

A Future for Criminal Injuries Compensation

*The Ombudsman for Bermuda's Own Motion Systemic Investigation into the
Administration of the Criminal Injuries Compensation Scheme by the Criminal
Injuries Compensation Board*



December 2021

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INTRODUCTION

The Criminal Injuries Compensation Board (“the Board”) is established to provide compensation to victims of crime who have suffered physical or mental harm as a result, or in case of their untimely passing, to the victim’s dependants, spouse or children. Its purpose is to provide some compensation to attempt to reflect this society’s sympathy and concern for such victims.

From information provided, my Office has had concerns about significant delays individuals have experienced in getting their applications processed by the Board. Our early inquiries revealed the Ministry of Legal Affairs and Constitutional Reform (“the Ministry”), formerly, the Ministry of Legal Affairs, was of the view that the administration of the Board was the responsibility of the Court because it was chaired by a judge of the Supreme Court. Initially we found this position impossible to follow. It took time to confirm that the responsibility for administration of the Board had developed over many years, this led to delay. The Ministry was ultimately responsible, although the Court had assumed the administration of the Board for several years.

We gave the Permanent Secretary of the Ministry of Legal Affairs and Constitutional Reform notice of commencement of an own motion investigation into the inadequate administration of the Criminal Injuries Compensation Board (“CICB”) (“the Board”). An own motion investigation is one commenced by the Ombudsman without there being an individual complaint by a named person, where she is satisfied that there are grounds for an investigation to be carried out in the public interest.

We commenced an own motion investigation into the Criminal Injuries Compensation Scheme and the Board to assist in our understanding of the issues. Our concern was that victims of crimes and their families were facing long periods of uncertainty in waiting for the result of their applications. Aside from the time spent determining the responsible body for the Board, we had to manage resource challenges of our own and the shifting of priorities as a result of the public health crisis. While it took longer than we would have liked, the Report is intended to support the Authority to assist those who are vulnerable and have suffered injury.

We are pleased to report that we had full cooperation from the (then) Chair of the Board. It provided our Office with a historical understanding of the administrative

challenges that the Board has experienced. We learned that the Board budget did not have a dedicated line item to provide the administrative infrastructure one might expect of a modern administrative tribunal. We also benefited from the information provided by an experienced administrator engaged by the Ministry in 2019 in a contractual capacity. He provided our Office with an update on progress being made by the Board to address the backlog of applications.

During 2019, the Board also had its constituting legislation amended. The amendment gave the Minister of Legal Affairs and Constitutional Reform the ability to appoint members to the Board.

It was pointed out that the Board determines its own quorum and procedures and is required to provide an Annual Report to the Minister. The Board is a quasi-judicial tribunal having statutorily mandated judicial officers as Chair and Deputy Chair. After reviewing the provisions of the Criminal Injuries (Compensation) Act 1973 (“the Act”), conducting associated research and careful consideration, our Office informed the Permanent Secretary that we were satisfied that the Ministry was the appropriate Authority to be identified for the purposes of this investigation.

We obtained and reviewed information and documents:

- 1) For calendar years 2016, 2017, 2018 and 2019 the following: the number of applications received and disposed of; the number of times the Board met and the minutes of those meetings; copies of all orders issued by the Board; and budgets allocated to the Board indicating revenues and actual expenditures.
- 2) Section 6A of the Act provides:

Standard amount of compensation

6A (1) *The Board, after consultation with the Minister, may make Regulations providing for a standard amount of compensation, determined by reference to the nature of the injury.*

(2) *Regulations made under subsection (1) shall provide for the standard amount to be determined—*

(a) in accordance with a table (the “Tariff”); and

(b) where no provision is made in the Tariff, in accordance with such provisions of this Act as may be relevant.

(3) The Tariff shall show, in respect of each description of injury mentioned therein, the standard amount of compensation payable in respect of that description of injury.

(4) An injury may be described in the Tariff in such a way, including by reference to the nature of the injury, its severity or the circumstances in which it was sustained, as the Board considers appropriate.

(5) The Board, after consultation with the Minister, may at any time alter the Tariff—

(a) by adding to the descriptions of injury mentioned therein;

(b) by removing a description of injury;

(c) by increasing or reducing the amount shown as the standard amount of compensation payable in respect of a particular description of injury; or

(d) in such other way as he considers appropriate.

