

# Manitoba Laws

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C.C.S.M. c. V55

## The Victims' Bill of Rights

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(Assented to June 29, 1998)

WHEREAS victims of crimes and other offences have needs, concerns and interests that deserve consideration in addition to those of society as a whole;

AND WHEREAS all victims should be treated with courtesy, compassion and respect;

AND WHEREAS victims should have access to appropriate protection and assistance, and should be given information regarding the investigation, prosecution and disposition of crimes and other offences;

AND WHEREAS it is in the public interest to give guidance and direction to persons employed in the justice system about the manner in which victims should be treated;

AND WHEREAS persons employed in the justice system should consider the rights and views of victims in a manner that does not unreasonably delay or prejudice investigations or prosecutions, that is consistent with the law and the public interest, and that is reasonable in the circumstances of each case;

[S.M. 2000, c. 33, s. 3.](#)

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

### PART 1

#### DECLARATION OF VICTIMS' RIGHTS

DEFINITIONS

## Definitions

1(1) In this Part,

"**Commissioner of Correctional Services**" means the person so designated under *The Correctional Services Act*; (« commissaire des Services correctionnels »)

"**Director of Prosecutions**" means the person in the Department of Justice who is responsible for the prosecution of offences; (« directeur des poursuites »)

"**family**" in relation to a victim includes an individual, other than the offender or the alleged offender, who, not being married to the victim, is cohabiting with him or her in a conjugal relationship of some permanence; (« famille »)

"**minister**" means the minister appointed by the Lieutenant Governor in Council to administer this Act; (« ministre »)

"**nearest relative**" means, with respect to a deceased victim, the adult person who is related to the victim and is first described in the following list:

- (a) child,
- (b) grandchild,
- (c) great-grandchild,
- (d) parent,
- (e) sibling,
- (f) niece or nephew; (« parent le plus proche »)

"**offence**" means a contravention of

- (a) *not yet proclaimed*;
- (b) an Act or regulation of Canada or Manitoba prescribed by regulation; (« infraction »)

"**victim**" means an individual, or a corporation, organization or other entity, against whom an offence is committed or is alleged to have been committed, and

- (a) where the victim is an individual who is deceased, means an individual — other than the alleged offender — who, at the time of the offence,
  - (i) was
    - (A) married to and living with the victim,
    - (B) cohabiting with the victim and together with the victim had registered their common-law relationship under section 13.1 of *The Vital Statistics Act*, or
    - (C) cohabiting with the victim in a relationship for not less than one year, or
  - (ii) where no person qualifies under subclause (i), is the victim's nearest relative, or
- (b) where the victim is an individual who is a minor or is incapable of handling his or her affairs, means the person — other than the alleged offender — who is the victim's parent, guardian, committee or substitute decision maker. (« victime »)

## Exercise of rights by corporation or other entity

1(2) When a corporation, organization or other entity is a victim, its rights under this Part may be exercised by an individual authorized by the entity.

## Registered common-law relationship

1(3) For the purposes of this Act, while they are cohabiting, persons who have registered their common-law relationship under section 13.1 of *The Vital Statistics Act* are deemed to be cohabiting in a conjugal relationship of some permanence.

S.M. 2000, c. 33, s. 4; S.M. 2002, c. 24, s. 53; S.M. 2002, c. 48, s. 22.

## VICTIMS' RIGHTS AND ACCESS TO SERVICES

### Victims' entitlement to services by request

2(1) A victim is entitled to the services described in this Part and may obtain services from the Department of Justice or an agency referred to in this Part at any time by

- (a) requesting services from the Department or agency; or
- (b) filing a general request for information with the Department or a law enforcement agency designated by the minister.

### Minister may approve a form of request

2(2) The request referred to in clause (1)(b) may be in a form approved by the minister.

### Reasonable effort to be made to locate victim

2(3) If the whereabouts of a victim who requests information under this Part is unknown to the person responsible for providing it, the person must ensure that a reasonable effort is made to locate the victim.

S.M. 2000, c. 33, s. 4.

## LAW ENFORCEMENT AGENCIES

### Right to information from police agency

- 3 The head of a law enforcement agency responsible for investigating an offence must ensure that the agency gives the victim the following information:
- (a) the rights and remedies of victims under this Act, including Part 5 (Compensation for Victims of Crime);
  - (b) the agency's name, address and telephone number, and the number of its file about the offence;
  - (c) a copy of any form approved by the minister under subsection 2(2);
  - (d) after a charge is laid, the form of victim impact statement designated under section 722 of the *Criminal Code* (Canada);
  - (e) how to obtain information about
    - (i) services available for victims, including medical, financial, housing, counselling, legal and emergency services, and
    - (ii) crime prevention and safety planning;
  - (f) how a court order of restitution may be made for any loss, damage or bodily harm suffered as a result of an offence, where the amount is readily ascertainable;
  - (g) how to obtain the return of any property taken as evidence by the agency in an investigation;
  - (h) how to obtain information about the release from custody of a person charged with an offence, and how to report a breach of a condition of release.

S.M. 2000, c. 33, s. 4.

### Right to give opinion on alternative measures and release

- 4 The head of a law enforcement agency responsible for investigating an offence must ensure that, where reasonably possible and at an appropriate time, the agency consults the victim on
- (a) the use of pre-charge alternative measures to deal with a person alleged to have committed the offence, if alternative measures are reasonably possible in the matter; and
  - (b) whether a person accused of the offence should be detained to ensure the safety and security of the victim or another person, and if the accused person is released, whether he or she should be subject to any conditions.

S.M. 2000, c. 33, s. 4.

### Right to interview by same gender in sexual offence

- 5 If a victim of a sexual offence requests to be interviewed by officers of his or her own gender, the head of the law enforcement agency responsible for investigating the offence must ensure that the request is accommodated, if reasonably possible.

S.M. 2000, c. 33, s. 4.

