a minor child**

- 24** (1) The director may award \$3 000 under section 4 (2) (g) of the Act to an immediate family member who
- (a) is a child of a parent who dies as a result of an eligible offence, and

(b) is under 19 years of age when his or her parent died as a result of an eligible offence.

(2) If more than one parent of a child described in subsection (1) dies as the result of an eligible offence, \$3 000 may be awarded for each parent under section 4 (2) (g) of the Act.

### **Bereavement leave**

**25** (1) The director may award an immediate family member of a victim earnings lost due to bereavement leave referred to in section 4 (2) (h) of the Act only if

(a) the immediate family member's absence from work occurs within 2 weeks of the death of the victim, and

(b) the director is satisfied that the immediate family member suffered loss of earnings due to the absence.

(2) An award under subsection (1) must equal the product of A, B and C where

A = the number of working days that the family member was absent from work, up to a maximum of 5 working days,

B = 8, and

C = the higher minimum hourly wage under the *Employment Standards Act* that is in effect at the time the award is made.

### **Crime scene cleaning expenses**

**26** (1) The director may award an immediate family member of a victim the benefit of crime scene cleaning expenses only if

(a) the victim's death resulted from an eligible offence, and

(b) the director is satisfied that

(i) the eligible offence occurred at the victim's or the immediate family member's residence or in a motor vehicle owned or leased by the victim or the immediate family member,

(ii) exceptional and specialized cleaning is required, and

(iii) the expense is reasonable and necessary.

(2) The maximum that the director may award under subsection (1) with respect to a victim's death is \$2 500.

### **Childcare services or expenses**

**27** (1) The director may award an immediate family member of a victim the benefit of childcare services or expenses only if

(a) the person is a spouse who, at the time of the eligible offence, was married to the victim or living and cohabiting with the victim in a marriage-like relationship,

(b) the victim provided some or all of the childcare before his or her death,

- (c) the childcare services are provided or the child care expenses are incurred during the 5 year period after victim's death, and
- (d) the director is satisfied that the benefit is reasonable and necessary.

(2) The director may not award an immediate family member more than \$800 per month for childcare services under this section.

### **Homemaker services or expenses**

**28** (1) The director may award an immediate family member the benefit of homemaker services or expenses only if

- (a) the person is a spouse who, at the time of the eligible offence, was married to the victim or living and cohabiting with the victim in a marriage-like relationship,
- (b) the victim provided some or all of the homemaker services before his or her death,
- (c) the homemaker services are provided or the homemaker expenses are incurred during the 5 year period after the victim's death, and
- (d) the director is satisfied that the benefit is reasonable and necessary.

(2) The director may not award an immediate family member more than \$400 per month for homemaker services and expenses under this section.

## **Part 4 — Witness Benefits**

### **Counselling services or expenses**

**29** (1) Subject to this section, the director may award a witness a benefit in the category of benefits described as counselling benefits or expenses in section 4 (3) (a) of the Act only if the director is satisfied that the counselling services or expenses are reasonable and necessary to assist the witness in his or her recovery from the psychological injury that resulted from an eligible offence.

(2) A benefit referred to in subsection (1) does not include the following:

- (a) stress management courses, self improvement seminars or self help books, tapes, audio or video displays or other similar materials;
- (b) counselling provided by a counsellor who does not have professional liability insurance that is satisfactory to the director;
- (c) counselling provided by a counsellor who has failed to provide to the director a criminal record check that is satisfactory to the director.

(3) The director may award a witness up to 12 one hour counselling sessions with a counsellor.

(4) If the witness was under 19 years old when the eligible offence that resulted in the death or injury of the victim occurred, the director may award more than 12 counselling sessions to the witness if the director is satisfied that continued counselling is reasonable and necessary.

(5) The director may not pay more than the amount set out in Column 2 of Schedule 2 for the type of counselling session that a witness attends.