(6) Regulations made under subsection (1) or subsection (5) shall be subject to the affirmative resolution procedure and may include such transitional provisions as the Board considers appropriate.

- 3) Copies of the policies and procedures utilised by the Board in assessing applications including Tariffs for determining compensation under the Act, and
- 4) We reviewed a sample list of ten files for each of the calendar years noted above.

We read decisions of the Court of Appeal appealing decisions of the Board. Research was conducted on issues arising from our evidence review.

THE CHAIR

During our investigation, we learned that the Board has been chaired by successive Justices of the Supreme Court. Our team met with the then Board Chair, a Supreme Court Justice. There was no dedicated staff member assigned to provide administrative support to the Board before June 2019 when an administrator consultant was contracted to work with both the CICB and the Liquor Licence Authority. Prior to that, the Chair had to rely upon an employee of the Supreme Court Registry (“the Registry”) for whatever time they had available to assist with administrative functions.

Job descriptions were prepared in 2017 for administrative assistants that specifically had responsibility for provision of administrative support to the Board. There had been turnover in administrative assistant positions with temporary assignees having limited experience in performing the administrative role for the Board. These temporary assistants often rotated between the Registry and the Board without time to gain the requisite knowledge to perform the appropriate duties.

In 2018, the Board was reconstituted with all new members except for a long serving medical doctor. It is difficult to arrange meetings as members are very busy. For example, the doctors on the Board are often only available to meet for one half day per month. It was not until late 2018 that the Board was appointed and they did not meet other than for an orientation for some members. The budget allotment of \$320,000 is solely for the payment of awards. The Board does not have an operating budget specifically dedicated for administrative purposes. The Board does not have the infrastructure that most modern Boards have which specifically would enhance its administrative function to undertake:

- 1) Implementing a process whereby applications are screened when first filed – The Registry of the Supreme Court accepts what is presented by applicants. There is not presently a process to ensure applications are completed with adequate contact information and relevant evidence which could reasonably support a claim. For example, an applicant was out of the country for two years and did not provide any contact information, when he returned he complained that the Board took too long to process his application. Some applicants present with literacy challenges or disabilities, making it unrealistic to expect them to satisfactorily make use of or benefit from the application process without assistance or guidance in order to do so.

- 2) Writing policies and procedures – These need to be developed but no one has been tasked for the Board’s use on a regular basis to assist with the development of these guidelines.
- 3) A dedicated address and assigned hearing room – Currently the Board has no set space and relies on the availability of whichever hearing rooms within other authorities in the building may be available which the Board can only access if not in use.
- 4) Conducting a review of the Board’s legislation – The current Bermuda legislation has not been reviewed for some time. For example, it has the discretion to deny compensation to victims who have suffered from domestic violence.
- 5) Implementing a better system for financial management – Currently funds held in trust for a minor are held by a private law firm and this process should be further examined. When the Board makes an award of compensation it can take a long, extended period of time for the applicant to receive payment. Funds are paid out by the Registrar of the Supreme Court and payments are therefore, subject to the demands of that office’s workload.

We learned of challenges with addressing requests for access to records under the Public Access to Information Act 2010 (“PATI”) in the absence of any administrative support to respond to them. More importantly, the subject matter and evidence presented before the Board can be deeply painful and personal. Concern was expressed that applicants would be reluctant to come forward and provide details or would otherwise find it difficult to express their experiences if they thought the process was public or subject to PATI requests.

Prior to the arrival of the contracted administrator, the Chair was responsible for both chairing meetings and recording the notes of the proceedings.

The Chair directed that the information we requested be quickly compiled and delivered to us. The Administrator, who was contracted, was responsive to our request for documents and additional information as requested.

THE ADMINISTRATOR

The Administrator commenced work with the Liquor Licence Authority in 2018 and was subsequently asked to also assist the Board. He worked with an employee of the Supreme Court Registry who had previously assisted the Board from time to time, as her other duties permitted. She was familiar with the work of the Board but was not specifically assigned to it. While the job descriptions of the administrators of the Court specified that part of their duties included supporting the Board, none were assigned to it.