### Right to confidentiality

- 6 If a victim requests confidentiality, the head of the law enforcement agency investigating the offence must ensure that the residential address, telephone number and place of employment of the victim and members of his or her family are not disclosed by the agency, except to the extent required
- (a) by law, or for the purpose of law enforcement or prosecution or other legal proceedings; or
  - (b) to ensure the safety and security of any person.

S.M. 2000, c. 33, s. 4.

### Right to information about investigation of offence

- 7 If a victim requests information about the investigation of the offence, the head of the law enforcement agency must ensure that the agency gives the victim the following information, unless doing so could unreasonably delay or prejudice an investigation or prosecution or affect the safety or security of any person:
- (a) the status of the investigation;
  - (b) the name of any person charged with committing the offence, and whether the person is detained in custody;
  - (c) if an accused person is released from custody by the agency, any conditions attached to the release;
  - (d) a decision not to lay a charge, and reasons for the decision.

S.M. 2000, c. 33, s. 4.

### Right to information about escape from police custody

- 8 If a person charged with an offence breaches a condition of his or her release from custody or escapes from the custody of a law enforcement agency, the head of the agency must ensure that the victim is promptly notified if
- (a) there are reasonable grounds to believe that the person is or could be a threat to the safety or security of the victim or the victim's family; or
  - (b) the person is accused of, or is under investigation in respect of, a contravention of section 264 (criminal harassment) of the *Criminal Code* (Canada).

S.M. 2000, c. 33, s. 4.

#### Right to return of property

9 If a law enforcement agency is in possession of a victim's property and the victim requests its return, the head of the agency must ensure that the property is returned to the victim promptly when the agency is satisfied it is no longer needed as evidence for an investigation or prosecution.

S.M. 2000, c. 33, s. 4.

#### Minister may make agreement for services

10 The minister may make an agreement with an agency or department of the Government of Canada for a law enforcement agency under the control or supervision of the government of Canada to provide services under this Part.

S.M. 2000, c. 33, s. 4.

#### Right to information about prosecution office

11 When a charge is laid in respect of an offence or the matter is referred to a Crown attorney, the head of the law enforcement agency investigating the offence must ensure that the agency gives the victim, on request, the name, address and telephone number of the office responsible for prosecuting the offence.

S.M. 2000, c. 33, s. 4.

### PROSECUTIONS

#### Right to information about prosecutions

12 If a victim requests information about the prosecution of a person for the offence, the Director of Prosecutions must ensure that information is given to the victim on the following topics:

- (a) the possible use of alternative measures to deal with a person who is alleged to have committed an offence;
- (b) the court process, including the role of the victim, prosecutor and other persons involved in the process;
- (c) the right of a witness to have an interpreter while testifying in court;
- (d) the right to apply for a ban on the publication or broadcast of the identity of a victim or witness;
- (e) the right of the victim, and a person providing support to the victim, to be present during any court proceeding relating to the alleged offence, subject to any court order of exclusion;
- (f) the right of a prosecutor, or of a witness who is under the age of 14 years or mentally or physically disabled, to ask the court that a support person of the witness's choice be permitted to be close to the witness while testifying, as provided in section 486 of the *Criminal Code* (Canada);
- (g) the right of a witness who is under the age of 18 years, or mentally or physically disabled, to ask the court to be allowed to testify by closed-circuit television or behind a screen or other device in the court room, as provided in subsection 486(2.1) of the *Criminal Code* (Canada);
- (h) how to obtain the dates, times and places of proceedings relating to a prosecution;
- (i) the process for entering a plea of guilty or not guilty, including the possibility of discussions between the Crown attorney and an accused person, or his or her legal counsel, on a resolution of the charge;
- (j) the possible finding by the court that an accused person is not criminally responsible by reason of mental disorder or is unfit to stand trial;
- (k) the process for sentencing a person convicted of an offence;
- (k.1) the possible application by a Crown attorney to the court to designate a convicted person as a dangerous offender under subsection 753(1) of the *Criminal Code* (Canada);
- (l) the right to file a victim impact statement, and to add to it any time before the sentencing of the accused person;
- (m) how to obtain assistance to complete a victim impact statement;
- (n) the use of victim impact statements and pre-sentence reports in sentencing;
- (o) how a court order of restitution may be made for any loss, damage or bodily harm suffered as a result of an offence, where the amount is readily ascertainable;
- (p) the right of an owner of property to have it returned when it is no longer required as evidence in a prosecution;
- (q) the appeal process.

S.M. 2000, c. 33, s. 4.

#### Right to information about status of prosecution

13 If a victim requests information about the status of the prosecution of a person for the offence, the Director of Prosecutions must ensure that the following information is given to the victim, unless doing so could unreasonably delay or prejudice an investigation or prosecution or affect the safety or security of any person:

- (a) the charge laid against the accused person;
- (b) the name, address and telephone number of the office or Crown attorney that has conduct of the case;
- (c) if the accused person is in custody pending trial, how the victim may comment on

- (i) whether there are reasons why the accused person should be detained to ensure the safety and security of the victim or another person, or
  - (ii) if the person is released, whether he or she should be subject to any conditions;
- (d) the date, time and place of a proceeding that relates to the prosecution and is likely to affect its outcome, including a preliminary hearing, trial and sentencing hearing;
- (e) the possibility that a person who is found guilty of the offence could be ordered by the court to make restitution to any person who has suffered loss, damage or bodily harm as a result of the offence;
- (e.1) the date, time and place of an application by a Crown attorney to the court to designate a convicted person as a dangerous offender under subsection 753(1) of the *Criminal Code* (Canada);
- (f) the outcome of the prosecution, including the outcome of an application by a Crown attorney to the court to designate a convicted person as a dangerous offender under subsection 753(1) of the *Criminal Code* (Canada);
- (g) any appeal of the result of the prosecution.

S.M. 2000, c. 33, s. 4.