### **Prescription drug expenses**

**30** (1) The director may award a witness a benefit referred to in section 4 (3) (b) of the Act only if

- (a) the drugs are prescribed for the witness by a medical practitioner or a health professional authorized by law to prescribe those drugs,
- (b) the drugs are prescribed as a result of the psychological harm caused to the witness by the victim's death or injury, and
- (c) the director is satisfied that the prescriptions drugs are necessary and reasonable and the cost of providing the benefit is economically reasonable.

(2) For the purposes of subsection (1), the director may not pay an amount for prescription drugs that a victim obtains outside of British Columbia that is more than the amount payable under the Pharmacare Program operated by the Ministry of Health Services for that type of prescription drug.

### **Transportation and related expenses and child care expenses**

**31** (1) In this section, related expenses means the cost of meals and accommodation that are incurred by a witness as part of transportation undertaken by the witness.

(2) The director may award a witness a benefit described as transportation and related expenses in section 4 (3) (c) of the Act on the conditions and subject to the limitations set out in this section.

(3) The director may award a benefit referred to in subsection (2) to a witness if the director is satisfied that the transportation and related expenses are reasonable and necessary for the witness to be able to access counselling benefits referred to in section 29.

(4) The director may pay a witness for transportation and related expenses at the same rate as that set for group I public service employees under the Financial Administration Procedures Manual, published by the Ministry of Finance, that is in effect at the time the expense is incurred.

(5) The director may award a witness childcare services or expenses if

- (a) the director is awarding the witness transportation and related expenses referred to in this section,

(b) no other person in the witness's household is reasonably able to perform the childcare services necessary for the witness to be able to receive the counselling benefits referred to in section 29, and

(c) the director is satisfied that the benefit is reasonable and necessary for the witness to be able to receive the counselling benefits referred to in section 29.

### **Crime scene cleaning expenses**

**32** (1) The director may award a witness of an eligible offence the benefit of crime scene cleaning expenses only if

- (a) the victim's death resulted from an eligible offence, and
- (b) the director is satisfied that
  - (i) the eligible offence occurred at the residence of the witness or in a motor vehicle owned or leased by the witness,
  - (ii) exceptional and specialized cleaning is required, and
  - (iii) the expense is reasonable and necessary.

(2) The maximum that the director may pay under subsection (1) with respect to a victim's death is \$2 500.

## **Part 5 — Modifications to Compensation Awarded under the Former Act**

### **Application and definitions**

**33** (1) In this Part, former applicant means an applicant under the former Act.

(2) This Part applies with respect to applications, applicants and compensation under an application made under the former Act, if the Act applies to the application.

### **New benefits if compensation awarded under the former Act**

**34** (1) For the purposes of this section and section 35, a former applicant's eligibility for a benefit awarded under these sections commences on the date of reassessment or the date of reconsideration under the Act, whichever is earlier.

(2) Subject to this section and section 35, if an item of compensation awarded under the former Act to a former applicant is being reassessed under section 12 of the Act or is being reconsidered under section 14 of the Act, the former applicant, effective on the reassessment or reconsideration, as the case may be,

- (a) is no longer eligible for that item of compensation, and
- (b) is eligible for an item of benefit that may be awarded under the Act for the same or a similar purpose as the item of compensation.