When the Administrator was assigned to assist the Board in June 2019, there was a substantial backlog. Two of members of the Board had resigned and it was sometimes difficult to schedule meetings of the Board as noted, particularly for the two members who were doctors with busy practices. The Chair was concerned about the slow progress in processing and adjudicating applications. In July 2020, a new Chair was appointed who soon resigned. It was surprising to learn that a member of the Judiciary had been appointed as the amendment to the legislation revised the qualifications for the Chairman of the Board by changing it from a judge to a barrister and attorney with at least 10 years' experience. This amendment was intended to facilitate the Board meeting more frequently and to preserve judicial resources.

When asked about reduction of administrative support to the Board, the Administrator explained that the Registry is very busy. Staff must provide administrative support for the entire Judiciary and the administration of justice which includes the many and varied demands of litigants and counsel.

We were interested in the length of time the Board spent on assessing each application. Board minutes disclosed, for example, that at one meeting the Board spent three hours and twenty minutes dealing with 17 applications and at another spent one hour and ten minutes dealing with ten applications. The Administrator stated there was nothing remarkable about the amount of time the Board spent on each application, as the Board thoroughly assessed most applications in a relatively short amount of time, since Board members reviewed pertinent file information prior to the meeting. Most Board members were familiar with the process and the Tariff provides guidance on making assessments. Adjudication of an application would be longer when an applicant or those representing or assisting them attended the hearing, as is the right of applicants.

The Administrator agreed that the Board does not have formal policies and procedures and that they would be helpful. The Act sets out the remit of the Board.

Early in his role the Administrator did research best practices for a criminal compensation scheme. He looked at the UK system for compensating victims of crime and found extensive policies and procedures that could be modified for Bermuda.

The Administrator could not provide insight into why the Tariff used by the Board has not been made a regulation with the weight of law. He acknowledged that the Court of Appeal noted that the Tariff is a useful tool for the Board and should be a regulation. The Tariff is old and should be updated. However, at this time there is no one dedicated to provide the assistance to advance a Tariff update.

When the Board orders that certain funds are to be held in trust for an applicant, they are transferred to a trust account at a specific firm. A lawyer from that firm wrote to the Government to see if an alternate process could be implemented but the Administrator does not think he received a reply. As noted, when the Board makes an award for compensation, it can take considerable time for the applicant to receive the funds. This may be compounded because there is no person in the Registry specifically assigned to the task. Applicants who are awarded funds have to complete a vendor form listing certain personal financial information. Confirmation of a bank account is also required. Sometimes, applicants find this process difficult.

The Administrator indicated that the Board could benefit from some basic technological advances. It currently does not have a website. While there was some discussion about developing an online application form, the idea never progressed. The Administrator shared with us that as part of his work with the Liquor Licence Authority, he worked with a developer to create a platform that greatly increased productivity. He suggested that a developer could work with the Board to develop a similar platform that would not only make the application process easier but could assist the Board with its work.

The Administrator indicated that the Chair has long wished that there were lawyers appointed who to the Board who had specifically worked on victim of crime applications. They would develop a familiarity with the processes involved and would not be required to overcome a learning curve with each new application.

He further noted that many applicants need assistance with completing forms and with understanding the process. He gave the example of an applicant whose daughter was injured. The application was processed and the person had an expectation that an award might be granted. However, as the injuries were not sustained during a crime, the Board had no jurisdiction to make an award. If the Board had a permanent administrator, he or she could identify the jurisdictional issue early in the process

and advise the applicant accordingly, thereby saving the Board time and assisting to manage applicants expectations.

In February 2020, the Administrator advised that the backlog of cases had been dealt with. The full budget allocated to the Board for the fiscal year was expected to be paid to applicants.

The Administrator stated that with an increase of crime and, collaterally, an increase in applications, the Board will need a permanent administrator and appropriate meeting space. The Board uses space in the Dame Lois Browne-Evans Building but there is no area where applicants or witnesses can sit privately. Members of the press can attend the meeting unless otherwise ordered by the Board to leave. Currently the Board does not have a proper means to electronically record its proceedings.

The Administrator also referred to PATI requests. The Board has received requests under the PATI legislation from the media to obtain Board minutes. This information may contain deeply personal and sometimes embarrassing information about the applicant or incident. Generally personal information is exempt from public disclosure under the PATI Act.