#### Right to be consulted about prosecution

14 At the victim's request, the Director of Prosecutions must ensure that the victim is consulted on the following, if it is reasonably possible to do so without unreasonably delaying or prejudicing an investigation or prosecution:

- (a) a decision on whether to lay a charge;
- (b) the use of alternative measures to deal with a person who is alleged to have committed the offence, or the accused person;
- (c) staying the charge against the accused person;
- (d) if the accused person is in custody, an application for release by the person;
- (e) any agreement relating to a disposition of the charge;
- (f) any position taken by the Crown in respect of sentencing, if the accused person is found guilty;
- (g) a decision on whether to appeal, or the position of the Crown respecting any appeal by the accused person.

S.M. 2000, c. 33, s. 4.

#### Right of victim to have restitution requested

15 When the amount of restitution for a victim's loss, damage or bodily harm is readily ascertainable, the Director of Prosecutions must ensure that an application for an order of restitution is made when it is reasonably possible to do so.

S.M. 2000, c. 33, s. 4.

#### Right to information about corrections office

16 The Director of Prosecutions must ensure that if a person accused or found guilty of an offence is subject to supervision, control or custody under *The Correctional Services Act* or any other Act, the victim, on request, is given the name, address and telephone number of the office or agency that can provide information to the victim.

S.M. 2000, c. 33, s. 4.

### COURT ADMINISTRATION

#### Right to information about court administration

17 If a victim requests information about the courts, the person in the Department of Justice who is in charge of the administration of the courts must ensure that information is given to the victim on the following topics:

- (a) the public's right of access to court proceedings;
- (b) security measures and facilities, including waiting areas, available at court locations;
- (c) the availability of court records relating to a proceeding, including records on the release of a person from custody;
- (d) how to obtain the date, time and place of a court proceeding;
- (e) how to obtain the return of property used as evidence in a court proceeding.

S.M. 2000, c. 33, s. 4.

#### Right to separate waiting area at court

18 At the request of a victim who is to attend a court proceeding relating to the offence, the person in the Department of Justice who is in charge of the administration of the courts must ensure that, where it is reasonable and practicable to do so, the victim is provided with a waiting area that is separate from the area used by the accused person and witnesses.

S.M. 2000, c. 33, s. 4.

## CORRECTIONAL SERVICES

### Right to information from correctional services

19(1) At the request of a victim, and when it is reasonably possible without affecting the safety or security of any person, the Commissioner of Correctional Services must ensure that information is given to the victim about a person who

- (a) is accused of the offence or has been found guilty of the offence; and
- (b) is subject to supervision, control or custody under *The Correctional Services Act*.

### Information about person accused or guilty of offence

19(2) The information referred to in subsection (1) may include the following:

- (a) whether a pre-sentence report or pre-disposition report is to be prepared in respect of the person, and if so, how the victim may comment, and the name, address and telephone number of the office in charge of preparing the report;
- (b) if the person is under supervision in the community, the office or agency responsible for the supervision;
- (c) if the person is subject to a supervision order, the terms and conditions of the order, including the date any condition in the order ends, and the date the order itself ends;
- (d) whether the person is in custody and, if so, the name and location of the custodial facility;
- (e) dates relating to the status of the person, including the estimated date of release from custody, and the dates of temporary absences or other types of release;
- (f) any terms and conditions under which the person has been or is to be released or temporarily absent without escort and, in the case of release, the general destination of the person, if known;
- (g) the occurrence of any of the following:
  - (i) the person's escape from custody or otherwise being unlawfully at large, and his or her recapture,
  - (ii) the person's breach of a term or condition of a supervision order, and any action taken as a result of the breach, and
  - (iii) the person's death.

### Right of victim to discuss release and conditions

19(3) At the victim's request, the Commissioner of Correctional Services must ensure that any release or unescorted absence of a person referred to in clause (1)(a) or (b), and any terms and conditions of the release or absence, are discussed with the victim and the victim's opinions are considered before the release or absence occurs.

S.M. 2000, c. 33, s. 4.

### Right to warning of possible threat

20 If there are reasonable grounds to believe that a person who is subject to supervision, control or custody under *The Correctional Services Act* poses a threat to a victim or his or her family, the Commissioner of Correctional Services must ensure that prompt notice is given to the victim or an appropriate law enforcement agency of any information that could be relevant to the safety or security of the victim or his or her family when the person

- (a) has breached the terms or completed the period of a supervision order;
- (b) has escaped from a provincial custodial facility; or
- (c) is about to be released from a provincial custodial facility.

S.M. 2000, c. 33, s. 4.

### Right to request meeting with offender

21(1) A victim who wishes to explain to the offender the impact of the offence on the victim and his or her family may request the Commissioner of Correctional Services to arrange a meeting of the victim with the offender.

### Commissioner to arrange meeting

21(2) The Commissioner must arrange a meeting if he or she is satisfied that it is in the public interest to do so, having regard to such factors as the offender's

- (a) willingness to accept responsibility for the offence and to participate in a meeting; and
- (b) record of offences, and potential for rehabilitation.

S.M. 2000, c. 33, s. 4.

### Minister may make agreement for services

22 The minister may make an agreement with an agency or department of the Government of Canada for a correctional services agency or department under the control or supervision of the Government of Canada to provide services under this Part.

S.M. 2000, c. 33, s. 4.

## REVIEW BOARD

### Definition of "Review Board"

23(1) In this section, "Review Board" means the review board established for Manitoba under section 672.38 of the *Criminal Code* (Canada) to make or review a disposition in respect of an offence concerning an accused person who is found not criminally responsible by reason of mental disorder, or unfit to stand trial.

### Right to information about role and process

23(2) If the victim of an offence referred to in subsection (1) requests information about the Review Board, the Board must ensure that information is given to the victim on the following topics:

- (a) the Board's role and process;
- (b) when a victim may attend a hearing of the Board;
- (c) how a victim impact statement may be filed under subsection 672.5(14) of the *Criminal Code* (Canada) for consideration by the Board;
- (d) how a victim may provide information — in addition to information in a victim impact statement — to the Crown attorney who represents an Attorney General designated as a party by the Board.