- (3) Subsections (4) to (6) apply if
- (a) compensation for an injury of a former applicant
    - (i) is awarded as a periodic payment under the former Act, and
    - (ii) is not awarded as the result of the death of a victim, and
  - (b) the awarding or the amount of the compensation is being reassessed under section 12 of the Act or being reconsidered under section 14 of the Act.
- (4) If, on a reassessment or reconsideration under the Act, it is determined that the injury of a former applicant has worsened from the date when the amount of the periodic payment that is being reassessed or reconsidered was determined under the former Act, the applicant is eligible for a benefit that is the greater of
- (a) the amount of the periodic payment he or she was receiving immediately before the reassessment or reconsideration, as the case may be, and
  - (b) the periodic payment that would be awarded under the Act, if the applicant had filed an application under the Act at the time of reassessment or reconsideration, as the case may be.
- (5) If, on a reassessment or reconsideration under the Act, it is determined that the injury of a former applicant is unchanged from the date when the amount of the periodic payment that is being reassessed or reconsidered was determined under the former Act, the applicant is eligible for a benefit that equals the amount of the periodic payment he or she was receiving immediately before the reassessment or reconsideration, as the case may be.
- (6) If, on a reassessment or reconsideration under the Act, it is determined that the injury of a former applicant is less severe than it was on the date when the amount of the periodic payment that is being reassessed or reconsidered was determined under the former Act, the applicant is eligible for a benefit that equals the amount of the periodic payment that would be awarded under the Act, if the applicant had filed an application under the Act at the time of reassessment or reconsideration, as the case may be.
- (7) Subject to subsections (4) to (6), if compensation that is a deemed benefit under section 29 (6) of the Act is subject to certain conditions or limitations, the deemed benefit continues to be subject to those conditions and limitations, unless the compensation, conditions or limitations are terminated or modified under section 12 or 14 of the Act.
- (8) If periodic payments awarded to a former applicant under section 3 (1) (b) (ii) of the former Act are reassessed under section 12 of the Act or reconsidered under section 14 of the Act, the former applicant is eligible to receive a benefit equal to the amount of, and subject to the terms and conditions for, the periodic payments that may be awarded under the former Act.

- (9) For the purposes of subsection (8), the former Act means
- (a) if the former Act is in effect at the time of the reassessment or reconsideration, the former Act as it is on that date, and
  - (b) if the former Act is not in effect at the time of the reassessment or reconsideration, the former Act as it was immediately before its repeal.

### **Counselling benefits**

**35** (1) Subject to this section, a former applicant may be awarded additional counselling sessions if the former applicant

- (a) was awarded counselling under the former Act, and
- (b) applies in a reassessment under section 12 of the Act or a reconsideration under section 14 of the Act for additional counselling sessions for the same injury.

(2) If a former applicant has received by the date of the reassessment or reconsideration, as the case may be, fewer than 36 counselling sessions under the former Act, the former applicant is eligible to be awarded a benefit of additional counselling sessions if the total number of counselling sessions provided under both Acts does not exceed 48 counselling sessions.

(3) If a former applicant has received by the date of the reassessment or the reconsideration, as the case may be, 36 or more counselling sessions but fewer than 60 counselling sessions under the former Act, the former applicant is eligible to be awarded a benefit of additional counselling sessions if the total number of counselling sessions provided under both Acts does not exceed 60 counselling sessions.

(4) If a former applicant has received by the date of the reassessment or the reconsideration, as the case may be, 60 or more counselling sessions under the former Act, the former applicant is eligible to be awarded a benefit of up to 12 additional counselling sessions.

(5) A maximum number of counselling sessions that may be awarded under another section of this regulation does not apply in the circumstances described in this section.

### **Ineligible benefits**

**36** (1) If a former applicant was awarded compensation for pain and suffering under section 2 (4) (f) of the former Act, the former applicant may not receive the following benefits with respect to the injury for which he or she was awarded pain and suffering under the former Act:

- (a) protective measures, services and expenses under section 4 (1) (f) of the Act;
- (b) lost earning capacity under section 4 (1) (m) of the Act;



(c) transportation and related expenses under section 4 (1) (n) of the Act, if those expenses are related to attending legal proceedings;

(d) maintenance of a child born as a result of a prescribed offence under section 4 (1) (k) of the Act;

(e) vocational services and expenses under section 4 (1) (e) of the Act, if the former applicant was unemployed at the time of his or her injury for which compensation was awarded.

(2) If a former applicant was awarded compensation under section 2 (4) (d) of the former Act, the former applicant may not receive a benefit under section 4 (1) (k) of the Act for the same injury.

(3) If a former applicant was awarded compensation for loss of love, guidance and affection under section 2 (4) of the former Act, the former applicant may not receive a benefit under section 4 (2) (g) of the Act with respect to the death for which he or she was awarded compensation under section 2 (4) (c) of the former Act.