People often get frustrated and angry about the delays associated with having their claims processed. He referred to the example of the man who was awarded a sum. Contrary to the prescribed process, both he and his lawyer filed vendor forms with the Board. The Board paid the award to the lawyer. The applicant's mother was listed as a recipient on the son's vendor form, but not on the one filed by the lawyer. The mother became quite angry when she did not receive the funds she had expected. The Administrator was eventually tasked with having to explain the situation to her. It was a difficult process.

Finally, the Administrator discussed what type of information a permanent administrator could place on the Board's website once it was established. He suggested that information about the Board and its processes would be developed. He added that it would also be useful to include resources that might be helpful to a victim of crime such as a list of social workers, community groups, psychologists and clergy who could provide support and help.

DECISIONS OF THE COURT OF APPEAL

We read decisions of the Bermuda Court of Appeal that dealt with appeals from the Board. We took care in doing so, mindful that our investigation is in no way a review of how the Board applies its governing legislation or applicable legal principles. That is the purpose of appellate review. Our interest is in the administrative operations of the Board and when the Court of Appeal makes commentary about that we, as an Ombudsman office, have a keen interest in what it has to say. The decisions are publicly available, and we will not cite them explicitly but will refer to them instead by the date of their issuance.

On 23rd March 2018, the Court issued two judgements dealing with decisions of the Board. The Court allowed both appeals and commented on the Board's operations. In both appeals the Court noted shortcomings in how the applications were framed. This is not a direct responsibility of the Board but it does reflect the challenges it faces and highlights the benefits of having administrative support to assist in ensuring the best evidence is available to it, when deliberating.

In one of the decisions the Court provided a postscript which stated in part:

The second matter concerns the Board's budgetary constraints, and no doubt the reason for steps such as the deduction of medical expenses from awards for pain and suffering stems from an understandable desire to stay within budgetary constraints. But it does seem to me that when it comes to reimbursing a medical practitioner or a hospital for medical expenses actually and reasonably incurred as a result of the victim's injury, those setting budgetary limits need to decide whether the Board should operate as an expression of Society's sympathy and compassion for the harm done to the victim or not. It makes no sense to me to make an award for the pain and suffering to a victim and then reduce the amount of that award on account of medical expenses. So those responsible for securing the proper administration of the Act must, it seems to me, make sure that there are funds available to allow the Board to discharge its functions under the Act.

The final matter is to voice this court's very great concern at the deficiencies identified in this judgment and (another). I regard these as sufficiently serious to warrant a request to the Chair of the Board that she should review the Board's practices and procedures with a view to ensuring that all future proceedings of the Board comply with the principles of natural justice.

In the other decision released by the Court on 23rd March 2018 the Court, in a postscript stated:

It would not be appropriate to conclude this judgment without making some further reference to the tariff. I concluded my judgment in (another case) by saying that if the tariff is to be used by the Board, it would be preferable for it to have the force of regulation. That clearly remains the case, and no doubt something on which the Board can, and should, make the appropriate representation.

In a third ruling released on 14th November 2018 the Court provided the following commentary:

I should refer at this point to the length of time which it took the Board to deal with this matter. As indicated in paragraph 13 above, the time lag between injury and the award was almost four years. There was no way of telling from the record why such a delay should have occurred, and neither counsel was able to assist the Court in this regard.... The Court was given a list showing that at this point the Board has some 37 applications outstanding, but without further detail there is no way of knowing whether appeals are generally being dealt with on a timely basis. The Court raised this and a number of other queries with counsel for the board, so that it could be satisfied that applications are being promptly processed and the statutory scheme created by the act is operating efficiently. Chief importance of these queries is the Board's failure to comply with statutory obligation to deliver annual reports to the responsible minister, as required by section 19 of the Act. Next are the failure to respond to a letter off April 24, 2018 and delay in processing this application generally.

On what it describes as the Board's failure to provide adequate reasons for its decisions the Court stated:

In the two cases referred to above...the failure on the part of the Board to give reasons for the Board's decision was particularly significant because in each case there were substantial medical expenses, and the manner in which the Board had dealt with the payment of these expenses has led to the awards which the Board had made for pain and suffering being reduced so as to allow for the payment of medical expenses....in those two cases, the Court proceeded on the basis that, given the failure by the Board to give reasons for its decision, it was appropriate for the Court to substitute its own view of the proper level of award for that reached by the Board.