### Right to information about status of matter under review

23(3) If a victim requests information about an accused person referred to in subsection (1), the Review Board must ensure that the victim is given the following information, to the extent allowed by the *Criminal Code* (Canada) and the *Youth Criminal Justice Act* (Canada):

- (a) the dates, times and places of proceedings relating to a hearing of the Board;
- (b) a copy of a disposition order, including an order discharging the person, made by the Board, and its stated reasons, to the extent that the Board authorizes disclosure to the victim.

S.M. 2000, c. 33, s. 4; S.M. 2004, c. 42, s. 95.

### LEGAL SERVICES

### Right to information about legal aid services

24 At the request of a victim, the executive director of Legal Aid Manitoba must ensure that information is given to the victim on

- (a) the availability of legal advice about the victim's rights; and
- (b) the right to apply for other legal aid services.

S.M. 2000, c. 33, s. 4; S.M. 2004, c. 50, s. 18.

### Right to free and independent counsel

25 A victim is entitled, on request, to be given access to free, independent counsel by the Department of Justice when access to personal information about the victim is sought under section 278.3 of the *Criminal Code* (Canada).

S.M. 2000, c. 33, s. 4.

### VICTIMS' TIME OFF FROM EMPLOYMENT

### Victim to be granted time off for parts of trial

26(1) The employer of a person who is a victim must grant him or her, on written request, sufficient time off work, without pay, to attend the trial of the person accused of committing the offence, for the purpose of

- (a) testifying;
- (b) presenting a victim impact statement to the court; or
- (c) observing any sentencing of the accused person.

### Time off not to affect seniority or benefits

26(2) An employer must not discharge from employment, refuse to continue to employ, or discriminate against an employee because the employee requests or takes time off under subsection (1).

### Application of *The Labour Relations Act*

26(3) Sections 30 (filing complaint) and 31 (hearing and remedies) of *The Labour Relations Act* apply, with necessary modifications, to a complaint alleging a contravention of this section or section 7 of that Act.

### Calculation of loss not to include time at court

26(4) An order of compensation made by the Labour Board under section 31 of *The Labour Relations Act* must not include pay for time off taken by the employee under subsection (1).

### Continuity of employment

26(5) The employment of an employee who takes time off under this section is deemed to be continuous for the purpose of vacation entitlements and pension and other benefits.

S.M. 2000, c. 33, s. 4.

### ACCOUNTABILITY AND COMPLAINT PROCESS

### Definition of "director"

27 In sections 28 to 31, "director" means the person designated as the Director of Victim Services under Part 3.

S.M. 2000, c. 33, s. 4; S.M. 2005, c. 42, s. 38.

### Complaint to director

28(1) A victim who believes that he or she has not been dealt with in accordance with this Part may complain to the director.

### Director to investigate complaint

28(2) The director must investigate each complaint and, in consultation with officials in the justice system, take or recommend any step that the director considers necessary to address the victim's concerns and any systemic concern raised by the complaint.

### Director to provide victim with report

28(3) The director must make every reasonable effort to provide the victim with a report on the investigation within 30 days after receiving the complaint.

### Content of report

28(4) The director must ensure that the report includes

- (a) any step taken or recommended to address the complaint; and
- (b) the victim's right to make a complaint to the Ombudsman about the investigation or report.

### Right of victim to comment on report

28(5) The director must give the victim an opportunity to comment on the report.

S.M. 2000, c. 33, s. 4.

### When director may extend time

29(1) The director may extend the time for providing a report for up to an additional 30 days, or for a longer period if the Ombudsman agrees, and if

- (a) time is needed to consult with the victim or a third party; or
- (b) owing to the extent of the investigation, additional time is required to complete the report.

### Victim to be given notice of extended time

29(2) If the time is extended under subsection (1), the director must send notice to the victim, stating

- (a) the reason for the extension;
- (b) when the director expects to complete the report; and
- (c) the victim's right to make a complaint to the Ombudsman about the extension.

S.M. 2000, c. 33, s. 4.

### Ombudsman Act applies to any complaint

30(1) When a victim makes a complaint to the Ombudsman, *The Ombudsman Act* applies.

### Ombudsman to designate Crime Victim Investigator

30(2) The Ombudsman must designate an employee of the Ombudsman as a Crime Victim Investigator to investigate complaints received under this Part.

S.M. 2000, c. 33, s. 4.

### Annual report of director regarding complaints

31(1) The director must, within six months after the end of the fiscal year, submit a report to the minister that includes a summary of the following, without any information that could identify an individual:

- (a) the complaints received from victims under subsection 28(1) in that year;



(b) how the complaints were addressed;

(c) any comments received from victims, including comments received under subsection 28(5).

#### Report to be tabled in the Assembly

31(2) The minister shall lay the director's report before the Legislative Assembly within 15 days after receiving it if the Legislative Assembly is sitting and, if it is not sitting, within 15 days after the beginning of the next sitting.

S.M. 2000, c. 33, s. 4.

#### GENERAL PROVISIONS

#### Disclosure limited by federal Act or court order

32 Nothing in this Part shall be interpreted to require or authorize the disclosure of information if its disclosure is restricted or prohibited by the *Criminal Code* (Canada), the *Youth Criminal Justice Act* (Canada) or the *Criminal Records Act* (Canada) or a court order.

S.M. 2000, c. 33, s. 4; S.M. 2004, c. 42, s. 95.

#### Delegation

33 A person who is responsible under this Part to provide information may delegate the responsibility to another person under his or her administration.

S.M. 2000, c. 33, s. 4.

#### Liability

34 Other than section 26, no action lies and no proceeding may be brought against any person — including a law enforcement agency, the Government of Manitoba, an agency, board, public officer or public body — for anything done or omitted to be done in good faith in the exercise or intended exercise of a duty or power that under this Part is intended or authorized to be executed or performed.

S.M. 2000, c. 33, s. 4.

#### No appeal

35 An order, conviction or sentence may not be appealed on the grounds that a right granted by this Act has been infringed or denied.

S.M. 2000, c. 33, s. 4.

#### Regulations

36 The Lieutenant Governor in Council may make regulations

(a) for the purpose of clause (b) of the definition "offence" in section 1, respecting Acts and regulations, and provisions of Acts and regulations, of Canada and Manitoba to which this Part applies;

(b) defining a word or expression that is used and not defined in this Part;

(c) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purpose of this Part.