## Schedule 1. Prescribed Offences

Section of <i>Criminal Code</i>	Description of Offence
64	Riots
72	Forcible entry
76	Hijacking
77	Endangering safety of aircraft or airport
78	Offensive weapons and explosive substances
80	Breach of duty (duty of care of explosives)
81	Using explosives
85	Using firearm in commission of offence
86	Careless use of a firearm
87	Pointing a firearm
151	Sexual interference
152	Invitation to sexual touching
153	Sexual exploitation
153.1	Sexual exploitation disabled person
155	Incest
163.1	Child pornography
170	Parent or guardian procuring sexual activity
180	Common nuisance
212	Procuring
215	Failure to provide necessities
218	Abandoning child

<b>Section of Criminal Code</b>	<b>Description of Offence</b>
220	Causing death by criminal negligence
221	Causing bodily harm by criminal negligence
235	Homicide
236	Manslaughter
237	Infanticide
238	Killing unborn child in act of birth
239	Attempt to commit murder
241	Counselling or aiding suicide
244 and 244.1	Causing bodily harm with intent
245	Administering noxious thing
246	Overcoming resistance to commission of offence
247	Traps likely to cause bodily harm or death
248	Interfering with transportation facilities
249 (1) (b)	Dangerous operation of vessel or towed object
249 (1) (c)	Dangerous operation of aircraft
251	Unseaworthy vessel or unsafe aircraft
253	Impaired operation of vessel or aircraft
262	Impeding attempt to save life
263	Failure to safeguard opening in ice/excavation on land
264	Criminal harassment (stalking)
264.1	Uttering threats
266	Assault
267	Assault with a weapon or causing bodily harm
268	Aggravated assault
269	Unlawfully causing bodily harm
269.1	Torture
270	Assaulting a Peace Officer
271	Sexual assault
272	Sexual assault with a weapon, threats to a third party or causing bodily harm
273	Aggravated sexual assault
273.3	Removal of child from Canada
279 and 279.1	Kidnapping, forcible confinement, hostage taking
280	Abduction of person under 16
281	Abduction of person under 14
282	Abduction in contravention of custody order
283	Abduction
344	Robbery

<b>Section of Criminal Code</b>	<b>Description of Offence</b>
346	Extortion
423	Intimidation
430 (2)	Mischief causing actual danger to life
433	Arson
436	Arson by negligence
437	False alarm of fire

## **Schedule 2. Maximum Amount for Counselling Services**

<b>Column 1 Type of Counselling</b>	<b>Column 2 Maximum Hourly Rate</b>
<p><b>1</b> Individual counselling session provided by a counsellor who has the following education, training and experience:</p> <p>(a) Education and Training: high school graduation supplemented by completion of one or more relevant continuing education courses or training by an educational institution or agency approved by the director.</p> <p>(b) Experience: minimum of 6 years supervised counselling experience in a field related to counselling to be provided under the Act. Related fields include psychology, social work, criminology, child and youth care or psychiatric nursing.</p>	\$40
<p><b>2</b> Individual counselling session provide by a counsellor who is not described in item 3, 4 or 5 of this Schedule and who has the following education, training and experience:</p> <p>(a) Education and Training: undergraduate degree or 2 year diploma in a field related to counselling to be provided under the Act. Related fields include psychology, social work, criminology, child and youth care or psychiatric nursing.</p> <p>(b) Experience:</p> <p>(i) for a person with an undergraduate degree, a minimum of 4 years supervised counselling experience in a field related to counselling to be provided under the Act;</p> <p>(ii) for a person with a 2 year diploma, a minimum of 5 years supervised counselling experience in a field related to counselling to be provided under the Act.</p> <p>Related fields include psychology, social work, criminology, child and youth care or psychiatric nursing.</p>	\$60