The Court once again took up the issue of the Tariff by stating:

At the risk of this request again falling on deaf ears, we repeat that if the Board is to place reliance on the Tariff, it would be helpful to applicants and counsel alike for the Tariff to have the force of regulation, something which the Chairman of the Board supports. We have been told that requests have been made to successive Attorneys-General to have the necessary regulations to be authorised. This is a simple matter which should not be delayed further.

In a concurring judgment on the same appeal one Justice stated:

There is a statutory duty on the government under section 17 of the Act to make payment of the Board's awards out of moneys appropriated by the legislature. There is also a statutory duty on the Chair of the Board to submit an annual report to the Attorney General as soon as practicable at the end of the calendar year and a statutory responsibility on the Attorney General to put that report before both houses of legislature. We have had no explanation why neither of these duties has been met for 2016 and 2017.

Unless prompt action is taken to remedy these problems, there are likely to be further appeals which come at an unnecessary cost to the public purse.

Finally, the President of the Court of Appeal was quoted as saying:

If the government is to provide a scheme for the compensation of victims of crime, as it currently does under the Criminal Injuries Compensation Act 1973, it must be properly funded with adequate administrative support. This is ultimately the responsibility of the Attorney-General.

OBSERVATIONS ON OVERSEAS BODIES

We have looked at some administrative tribunal practices in other jurisdictions to provide a context for our findings in this investigation.

In the United Kingdom, during July to September 2018, the number of employment tribunal cases rose 77% from the same period for the year previously. The rise was attributed to the elimination of a fee to file a claim. This coincided with a reduction in resources allocated to the tribunal, according to a leading employment lawyer, Sophie Vanhegan, a partner with GQ Lither, a specialist employment law firm in the U.K.:

...limited staff resource means tribunals are struggling to deal with the deluge of claims once fees were abolished. There is clearly a bottleneck which needs dealing with. The first step would be to increase the budget so that tribunals can take on more staff. A review of the claims procedure to reduce the number of cases that actually reach the tribunals may actually be needed long term...tribunals have done extremely well on a shoestring budget but this is not sustainable long term. It is not just judges that are important to the smooth running of tribunals, administrative staff are also essential to keep cases moving through the system.

In Canada, the federal government passed legislation establishing the Administrative Tribunals Support Service of Canada (“ATSSC”) on 1st November 2014. Its purpose is to provide the support services and the facilities that are needed by each of the tribunals it services to enable them to exercise their powers and perform their duties and functions in accordance with their legislation and rules. The Minister of Justice and the Attorney General of Canada is responsible for this organisation. Through this specialised service access to justice can be realised. The 11 tribunals the ATSSC services are varied in their roles but are consistent in their need for support services to function properly. The tribunals are: -

- Canada Agricultural Review Tribunal,
- Canada Industrial Relations Board,
- Canada Cultural Property Export Review Board,
- Canada Human Rights Tribunal,
- Canada International Trade Tribunal,
- Completion Tribunal,
- Public Service Disclosure Protection Tribunal,
- Federal Public Sector Labour Relations and Employment Board,

- Social Security Tribunal,
- Specific Claims Tribunal Canada,
- Transportation Appeal Tribunal of Canada, and the,
- Environmental Protection Tribunal of Canada.

We have also reviewed general information about how some overseas Criminal Injuries Compensation Schemes are constituted and administered. We compiled this information in a comparison chart which can be found in the Appendix to this Report.

SUPPORTING MATERIALS

We carefully considered the boxes of documents received from the Board in response to our request for Board materials. A review of that material helped to inform our findings and recommendations.

We reviewed Board files from 2016 through 2019. Our review was not intended to ascertain whether the Board was correct in its deliberations, rulings and awards. That is a task for appellate review as we have stated. Our review was to examine the administrative functioning of the Board.

It was difficult to ascertain with precision the average time it took for the Board to deal with applications. This was so because, with many files, it was hard to ascertain the precise date the application was filed and when it was concluded. Further, while an award may have been granted by the Board, it was not clear based on file material when the applicant received funds. In any event, application timeframes of over two years were not uncommon.