S.M. 2000, c. 33, s. 4.

#### Part 1 to be reviewed within five years

37 Within five years after this Part comes into force, the minister must undertake a comprehensive review of it, and must, within one year after the review is undertaken or within such further time as the Legislative Assembly may allow, submit a report on the review to the Assembly.

S.M. 2000, c. 33, s. 4.

## PART 2

### DEFINITIONS

#### Definitions

38 In this Part and Parts 3 to 6,

"**compensation**" means compensation payable under Part 5; (« indemnité »)

"**director**" means the person designated as the Director of Victim Services under subsection 39(1); (« directeur »)

"**fund**" means the Victims' Assistance Fund continued under subsection 40(1); (« Fonds »)

"**minister**" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act; (« ministre »)

"**surcharge**" means a surcharge established under section 44. (« amende supplémentaire »)

S.M. 2000, c. 33, s. 7; S.M. 2005, c. 42, s. 38.

### PART 3

#### ADMINISTRATION

##### Designation of director

39(1) The minister may designate an employee under the administration of the minister as the Director of Victim Services.

##### Duties and functions

39(2) The duties and functions of the director include the following:

- (a) to promote the principles set out in Part 1;
- (b) to provide victims and their families with general information respecting programs and services for victims, the structure and operation of the criminal justice system, and this Act;
- (c) to provide information to the public about this Act, using pamphlets, notices, electronic distribution or any other medium that, in the opinion of the director, will effectively communicate the information to the public;
- (d) to receive and investigate complaints in accordance with section 28 and prepare reports respecting complaints under sections 28 and 31;
- (e) to receive from any person, organization or institution, submissions relating to the needs and concerns of victims and applications for grants from the fund;
- (f) to receive and make decisions respecting applications for compensation under Part 5;
- (g) to carry out other duties and functions assigned by the minister.

##### Delegation

39(3) The director may delegate any of his or her duties and functions to an employee under the administration of the minister.

S.M. 2000, c. 33, s. 7; S.M. 2002, c. 47, s. 20; S.M. 2005, c. 42, s. 38.

### PART 4

#### VICTIMS' ASSISTANCE FUND

##### Fund continued

40(1) The Victims' Assistance Fund is continued.

##### Money to be deposited into fund

40(2) The following must be deposited into the fund:

- (a) money collected as surcharges under this Act;
- (b) money collected as surcharges in Manitoba pursuant to section 737 (victim surcharge) of the *Criminal Code* (Canada) and directed by the Lieutenant Governor in Council to be paid into the fund;
- (b.1) money collected as victim fine surcharges in Manitoba pursuant to section 53 of the *Youth Criminal Justice Act* (Canada) and directed by the Lieutenant Governor in Council to be paid into the fund;
- (c) money received by the Crown for the purpose of assisting victims;
- (c.1) money received by the Crown as damages for injury to the public pursuant to an order made under section 7 of *The Civil Remedies Against Organized Crime Act*;
- (c.2) money directed by the minister to be paid into the fund under *The Criminal Property Forfeiture Act*;
- (d) money appropriated by the Legislature for the purpose of the fund;
- (e) money received as a repayment or refund of a grant made under section 43 or as a grant recovered as a debt due pursuant to section 70;
- (f) money that is payable to the Crown in right of Manitoba under an agreement with the Crown in right of Canada respecting assistance to victims and that is approved by the minister for deposit in the fund.

##### Other money payable to fund

40(3) Money from any person or source made payable to the fund shall be deposited into the fund and any such money received subject to trust conditions shall be disbursed pursuant to those conditions.

S.M. 2000, c. 33, s. 7; S.M. 2002, c. 56, s. 17; S.M. 2004, c. 42, s. 95; S.M. 2004, c. 1, s. 25.

##### Fund to be held in separate trust account

41 The fund shall be under the control and supervision of the Minister of Finance and shall be held in trust for the purpose of this Act in a separate account in the Consolidated Fund.

S.M. 2000, c. 33, s. 7.

#### Investment of excess money

42 If at any time the balance to the credit of the fund or the amount received subject to trust conditions is in excess of the amount that is required for the immediate purposes of this Act or the trust conditions, the Minister of Finance may invest the excess and earnings from the investment shall be credited to the fund.

S.M. 2000, c. 33, s. 7.

#### Use of fund

43 The minister may, in accordance with this Act and the regulations, request that payments be made from the fund

- (a) to promote, deliver and administer services for victims;
- (b) to conduct research into the needs and concerns of victims and into services for victims;
- (c) to distribute information respecting services for victims;
- (d) to make grants with respect to programs and services that benefit victims of crime; and
- (e) to pay the costs of administering this Act.

S.M. 2000, c. 33, s. 7.

#### Funds from Civil Remedies Against Organized Crime Act

43.1 When any money is deposited into the fund under clause 40(2)(c.1), the minister may request that payments of that amount of money be made from the fund

- (a) for any of the purposes set out in section 43; or
- (b) to compensate an applicant for the actual expenses incurred in a proceeding under *The Civil Remedies Against Organized Crime Act*.

S.M. 2002, c. 56, s. 17.

#### Funds from Criminal Property Forfeiture Act

43.2 When any money is deposited into the fund under clause 40(2)(c.2), the minister may request that payment of that amount of money be made from the fund

- (a) for any of the purposes set out in section 43; or
- (b) to support programs or initiatives designed to reduce or prevent criminal activity.

S.M. 2004, c. 1, s. 25.

#### SURCHARGES

##### Surcharge payable by person guilty of offence

44(1) A person who pleads guilty to or is found guilty of an offence, except a parking offence and any offence exempted by regulation, under an Act of the Legislature or under a regulation, shall, in addition to any other penalty imposed, pay a surcharge.

##### Amount of surcharge

44(2) The amount of the surcharge is the amount provided for in the regulations.

