

PRACTICE DIRECTIVE #9

CRIMINAL INJURY COMPENSATION ACT

Amendments to the *Criminal Injury Compensation Act* make it possible for a worker who has suffered a compensable injury (on or after June 1, 1995) as a result of a crime to apply for both Workers' Compensation benefits and Criminal Injury benefits. It is therefore important that Board officers provide consistent advice to workers who may be entitled to benefits under both Acts.

Determining entitlement to benefits under the *Criminal Injury Compensation Act* is complicated and technical. The rules of entitlement are significantly different from those which apply under the *Workers Compensation Act*. For example, the concept of fault is important under the *Criminal Injury Compensation Act* and almost irrelevant under the *Workers Compensation Act*. In addition, determining what constitutes a "crime" for the purposes of the *Criminal Injury Compensation Act* can be extremely difficult.

Adjudicators under the *Criminal Injury Compensation Act* receive specialized training in both adjudicating and investigating claims. It is not possible to provide other Board officers with the kind of training which would enable them to provide accurate advice with respect to entitlement to benefits under the *Criminal Injury Compensation Act*. Therefore, they should not give such advice.

On the other hand, it may well be necessary for adjudicators to carry out sensitive investigations regarding entitlement under both Acts. It is important in such cases that workers not be subjected to multiple investigations regarding the same traumatic incident. In addition, the rules of disclosure which govern adjudication under the *Workers Compensation Act* may well require adjudicators to disclose the results of sensitive investigations to the employer, who may also be or become a defendant in a criminal prosecution. For these reasons, it may well be necessary for adjudicators under the *Workers Compensation Act* to communicate and coordinate investigations with adjudicators under the *Criminal Injury Compensation Act*.

These considerations require that Board practice be consistent and that the actions of adjudicators under one Act not compromise the investigation and adjudications of claims under the other Act. Staff should therefore be guided by the following practice direction:

1. Board officers who are considering the claims of workers under the *Workers Compensation Act* are not to provide any advice to workers regarding their entitlement to benefits or the amount of benefits to which they are entitled under the *Criminal Injury Compensation Act*. Board officers should limit their discussion of the requirements of the *Criminal Injury Compensation Act* to informing workers that the Act exists, that a separate department of the Board adjudicates these claims, that the workers should contact the Criminal Injury Compensation Department for any information, and that the telephone number of the department is: 244-6400. Board officers should be advised that anything they say to workers regarding

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entitlement under the *Criminal Injury Compensation Act* may well create expectations in the minds of workers which cannot be fulfilled. Attempts to be helpful will probably cause more harm than good.

2. The record of any investigation will be subject to the disclosure rules which apply to the *Workers Compensation Act*. If a worker alleges that an employer or co-worker committed a crime which caused the worker an injury, Board officers must ensure that the record is as complete and as accurate as possible.

3. Where workers allege that they are the victim of a sexual attack or other crime which can reasonably be viewed as "sensitive," the investigation of their evidence should be carried out in conjunction with the investigation carried out by investigators under the *Criminal Injury Compensation Act*. Unless it is unavoidable, workers should not be subjected to multiple investigations regarding the same events. Of course, adjudicators must each carry out the investigations they think proper and reach their findings on the evidence as they see it. However, adjudicators should make every effort to ensure that their efforts are coordinated with those of adjudicators under the *Criminal Injury Compensation Act*. For example, workers and witnesses can be interviewed simultaneously by Board officers who are responsible for adjudicating claims under both *Acts*.

4. Requests for disclosure of information by alleged wrongdoers and by third parties should be referred to the Disclosure and FIPPA Departments and to the Criminal Injury Compensation Department before any information is released.

5. Board officers should remember at all times that the provisions of FIPPA may override the privacy provisions of the *Workers Compensation Act*. Evidence which may be irrelevant to a claim, and evidence which is speculative or constitutes mere rumour, should be referred to a manager in order to consider the possible removal of that evidence from the file.

This Practice Directive is a partially modified version of an October 6, 1995, memorandum from Michael Karton to Directors and Managers.