In fairness, certain factors may have contributed to the length of time it took for the Board to make a determination on applications. Often, the applications were incomplete and without up-to-date contact information for the applicants. Further, the provision of medical information to support an application was sometimes insufficient. We were able to make two conclusions based upon our review. First, all files were generally in a better condition than a reading of the Court of Appeal decisions, referred to earlier, might suggest. Second, the state of the files was consistent with the amount of administrative support the Board was provided. For example, the files consisted of mostly handwritten notes. Ascertaining the progress of any application was dependent upon being able to read the content of handwritten material. Finally, the files processed after contracting the Administrator in 2019 were better organised and easier to follow.

The Board materials provided by the Board does contain some encouraging documentation. For example, there is a document entitled CICB Hearing Summary Note. It requires the provision of basic information required to facilitate deliberations on any particular application. In addition, we were provided with office procedures for the Board. They cover topics including:

- 1) what to do on receipt of an application;
- 2) procedures for a hearing;
- 3) rules for agenda preparation;
- 4) policies for the preparation of files;
- 5) procedures for setting up the meeting room; and

6) basic instructions on the conduct of meetings.

It was not clear after reviewing the file material whether these policies and procedures, and summary notes were consistently followed.

In March 2018, the Judicial Department wrote to the Ministry in connection with the Board. The letter notified the Ministry the Judicial Department which had previously informally supported the Board administratively would no longer be in a position to provide such support given staffing, budgetary constraints and existing pressures of work in the Judicial Department.

ADVOCATES AND CONCERNED PERSONS

In speaking with advocates and people who work with applicants. This was some of the information we received:

Problems with delay are not just about the money. The longer the process takes, the longer people have to wait for an outcome. Their personal life continues to be impacted and the delay hinders them from moving on with their lives. After the initial application, nothing is heard for a long time and then you wait and wait while reliving the whole incident.

People should not be left in limbo. As a statutory Board, there is a duty for a fair hearing, including: ensuring applications are heard in a reasonable time, ensuring applicants understand the process, informing applicants what they need to put forth, ensuring applicants understand what the Board would take into account and the importance of giving reasons for the Board's decisions. This means understanding the Tariff.

Given the importance of the Tariff it is difficult to understand why it is not easily accessible. It is something the CICB should readily disclose. Having said that, sometimes the Tariff is not referred to in the hearing or in the decision.

There were challenges when it came to medical evidence of injuries. This was very difficult because applicants did not really know what to ask their doctors for the purposes of preparing a document for the CICB. Where people were impecunious, it was hard for them. Applicants would be assisted if there was guidance provided by the Board with the assistance of the doctors on the Board so that applicants and physicians would know what was required. Where medical evidence was submitted that was incomplete, the Board should say this before the application is dismissed through no fault of the applicant.

The Board needs to know the medical position at the time of the hearing. Where there is delay, medical reports may be outdated and applicants may not easily be able to afford updates. In some cases, doctors may be unwilling to provide these where applicants owe fees. This is another area where the doctors on the Board could assist with what specifically was required, especially bearing in mind the Tariff in providing guidance on what they needed to be updated on. Where applications were years in the waiting, this was a real hardship.

The Board should bring obvious issues with applications to the attention of applicants, especially bearing in mind that all applicants would not be legally represented or assisted. It was unfair to hear a case where the Board saw things that

required clarification or were missing without allowing an opportunity to clarify or get that information.

One applicant was told by Department of Financial Assistance (DFA) that under the rules once a decision had been made to make an award a person who was on financial assistance would be cut off. The reason given was that there was no provision under Financial Assistance rules to waive the fact that an award had been made for criminal injuries compensation and as such the payment was not exempt. DFA understandably assumed that once the award had been made the person would receive payment and did not factor in that it was not received.

It is easy to overlook practical matters when looking at issues theoretically. On top of the trauma victims endured, the length and uncertainty of the process is an ongoing ordeal. Other practical considerations raised were that funds were allocated on a first come first served basis, if the budget is spent applicants have to wait for the next financial year. If people are waiting for years to have their application considered they may then have to wait even longer, until the next financial year before the award is actually paid.