##### Collection of surcharge

44(3) For the purpose of enforcement, the surcharge is deemed to be a fine, and where a fine is imposed, the surcharge shall be collected with the fine.

##### Justice may reduce or waive surcharge

44(4) Despite subsections (1) and (2), a justice may, having regard to the circumstances of an offender, including the degree of financial hardship the surcharge would impose on the offender, reduce or waive the surcharge.

S.M. 2000, c. 33, s. 7.

## PART 5

### COMPENSATION FOR VICTIMS OF CRIME

#### Definitions

45(1) In this Part,

"**appeal board**" means a body designated under section 61 or the Compensation Appeal Board appointed under section 62; (« Commission d'appel »)

"**applicant**" means a person who applies for compensation under subsection 46(1); (« auteur d'une demande »)

"**child**" includes a child to whom a victim stands *in loco parentis*; (« enfant »)

"**common-law partner**" of a victim means

(a) a person who, with the victim, registered a common-law relationship under section 13.1 of *The Vital Statistics Act*, and who was dependent on the income of the victim and cohabiting with the victim at the time of the victim's death, or

(b) a person who, not being married to the victim, cohabited with him or her in a conjugal relationship

(i) for at least the three years immediately before the victim's death, during which the person was dependent on the income of the victim, or

(ii) for at least the one year immediately before the victim's death, if a child of the union was a dependant of the victim at the time of the victim's death; (« conjoint de fait »)

"**dependant**" means a spouse or common-law partner or a child or other relative of a deceased victim who was, in whole or in part, dependent on the income of the victim at the time of the victim's death, and includes a child of the victim born after the victim's death; (« personne à charge »)

"**injury**" means bodily harm, pregnancy and mental or nervous shock; (« blessure »)

"**victim**" means a person who is injured or dies as a result of an event described in subsection 46(1). (« victime »)

#### Definition of "victim"

45(2) When an offence under the *Criminal Code* (Canada) is specified in a regulation made under clause 46(1)(a) and results in an individual's death, "victim" includes the individual's spouse, common-law partner, parent, child, brother and sister.

S.M. 2000, c. 33, s. 5 and 7; S.M. 2002, c. 24, s. 53; S.M. 2002, c. 48, s. 22.

#### Eligibility for compensation

46(1) An application for compensation may be made, in accordance with this Act and the regulations, to the director in respect of a person who is injured or dies as a result of an event that occurs in Manitoba and that

(a) is caused by an act or omission of another person that is an offence under the *Criminal Code* (Canada) specified in the regulations; or

(b) occurs while the person does or attempts to do any of the following:

(i) lawfully arrest a person or preserve the peace,

(ii) assist a peace officer in the execution of his or her duty, or

(iii) lawfully prevent the commission of an offence or suspected offence under the *Criminal Code* (Canada).

#### Charge or conviction not required

46(2) For the purpose of subsection (1),

(a) it is not a requirement that a person be charged with, or convicted of, an offence in respect of the event that results in an injury or death; and

(b) a person incapable of forming a criminal intent is deemed to have intended the act or omission that results in an injury or death.

S.M. 2000, c. 33, s. 7.

#### Compensation for victim's injury

47 Compensation payable to a victim in respect of his or her injury is determined in accordance with this Act and the regulations, and consists of expenses incurred by the victim in respect of the injury and,

(a) if the victim is disabled by the injury, compensation for loss of wages; and

(b) if the victim is permanently impaired by the injury, compensation for the impairment.

S.M. 2000, c. 33, s. 7.

#### Compensation for dependants of deceased victim

48 Compensation payable to dependants of a victim in respect of the victim's death is determined in accordance with this Act and the regulations, and consists of expenses incurred in respect of the victim's death and,

(a) for the spouse or common-law partner of the victim, compensation for loss of the victim's wages; and

(b) for a dependant other than a spouse or common-law partner, compensation in the form of a monthly payment.

S.M. 2000, c. 33, s. 7; S.M. 2002, c. 24, s. 53.

#### Manner of payment of compensation

49 Subject to the regulations, compensation may be paid in a lump sum or periodic payments or both, and may be made subject to such terms and conditions as the director considers reasonable.

S.M. 2000, c. 33, s. 7.

#### Who may apply for compensation

50(1) An application for compensation may be made

- (a) by a victim in respect of his or her injury;
- (b) by a dependant in respect of a victim's death;
- (c) by a person who incurs an expense or other pecuniary loss as a result of a victim's injury, if the maintenance of the victim is the responsibility of the person; or
- (d) by a person who incurs funeral expenses in respect of a victim's death.

#### Application for person under 18

50(2) If a person eligible for compensation is under 18 years of age, an application for compensation may be made on his or her behalf by a parent or guardian of the person or by another person acceptable to the director.

#### Application for mentally incompetent person

50(3) If a person eligible for compensation is mentally incompetent, an application for compensation may be made on his or her behalf by the person's committee, the person's substitute decision maker for property appointed under *The Vulnerable Persons Living with a Mental Disability Act* or, if the person does not have a committee or substitute decision maker, a person acceptable to the director.

S.M. 2000, c. 33, s. 7.

#### Time limit for applying

51(1) Subject to subsection (2), an application for compensation must be made within one year after the date of the event that results in the victim's injury or death, or within one year after the date when the victim becomes aware of or knows or ought to know the nature of the injuries and recognizes the effects of the injuries.

#### Extension of time

51(2) The director may, before or after the expiry of the one year period, extend the time for making an application if he or she considers it appropriate.

S.M. 2000, c. 33, s. 7.

#### Director to evaluate applications

52(1) On receipt of an application for compensation, the director shall determine, in accordance with this Act and the regulations, whether compensation is payable and, if so, the amount.

#### Director may request information

52(2) The director may

- (a) request the applicant to provide, or authorize the director to obtain, information that the director considers necessary to make a determination under subsection (1); and
- (b) consider any statement, document or information that he or she considers relevant to making the determination.

S.M. 2000, c. 33, s. 7.

