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Fourth Session, Thirty-Eighth Parliament  
56 Elizabeth II, 2008  
Legislative Assembly of British Columbia

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**VICTIMS OF CRIME COMPENSATION ACT, 2008**

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Mr. Farnworth

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### **Explanatory Note**

It is a devastating and emotionally jarring experience to be harmed by another's criminal act. It is senseless and profoundly unfair that innocent people die and are seriously injured simply because of such unfortunate circumstances beyond their control.

While programs and services are in place to rehabilitate criminals and to protect the public from being victims of crime, they have not eliminated crime, and thus innocent people continue to be victims of crime. This Act recognizes the importance of compensation for individuals who experience long-term physical and emotional trauma when these systems fail. Victims and their families deserve compensation for the harm that they experience due to crime. In many cases, they are unable to work for a period of time, and may lose not only wages, but also a job to return to.

This Act joins Quebec in recognizing that victims of crime are entitled to a two year unpaid leave of absence from their employment, with right to return to their previous position thereafter. In addition, it links this statutory right to the *Crime Victim Assistance Act* in order to ensure that they receive adequate compensation for income loss during this time.

**VICTIMS OF CRIME COMPENSATION ACT, 2008**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

*1 The Employment Standards Act, R.S.B.C. 1996, c. 113, is amended by adding the following section:*

**Criminal offence**

52.2 (1) In this section,

“**immediate family member**” means the same as in the *Crime Victim Assistance Act*;

“**serious injury**” means the same as in the *Crime Victim Assistance Act*;

(2) An employee may be absent from work for a period of not more than 104 weeks if the employee or an immediate family member of the employee suffers,

(a) in the case of the employee, serious injury, and

(b) in the case of an immediate family member of the employee, death,

during or resulting from a criminal offence, that renders the employee unable to hold his or her regular position.

(3) An employee who requests leave under subsection (2) is entitled to up to 104 weeks of unpaid leave beginning not before the date on which the criminal offence was committed, and ending not later than 104 weeks after the commission of the criminal offence.

(4) Subject to subsection (5), entitlement to unpaid leave under subsection (2) may be determined by agreement between employee and employer, and in the event of a disagreement regarding the occurrence of a criminal offence,

(a) a decision by the tribunal; or

(b) compensation awarded to the employee under the *Crime Victim Assistance Act, 2001*

is sufficient proof of the criminal offence.

(5) An employee is not entitled to a period of absence under subsection (2) if it may be inferred from the circumstances that the employee or immediate family member of the employee, as the case may be,

- (a) was probable a party to the criminal offence; or
  - (b) probably contributed significantly to the injury by gross fault.
- (6) Without limiting its generality, subsection (2) applies if the employee or immediate family member of the employee, as the case may be, suffered the injury
- (a) while lawfully arresting or attempting to arrest an offender or suspected offender or assisting a peace officer making an arrest; or
  - (b) while lawfully preventing or attempting to prevent the commission of an offence or suspected offence, or assisting a peace officer who is preventing or attempting to prevent the commission of an offence or suspected offence.
- (7) For the purposes of subsection (2)
- (a) compensation may be awarded whether or not any person is prosecuted for the offence giving rise to the injury or death;
  - (b) a person is deemed for the purposes of this section to have intended an act or omission that caused injury or death whether or not the person is legally incapable of forming criminal intent; and
  - (c) proof that a person has been convicted, discharged under section 730 of the *Criminal Code* or found not criminally responsible on account of mental disorder for an offence in relation to the victim's death or injury, and that no appeal or further appeal of that verdict is available, is conclusive evidence that the offence was committed.
- (8) During a period of absence under subsection (2), the employee may return to work intermittently or on a part-time basis if the employer consents to it.
- (9) At the end of an unpaid leave under subsection (2), the employer must reinstate the employee in the employee's former position with the same benefits, including the wages to which the employee would have been entitled to, had the employee remained at work.

**2 Subsection 4 (1) of the Crime Victim Assistance Act, R.S.B.C. 2001, c. 38, is amended by adding the following clause:**

(m.1) income lost during unpaid leave in accordance with section 52.2 of the *Employment Standards Act*;

**3 Subsection 4 (2) of the Crime Victim Assistance Act, R.S.B.C. 2001, c. 38, is amended by adding the following clause:**

(h.1) income lost during unpaid leave in accordance with section 52.2 of the *Employment Standards Act*;

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