Once applications were submitted all that could be done was to follow up and seek responses and updates. The deadline for application to the Board is within one year of the date of the injury or death in respect of which the application is made. The Board may extend this for a further period not exceeding 12 months. In some cases clients lost confidence in their counsel and had changed attorneys after waiting for years. In order for counsel to carry on the original preparatory work, to submit applications in time, they incurred the cost of obtaining medical records to do so. We heard of one case where legal fees remained on the firm's accounts receivable for over 5 years and learned from the Board that the client had changed attorneys.

FINDINGS AND RECOMMENDATIONS

Prior to making any findings or recommendations it is necessary to make certain points which will provide context. The Ombudsman Act 2004 does not necessarily anticipate culpability on the part of any individual. Maladministration can occur by virtue of deficient systems and administrative structures. We came to recognise difficulties which had developed in the operation of the Board had taken place over time for a wide range of reasons.

When an Ombudsman identifies problems with a particular process or decision, we may make recommendations to the Authority to address the issues. An Ombudsman may also make recommendations addressing systemic issues related to legislation, policies or procedures.

The people of Bermuda, through legislation have indicated a desire that victims of crime should receive some compensation for their injuries. This desire is manifest in the provisions of the Act.

We found that the functioning of the Board and its processing of applications for compensation, have not been efficient. The best results are not being achieved by how the Criminal Injuries Compensation Board operates. In making this finding, we rely upon the evidence which was provided during the course of this investigation as follows.

The length of time that an applicant has to endure to have a claim processed is exceedingly long. Those familiar with access to justice issues understand that our Courts are backlogged, our administrative agencies are overworked and the legal system in general is not a perfect model for settling grievances. However, the experiences of those filing applications to the Board consistently fail to meet a reasonable person's expectation of efficient.

As victims of crime, applicants may find difficulty in navigating the rules and procedures necessary for the application process. They may not have access to information and may be more likely to present incomplete or inaccurate information in the application. This contributes to delay. The Board's practice of accepting an application without vetting makes the work of its members harder and unintentionally affects applicants' chances of receiving an award.

The lack of an internet presence by an administrative tribunal that, ultimately, does front-line work is problematic. A website which provides general information about the Board and its work would help not just applicants, but those who assist them, including their legal representatives, in ascertaining reasonable expectations of likely outcomes. As noted earlier, we recognise some applicants may have

challenges in accessing this process for various reasons. The trauma of their ordeal or any resulting medical needs or disability may also be a factor. We also recognise that some applicants struggle with literacy. Those who assist them would benefit from an online portal where relevant information could be found. Board members could have their work facilitated by online protocols. In any event, there should be a means for applicants to obtain guidance from a person by telephone.

There is a lack of generally accepted infrastructure for a modern administrative tribunal. There is no dedicated hearing room. Proceedings are generally not recorded. The Tariff used by the Board requires updating, should be more readily available and there should be an examination of the position of the Tariff generally.

It is not clear that procedures exist for giving notice of the timing of Board meetings and procedures for their rescheduling.

The fact the Board has not, or cannot, turn its attention to the examination of applicants' civil claims can be further reviewed. Those in the legal profession who attempt to collect debts are well aware of the time-consuming and discouraging nature of the work.

These findings lead to the following recommendations.

I recommend, the Ministry should briefly survey administrative tribunals and bodies to ascertain where economies of scale can be found. It may not be feasible to have one umbrella organisation, but cost savings might be realised through shared personnel, dedicated space for hearings, infrastructure, policies and procedures.

I recommend that, in the present circumstances, the Ministry should provide to the Board a permanent staff member for administrative support. It was enlightening to see the progress the Board made processing applications when it had access to the Administrator. For the foreseeable future, a permanent administrator could assist the Board with, but not limited to, the following:

1. Updating policies and procedures;
2. Facilitating a review of the Board's legislation;
3. Ensuring procedural capacity to continue to progress applications where there are issues concerning full membership of the Board;
4. Helping the Board establish a website and for those with limited access to the internet, a telephone contact including a recorded message with basic information and educational material to assist applicants and their representatives;
5. Conducting some type of preliminary review of applications once received, to ensure that the Board has the best possible evidence on which to deliberate.

CONCLUSION

The Ministry is responsible for the Board. It must uphold this responsibility by providing the resources, some of which, it may already have available to it for the Board to carry out its important work.

Fairness requires that the Ministry and Board take responsibility to address matters identified for change. Fairness also requires that the Board should not be criticised for things outside its control. As we reach the end of this process, we strongly encourage the Ministry of Legal Affairs and Constitutional Reform to take the necessary steps to provide for those who have suffered.