#### Reports from attending professionals and hospitals

53 A duly qualified medical practitioner, nurse, dentist, chiropractor, podiatrist, optometrist, physiotherapist, psychologist, occupational therapist or osteopath who attends or consults on a victim's injury, and a hospital providing care or treatment to the victim, shall provide reports respecting the injury, care or treatment in the form required by the director, without charge to the victim.

S.M. 2000, c. 33, s. 7; S.M. 2001, c. 36, s. 70.

#### Director may refuse or reduce compensation

54 Subject to the regulations, the director may refuse to award compensation or may reduce the amount of compensation payable if he or she is of the opinion that

- (a) the event that resulted in the victim's injury or death was not reported to law enforcement authorities within a reasonable time after it occurred;
- (b) the applicant has not assisted law enforcement authorities to apprehend or prosecute a person whose actions resulted in the victim's injury or death;
- (c) the victim's injuries or death occurred while participating in a criminal offence;
- (d) the victim's conduct directly or indirectly contributed to the victim's injury or death; or
- (e) the applicant has not provided information requested by the director, or in the form requested by the director, within a reasonable time after the request was made.

S.M. 2000, c. 33, s. 7.

#### Director may vary compensation

55 The director may at any time vary the amount of compensation payable based on new information or a change in the circumstances of the person receiving the compensation.

S.M. 2000, c. 33, s. 7.

#### Certain amounts to be deducted from compensation

56 The director shall deduct the following from any compensation payable to a victim or dependant:

- (a) an amount paid or payable to a victim or dependant in respect of the victim's injury or death under *The Workers Compensation Act*, *The Profits of Criminal Notoriety Act*, the *Canada Pension Plan*, the *Employment Insurance Act* (Canada) or any other Act of Parliament or the Legislature or the legislature of another province or a territory of Canada;
- (b) an amount recovered by the victim or dependant from the person who caused the victim's injury or death or from any other person in respect of the injury or death;
- (c) a benefit received by the victim or dependant as a result of the victim's injury or death through accident, sickness or life insurance or another compensation scheme;
- (d) an amount or benefit prescribed by regulation.

S.M. 2000, c. 33, s. 7; S.M. 2004, c. 34, s. 20.

#### Applicant to advise director of recovery or action

57(1) A person who applies for or receives compensation must immediately advise the director of

- (a) any money received at any time from the person who caused the victim's injury or death or from any other person in respect of the injury or death; and
- (b) any action or proceeding taken to recover money from any person in respect of the injury or death.

#### Applicant may be required to take action

57(2) The director may, as a condition of awarding compensation, require the victim or dependant to bring an action within a specified period of time against the person who caused the victim's injury or death, and, if the victim or dependant fails to do so, an action may be commenced by the Attorney General in the name and on behalf of the victim or dependant.

#### Director to approve settlement of action

57(3) Where a victim or dependant has applied for or received compensation, any settlement of an action or proceeding taken by the victim or dependant against the person who caused the victim's injury or death must be approved by the director, and any settlement made without his or her approval is void.

#### Compensation may be reduced or revoked

57(4) If a victim or dependant referred to in subsection (2) fails to bring an action or to co-operate in respect of an action brought on his or her behalf, the director may refuse to award compensation or, if compensation has been awarded, may reduce or revoke the award.

S.M. 2000, c. 33, s. 7.

#### Application of money from person causing injury or death

58(1) If, after compensation is awarded, the victim or dependant receives money, as a result of a civil action or otherwise, from the person who caused the victim's injury or death or from any other person in respect of the injury or death, the money shall be applied as follows:

- (a) first, to pay any legal costs incurred in obtaining the money;
- (b) second, to reimburse the Crown for the amount of the compensation paid and reasonable costs incurred in dealing with the application and making the order for compensation;
- (c) third, to the victim or dependant.

#### Reduction or discontinuance of periodic payment

58(2) The director may reduce or discontinue periodic payments of compensation to an injured victim or a dependant of a deceased victim where the victim or dependant receives money from the person who caused the injury or death or from any other person in respect of the injury or death.

S.M. 2000, c. 33, s. 7.

#### Director to give written notice of decisions

59(1) The director must give written notice

- (a) to the applicant of a decision made under section 52 respecting an application for compensation; and
- (b) to a person receiving compensation, of a decision affecting the nature or amount of compensation payable to the person.

#### Notice to include information on reconsideration

59(2) A notice given under subsection (1) shall include information on the right to request a reconsideration under subsection (3).

### Right to request reconsideration

59(3) A person who receives notice under subsection (1) and is not satisfied with the decision of the director may, within 60 days after receiving the notice, request that the director reconsider the matter and may, for that purpose, provide additional information to the director.

### Director to give written notice of reconsideration

59(4) After reconsidering a matter, including any additional information provided by the person requesting the reconsideration, the director shall give written notice of his or her decision to the person and shall include in the notice information on the right to appeal under section 60.

S.M. 2000, c. 33, s. 7.

### Right to appeal decision made on reconsideration

60(1) A person who receives a notice under subsection 59(4) (reconsideration) may appeal the decision to the appeal board within 30 days after receiving the notice.

### Extension of time

60(2) The appeal board may extend the time for appeal if it is satisfied that the person appealing has a reasonable excuse for failing to appeal within the time referred to in subsection (1).

S.M. 2000, c. 33, s. 7.

### L.G. in C. may appoint or designate appeal body

61 The Lieutenant Governor in Council may designate a board or other body established under another Act of the Legislature, or appoint a board under section 62, to hear appeals made under subsection 60(1).

S.M. 2000, c. 33, s. 7.

### Appointment of Compensation Appeal Board

62 The Lieutenant Governor in Council may appoint a board of not more than five members to be known as the Compensation Appeal Board, and may make regulations respecting the board and its operation, including the following:

- (a) the composition of the board, including the term of its members and the designation of a chairperson from among the members;
- (b) practice and procedure, including quorum and the conduct of hearings.

S.M. 2000, c. 33, s. 7.

### Remuneration and expenses of board members

63 Members of the appeal board may be paid remuneration, and may receive reasonable travelling and living expenses while away from their ordinary places of residence in the course of their duties as members of the board, at rates prescribed by regulation.