<b>Column 1 Type of Counselling</b>	<b>Column 2 Maximum Hourly Rate</b>
<p>In paragraph (b) of this item, supervised counselling experience includes any time spent in a supervised clinical placement approved by a college or university, up to a maximum of 500 hours.</p>	
<p><b>3</b> An individual counselling session provided by a counsellor who is not described in item 4 or 5 of this Schedule and who has the following education, training and experience:</p> <p>(a) Education and Training: master's degree or doctorate in psychology, psychiatry, social work, clinical or counselling psychology or criminology.</p> <p>(b) Experience: A minimum of 6 months supervised counselling experience for a counsellor with a doctorate. A minimum of 2 years supervised counselling experience for a counsellor with a master's degree.</p> <p>In paragraph (b) of this item, supervised counselling experience includes any time spent in a supervised clinical placement approved by a college or university, up to a maximum of 800 hours.</p>	\$80
<p><b>4</b> An individual counselling session provided by a counsellor who is not described in item 5 of this Schedule and who is a member in good standing and approved for private practice by the B.C. Registered Social Workers Association or an equivalent association in another jurisdiction.</p>	\$95
<p><b>5</b> An individual counselling session provided by a counsellor who is a member in good standing of the B.C. Registered Psychologists Association or an equivalent association in another jurisdiction.</p>	\$105
<p><b>6</b> A group counselling session provided by a counsellor, irrespective of the education, training and experience of the counsellor.</p>	\$15

[Provisions of the *Crime Victim Assistance Act*, S.B.C. 2001, c. 38, relevant to the enactment of this regulation: sections 3, 4, 9, 26 and 30]

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## SECTION E-4. CRIME VICTIM ASSISTANCE (INCOME SUPPORT AND VOCATIONAL SERVICES OR EXPENSES BENEFITS) REGULATION

This section provides the text of the Crime Victim Assistance (Income Support and Vocational Services or Expenses Benefits) Regulation, B.C. Reg. 162/2002, O.C. 520/2002.

For the web version with a hyperlinked table of contents, go to:  
[www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/11\\_162\\_2002](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11_162_2002).

### Part 1 — Victim's Vocational Services and Income Support Benefits

#### Definitions

**1** (1) In this regulation:

**"Act"** means the *Crime Victim Assistance Act*;

**"dependent child"** means a person who is

- (a) under 19 years old,
- (b) between 19 and 23 years old and attending an educational institution on a full-time basis, or
- (c) 19 years old or more, but unable to live independently because of a mental or physical disability;

**"eligible injury"** means an injury that has resulted from a prescribed offence, and includes, in the case of a victim or immediate family member of a victim, an injury that has resulted from an event that is described in section 3 (1) (a) (ii) of the Act;

**"eligible offence"** means an offence prescribed under the Crime Victim Assistance (General) Regulation and includes, in the case of a victim or an immediate family member of a victim, an event that is described in section 3 (1) (a) (ii) of the Act;

**"employability"** means the physical and mental capability of being employed or self-employed;

**"employable"** means physically and mentally capable of being employed or self-employed;

**"employed"** means working for wages, salary, profit, or commission;

**"income support benefit"** means an amount calculated hourly that is equal to the higher minimum hourly wage under the *Employment Standards Act* at the time the benefit is awarded, up to a maximum of 40 hours a week;

**"lost earning capacity benefit"** means an amount calculated hourly that is equal to the higher minimum hourly wage under

the *Employment Standards Act* at the time the benefit is awarded, up to a maximum of 40 hours a week.

### **Vocational services or expenses**

**2** (1) The director may award to a victim a benefit in the category of benefits described as vocational services or expenses in section 4 (1) (e) of the Act only if the director is satisfied that

- (a) an eligible injury has resulted in the need for the benefit, and
- (b) the service or expense is reasonable and necessary to assist in improving the victim's employability
  - (i) to assist the victim in returning to employment with remuneration at the level at which the victim was employed before the eligible injury, or
  - (ii) to improve the victim's earning capacity.

(2) The vocational services or expenses category of benefit awarded by the director may consist of one or more of the following benefits:

- (a) costs for or contributions to education, training and skill development courses;
- (b) costs for or contributions to programs to improve the victim's existing skills and qualifications or to develop new skills and qualifications;
- (c) costs for or contributions to programs to prepare the victim for or to find employment.

(3) The director must not award a vocational services or expenses benefit to the following:

- (a) a victim who has retired;
- (b) an adult victim who was unemployable at the time of the eligible injury.