I would be remiss not to acknowledge the efforts of the Board and those who have worked to assist the Board to do its work even where those efforts fell short of the mark, recognising the work, professionalism and commitment of all those who have assisted us during the investigation.

It is a testament to the generous nature of the people of Bermuda that there exists a regime for compensating those who suffer as a result of being victims of crime. That testament needs to be nurtured by providing the Board with administrative support that is consistent with the proper functioning of any modern administrative tribunal. It is my hope that the findings and recommendations of this investigation in this Report can facilitate this outcome.

CRIMINAL INJURIES COMPENSATION SCHEME JURISDICTION
COMPARISON CHART APPENDIX
to the
Ombudsman's Own Motion
SYSTEMIC INVESTIGATION
into
Inadequate Administration of the Criminal Injuries Compensation Scheme

JURISDICTION	Bermuda	Ontario, Canada	United Kingdom	Ireland	Trinidad & Tobago
GENERAL DESCRIPTION	The Criminal Injuries Compensation Board (CICB) provides compensation to victims of crime or their dependents.	The Victim Quick Response Program+ (VQRP+) provides short-term financial support toward essential expenses for victims, their immediate family members and witnesses in the immediate aftermath of a violent crime.	The Criminal Injuries Compensation Authority (CICA) provides compensation to victims of violent crime or their families.	The Criminal Injuries Compensation Tribunal (CICT) considers applications from victims of crime who suffer a personal injury or dependents where a relative died as a result of a crime of violence.	The Criminal Injuries Compensation Board (CICB) provides compensation to victims of crime or their dependents.
WHO CONSIDERS APPLICATIONS FOR COMPENSATION?	<p>Six members of the Board are appointed by the Minister:</p> <ul style="list-style-type: none"> • Chairman - a barrister and attorney with at least ten years' experience • Deputy Chairman - a barrister and attorney with at least eight years' experience • Two members - persons entitled to practise in Bermuda as a medical practitioner under the Medical Practitioners Act 1950 [title 30 item 8] • Two other members. 	Victim service providers	Claims officers	<p>14 members of the Tribunal are appointed by the Minister, all of whom are practicing barristers or solicitors. There is also discretion for a duly authorised officer of the Tribunal to take a claim where the amount claimed does not exceed €3000.</p>	<p>Seven members of the Board are appointed by the Minister:</p> <ul style="list-style-type: none"> • Chairman - an attorney-at-law with no less than ten years experience in the practice of criminal law. • Other members - a medical practitioner of no less than ten years experience; an Attorney-at-law of no less than seven years experience in the practice of civil law; an attorney-at-law of no less than seven years experience in the practice of criminal law; a psychologist; a representative from the Ministry with responsibility for social services; and a duly appointed representative of the Tobago House of Assembly.

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BASIS ON WHICH COMPENSATION IS CALCULATED	Based on the Tariff as provided for in the Criminal Injuries Compensation Act and where no provision is made in the Tariff, in accordance with relevant provisions of the Act.	N/a	Based on the Tariff as set out in the Criminal Injuries Compensation Scheme 2012.	On the basis of damages awarded under the Civil Liabilities Acts.	The amount payable is within the absolute discretion of the Board in the nature of an ex gratia payment.
IS INFORMATION ABOUT THE BASIS FOR CALCULATING COMPENSATION PUBLICISED?	No	N/a	Yes	Yes	N/a
METHOD OF PAYMENT	Lump sum and/or periodic payments at the Board's discretion.	N/a	Lump sum payments with the discretion to make other arrangements as the claims officer considers appropriate in connection with the acceptance, payment or administration of an award.	Lump sum payments with the discretion to make an interim award and to postpone making a final award in a case in which a final medical assessment of the injury is delayed.	Lump sum payments with the discretion to provide for periodic payments to compensate for loss of earnings or support in cases of death or protracted disability compensation.
MAXIMUM AWARD	\$100,000	N/a	£500,000	N/a	\$25,000 with discretion for the Minister to increase the amount payable up to \$50,000.
MINIMUM AWARD	\$400	N/a	As set out in the Tariff, the lowest award amount is £1,000.	€500	N/a

References

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