S.M. 2000, c. 33, s. 7.

### Powers of appeal board

64(1) The appeal board may confirm, vary or rescind the decision of the director.

### Powers of inquiry

64(2) For the purpose of this Act, each member of the appeal board has the powers of a commissioner under Part V of *The Manitoba Evidence Act*.

S.M. 2000, c. 33, s. 7.

### Appeal board may request assistance of experts

65 The appeal board may

- (a) request persons with special technical knowledge to advise the board on matters relevant to an appeal; and
- (b) require an appellant to undergo a medical examination by a physician named or approved by the board.

S.M. 2000, c. 33, s. 7.

### Appeal board to give written notice of decision

66 The appeal board shall as soon as practicable give written notice of its decision, and reasons for the decision, to the appellant and shall include in the notice information on the right to appeal under section 67.

S.M. 2000, c. 33, s. 7.

### Appeal to Queen's Bench

67(1) A person who receives notice under section 66 may, within 30 days, appeal the decision of the appeal board to the Court of Queen's Bench.

#### Grounds for appeal

67(2) An appeal may be taken only on a question of law or jurisdiction.

S.M. 2000, c. 33, s. 7.

#### Garnishment of compensation

68 Compensation payable to a victim or dependant under this Part is deemed to be wages for the purposes of *The Garnishment Act* and is exempt from seizure or attachment under a garnishing order to the same extent as wages are exempt under that Act.

S.M. 2000, c. 33, s. 7.

## PART 6

### GENERAL PROVISIONS

#### False statements

69 A person who deliberately makes a false or misleading statement in an application for a grant under Part 4 or for compensation under Part 5 is guilty of an offence.

S.M. 2000, c. 33, s. 7.

#### Recovery of grants and compensation as debt due

70 The minister may recover as a debt due to the Crown a grant or any compensation that

- (a) is paid on the basis of the statements of a person who is later convicted of an offence under section 69; or
- (b) is required under this Act or the regulations to be repaid or refunded.

S.M. 2000, c. 33, s. 7.

#### Regulations

71 The Lieutenant Governor in Council may make regulations

- (a) respecting surcharges, including the amounts of surcharges, or a method of calculating surcharges, on offences or classes of offences, and prescribing offences for which no surcharge is payable;
- (b) respecting payments from the fund under section 43;
- (c) respecting grants under clause 43(d), including applications, terms and conditions under which grants may be made, and the repayment or refund of grants or parts of grants if terms or conditions are not met;
- (d) for the purpose of clause 46(1)(a) (eligibility for compensation), specifying offences under the *Criminal Code* (Canada);
- (e) respecting compensation, including
  - (i) applications for compensation,
  - (ii) the classes of injury and expenses and other pecuniary losses for which compensation is payable,
  - (iii) the amounts, including maximum amounts, of compensation payable with respect to a class of injury or expense or other pecuniary loss and with respect to any one application,
  - (iv) conduct for which, and providing for amounts by which, compensation may be reduced,
  - (v) deductions to be made from compensation payable,
  - (vi) terms and conditions to which the payment of compensation may be made subject, and the repayment or refund of compensation if terms or conditions are not met, and
  - (vii) how and when payments of compensation are to be made;
- (f) respecting fees for information or reports, including medical reports, required to determine eligibility for compensation or the amount of compensation payable;
- (g) respecting appeals to the appeal board;
- (h) respecting the service of notices and other documents that are required to be given or served under this Act;
- (i) defining a word or expression that is used and not defined in the Act;
- (j) enlarging or restricting the meaning of a word or expression used in this Act;
- (k) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purpose of this Act.

S.M. 2000, c. 33, s. 7.



PART 7

TRANSITIONAL, CONSEQUENTIAL, REPEAL, C.C.S.M. REFERENCE, AND COMING INTO FORCE

TRANSITIONAL PROVISIONS

*Application of Part 5*

72(1) *Part 5 (compensation for victims of crime) applies in respect of a person who is injured or dies as a result of an event that occurs on or after the day this Act comes into force.*

*Application under Criminal Injuries Act continued*

72(2) *Despite the repeal of **The Criminal Injuries Compensation Act** by this Act, an application for compensation made under that Act before this Act comes into force shall be continued as if that Act and regulations under it remained in force and this Act had not come into force.*

*Applications made after new Act comes into force*

72(3) *Despite the repeal of **The Criminal Injuries Compensation Act** by this Act, an application for compensation may be made within the time allowed under that Act but the application is deemed to have been made under this Act.*

*Review of orders made under Criminal Injuries Act*

72(4) *The director may, in accordance with this Act, review and confirm, discontinue or vary an order made under **The Criminal Injuries Compensation Act** under which compensation is paid or payable.*

S.M. 2000, c. 33, s. 7.

*Reference in legislation or document to repealed Acts*

73 *A reference in an Act, regulation, by-law, agreement or other document to the an Act repealed under section 75 is deemed to be a reference to this Act.*

S.M. 2000, c. 33, s. 7.

74

**NOTE: This section contained consequential amendments to *The Manitoba Public Insurance Corporation Act* that are now included in that Act.**

S.M. 2000, c. 33, s. 7.

REPEAL, C.C.S.M. REFERENCE, AND COMING INTO FORCE

**Repeal**

75 The following Acts are repealed:

- (a) *The Criminal Injuries Compensation Act*, R.S.M. 1987, c. C305;
- (b) *The Justice for Victims of Crime Act*, S.M. 1986-87, c. 28.

S.M. 2000, c. 33, s. 7.

**C.C.S.M. reference**

76 This Act may be cited as *The Victims' Bill of Rights* and referred to as chapter V55 of the *Continuing Consolidation of the Statutes of Manitoba*.

S.M. 2000, c. 33, s. 6 and 7.

**Coming into force**

77 This Act comes into force on a day fixed by proclamation.

S.M. 2000, c. 33, s. 7.

**NOTE: S.M. 1998, c. 44 was proclaimed in force January 4, 1999.**