### **Income support: short term loss of employability**

**3** (1) The director may award to a victim a benefit in the category of benefits described as income support in section 4 (1) (l) of the Act only if the director is satisfied that an eligible injury has resulted in a mental or physical condition, or both, leading to a victim's short term loss of employability

- (a) at the job or occupation the victim held at the time of that injury, or
- (b) for as many hours at the job or occupation the victim held at the time of that injury.

(2) The director may award an income support benefit to a victim affected by a short term loss of employability in an amount that equals the difference between the average number of hours the victim was employed before the injury and the average number of hours the victim is employable at the same job or occupation after

the eligible injury, up to a maximum of 40 hours a week, less the victim's income from other sources.

(3) Subject to subsections (4) and (5), a victim is eligible for a benefit under subsection (2) from the date the victim first became affected by the short term loss of employability, as determined by the director.

(4) A victim who is a minor at the time of the eligible injury is not eligible for an income support benefit for short term loss of employability, unless the minor victim is living independently at the time of that injury.

(5) A victim who is a minor who is not living independently at the time of the eligible injury is eligible for an income support benefit for short term loss of employability on becoming 19 years old, payable from that date, if the victim is still affected by a short term loss of employability.

(6) The director may require a victim who is employable, as a condition of the victim receiving an income support benefit for short term loss of employability, to participate in vocational services that are specified by the director.

#### **Income support: long term loss of employability**

**4** (1) The director may award to a victim an income support benefit in the category of benefits described as income support in section 4 (1) (l) of the Act only if the director is satisfied that

(a) an eligible injury has resulted in a mental or physical condition, or both, leading to a victim's long term loss of employability, and

(b) the victim was employed at the time of that injury.

(2) The director may award to a victim an income support benefit affected by a long term loss of employability in an amount that equals the difference between 40 hours a week and the average number of hours the victim is employable after the eligible injury, up to a maximum of 40 hours a week, less the victim's income from other sources.

(3) Subject to subsections (4) and (5), a victim is eligible for a benefit under subsection (2) from the date the victim first became affected by the long term loss of employability, as determined by the director.

(4) A victim who is a minor at the time of the eligible injury is not eligible for an income support benefit for long term loss of employability, unless the minor victim is living independently at the time of that injury.

(5) A victim who is a minor who is not living independently at the time of the eligible injury is eligible for an income support benefit for long term loss of employability on becoming 19 years old, payable from that date, if the victim is still affected by a long term loss of employability.

(6) The director may require a victim who is employable, as a condition of the victim receiving an income support benefit for long term loss of employability, to participate in vocational services that are specified by the director.

### **Income support: transition**

**5** (1) The director may award to a victim a benefit in the category of benefits described as income support in section 4 (1) (l) of the Act for up to 3 months following the expiry of a vocational services or expenses benefit, only if the director is satisfied that

- (a) the benefit is reasonable and necessary, and
- (b) the victim is actively seeking to be employed.

(2) The director may award a victim a benefit referred to in subsection (1) only if the victim is not otherwise eligible for or receiving an income support benefit for short term loss of employability, long term loss of employability or a lost earning capacity benefit.

### **Lost earning capacity**

**6** (1) The director may award to a victim a benefit in the category of benefits described as lost earning capacity in section 4 (1) (m) of the Act only if the director is satisfied that an eligible injury has resulted in a loss of employability and the victim

- (a) was a minor or an adult victim who was employable but not employed at the time of that injury, and
- (b) is, as a result of that injury,
  - (i) unemployable, or
  - (ii) not employable for 40 hours a week.

(2) The director may award a lost earning capacity benefit to a victim affected by a loss of employability in an amount that equals the difference between 40 hours a week and the average number of hours the victim is employable after the eligible injury, up to a maximum of 40 hours a week, less the victim's income from other sources.

(3) Subject to subsections (4) and (5), a victim is eligible for a benefit under subsection (2) from the date the victim first became affected by the loss of employability, as determined by the director.

(4) The director must not award a lost earning capacity benefit to a victim who is a minor at the time of the eligible injury, unless the minor victim was living independently at the time of that injury.

(5) A victim who is a minor who is not living independently at the time of the eligible injury is eligible for a lost earning capacity benefit on becoming 19 years old, payable from that date if the victim is still affected by a lost earning capacity.



(6) The director may require a victim who is employable, as a condition of the victim receiving a lost capacity benefit, to participate in vocational services that are specified by the director.

## **Part 2 — Immediate Family Member's Vocational Services and Income Support Benefits**

### **Vocational services or expenses**

**7** (1) If a victim has died as a result of an eligible offence, the director may award to an immediate family member who is the spouse of the victim a benefit described as vocational services or expenses in section 4 (2) (c) of the Act for up to 5 years only if the director is satisfied that the service or expense is reasonable and necessary to

- (a) prepare the spouse to be employed if he or she is not employed, or
- (b) improve the spouse's earning capacity to a level that is reasonable given the spouse's skills, qualifications and abilities.

(2) As a condition of the spouse receiving a vocational services or expenses benefit under this section, the spouse must

- (a) be eligible for an income support benefit under section 8, and
- (b) complete the vocational services within 5 years of the date of the victim's death.

(3) The vocational services or expenses category of benefit awarded by the director may consist of one or more of the following benefits:

- (a) costs for or contributions to education, training and skill development courses;
- (b) costs for or contributions to programs to improve the spouse's existing skills and qualifications or to develop new skills and qualifications;
- (c) costs for or contributions to programs to prepare the spouse for or to find employment.

### **Income support: spouse**

**8** (1) If a victim has died as a result of an eligible offence, the director may award a benefit described as income support in section 4 (2) (e) of the Act to an immediate family member who is the spouse of the victim and who, at the time of the victim's death

- (a) was married to the victim and did not have an order for judicial separation, or
- (b) was living and cohabiting with the victim in a marriage-like relationship for a period of at least 2 years and was not separated from the victim for more than one year prior to the date of the victim's death.

(2) The director may award a benefit under subsection (1) of up to 75% of the maximum amount of income support benefit for 5 years following the death of the victim.

(3) If a victim has died as a result of an eligible offence, the director may award to an immediate family member who is the spouse of the victim and at the time of the victim's death, was in receipt of spousal support under a court order or written separation agreement a benefit described as income support in section 4 (2) (e) of the Act.

(4) The director may award a benefit under subsection (3) for 5 years following the death of the victim in an amount that is the lesser of

- (a) the actual maintenance, support or alimony that was required to be paid by the victim under a court order or written separation agreement, and
- (b) 35% of the maximum amount of income support benefit.

### **Income support: child**

**9** (1) If a victim has died as a result of an eligible offence, the director may award to an immediate family member

- (a) who is a dependent child of the victim, and
- (b) who resided with the victim at the time of the victim's death

a benefit described as income support in section 4 (2) (e) of the Act of up to

- (c) 15% of the maximum amount of income support benefit for one dependent child of the victim, and
- (d) 10% of the maximum amount of income support benefit for each additional dependent child of the victim.

(2) If a victim has died as a result of an eligible offence, the director may award to an immediate family member

- (a) who is a dependent child of the victim, and
- (b) who did not reside with the victim at the time of the victim's death but on whose behalf the victim paid maintenance or support,

a benefit described as income support in section 4 (2) (e) of the Act that is the lesser of

- (c) the actual maintenance or support paid by the victim on the dependent child's behalf while the victim was alive, and
- (d) 15% of the maximum amount of income support benefit.

### **Income support: immediate family member**

**10** If a victim has died as a result of an eligible offence, the director may award to an immediate family member, other than a spouse or a child, who is financially dependent on the victim, for up to 2 years from the date of the death of the victim, a benefit described as

income support in section 4 (2) (c) of the Act, in an amount that is the lesser of

- (a) the actual financial support that was provided by the victim on the immediate family member's behalf while the victim was alive, and
- (b) 15% of the maximum amount of income support benefit.

[Provisions of the *Crime Victim Assistance Act*, S.B.C. 2001, c. 38, relevant to the enactment of this regulation: section 26]

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