Neutral Citation Number: [2023] CA (Bda) 23 Civ

Civil Appeal Nos. 1, 3, 4, 6 and 12 of 2023

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM DECISIONS OF THE CRIMINAL INJURIES COMPENSATION BOARD

Before:

THE PRESIDENT, SIR CHRISTOPHER CLARKE
JUSTICE OF APPEAL GEOFFREY BELL
and
JUSTICE OF APPEAL IAN KAWALEY

- - - - - - - - - - - - - - - - - - - -

Between:

VALERIE RAYNOR
CHRISTINA BELBODA
EUJONTE OUTERBRIDGE
TIO SMITH
VINCENT ROBINSON

Appellants

-and-

THE CRIMINAL INJURIES COMPENSATION BOARD

Respondent

Valerie Raynor, Litigant in Person
Christina Belboda, Litigant in Person
Eujonte Outerbridge, No Appearance
Tio Smith, Litigant in Person
Vincent Robinson, Litigant in Person

Wendy Greenidge, Attorney General's Chambers, for the Respondent

Hearing Date: 1 November 2023
Date of Judgment 17 November 2023

\- -

APPROVED JUDGMENT

CLARKE P:

1. We are concerned in this case with five appellants whose claims for compensation from the Criminal Injuries (Compensation) Board (the "CICB" or the "Board") have been rejected.

2. The CICB was set up by section 2 of the *Criminal Injuries (Compensation) Act 1973* ("the Act"). Section 3 of the Act provides:

> ***"Injuries which may be compensated***
>
> *(1) Where a person is killed or injured, and the death or injury is directly attributable to—*
>
> *(a) the commission by any other person of a crime of violence;*
>
> *(b) the lawful arrest, or lawfully attempted arrest, of any person for having committed an offence or who is suspected of having committed an offence;*
>
> *(c) assisting a police officer in the execution of such officer's duties under any provision of law;*
>
> *(d) the prevention or attempted prevention of an offence,*
>
> *the Board may on application make an order for the payment of compensation, in such amount as it may determine—*
>
> *(i) to or for the benefit of the victim; or*
>
> *(ii) where the compensation is in respect of pecuniary loss suffered or expenses incurred, as a result of the victim's injury, by any person responsible for the maintenance of the victim, to that person; or*
>
> *(iii) where the death of the victim has resulted—*
>
> *(A) to or for the benefit of the victim's dependants or any one or more of them; or*

(B) if there are no such dependants and the compensation is in respect of expenses incurred as a result of the victim's death, to the person who incurred those expenses.

(2) In determining whether to make an order under this section, the Board shall, without prejudice to section 6(4)(a), have regard to all such circumstances as it considers relevant and, in particular, to any provocative or negligent behaviour of the victim which it is satisfied contributed, directly or indirectly to his injury or death.

(3) Without restricting the generality of the discretion vested in the Board under this section the Board may refuse to make an order hereunder if the victim was, at the time when the injury was sustained, living with the offender as his wife or her husband or as a member of the offender's household.

(4) No order shall be made under this section—

(a) if the injury is one for which a total compensation of less than $400 would be payable; or

(b) if the victim fails, without reasonable cause—

(i) to undergo any medical examination which he may be required to undergo by the Board; or

(ii) to produce or cause or permit to be produced to the Board any medical records, X-rays or other documents relating to his injury or medical history which the Board may require to be produced.

(5) The Board may refuse to entertain a claim for compensation where no person has been prosecuted for the offence giving rise to the injury or death unless the offence has been reported to the police as soon as reasonably practicable after its commission by the victim or some other person on behalf of the victim or, in the event of his death, by one of his dependants or some other person on behalf of such person.

(6) The Board shall refuse to entertain a claim for compensation where an application for compensation is made to the Board after the end of the period specified by the Board under section 4(1) in respect of the application."

3. Section 4 of the Act provides:

> ***"Application for compensation***
>
> *(1) An application for compensation shall be made within one year of the date of the injury or death in respect of which the application is made; but the Board may, if it thinks fit, extend the period of one year for a further period not exceeding twelve months.*
>
> *(2) A copy of every application under subsection (1) shall be served on such persons as the Chairman of the Board may direct and every person upon whom such copy is served shall be deemed to be a party to the proceedings with effect from the date of such service.*
>
> *(3) An application for compensation may be made by any of the persons mentioned in section 3(1)(i), (ii) or (iii), but so that—*
>
> *(a) where the death of the victim has resulted, the application may be made by the victim's spouse on behalf of both the applicant and of such of the children of the marriage, if any, as are the victim's dependants;*
>
> *(b) where—*
>
> *(i) there is no surviving spouse of a deceased victim; or*
>
> *(ii) the victim or other person entitled to apply for compensation is, by reason of age or otherwise, incapable of making the application,*
>
> *the application may be made by such person as the Board may allow."*

4. In each of the cases before us the application to the CICB was made more than 2 years after the date of the injury or death in respect of which the application was made. Each of those applications has been rejected by the CICB on the grounds that it was bound to do so by reason of the provisions of section 4 of the Act. The CICB accepts that, if the application had been made within two years it could have exercised a discretion whether to extend the period of one year (but no further). But it took the view since the application was made more than 2 years after the date of the injury or death the question of exercising any discretion did not and could not arise. I shall revert to this issue after detailing the facts.

The facts

Raynor

5. On **8 July 2020** Amon James Brown Jr, aged 52, the son of Valerie B Raynor, who appeared before us, was murdered by Tyshaun Brown, his son, who stabbed Amon many times in the chest and elsewhere. Ms Raynor told us that Tyshaun Brown had confessed that he had done that and came before the arraignment court on a series of monthly sessions, at one of which he pleaded guilty to the charge of murder. The case was brought before the judge for sentencing in **April 2022.** According to Valerie Raynor's evidence, once the defendant was sentenced she learnt, from sources in the community, that she could apply for criminal injury compensation. In **July** or **August 2022** she went to the DPP's office to get the relevant form and was told that every aspect of the form must be completed including attaching a copy of her son's death certificate. Due to the Coronavirus pandemic the Coroner's Office was unable to produce the Death Certificate in a timely manner. She did not receive a certificate until September 2022. She submitted the appropriate form, with a claim for funeral expenses, on **20 September 2022**.

6. There were at the time two different types of form:

(i) Form 1

This form is for applications by Injured Persons with respect to compensation payable to him/her. It contains in capital letters and in bold red in the middle of the first page the following:

"**ALL APPLICANTS MUST COMPLETE EVERY ASPECT OF THIS FORM. IF INCOMPLETE THE MATTER WILL BE DELAYED IN BEING PLACED BEFORE THE CRIMINAL INJURIES COMPENSATION BOARD FOR CONSIDERATION UNTIL COMPLETION".**

The form does not specify a date by which the form has to be completed.

(ii) Form No 2

This form is for applications on behalf of Dependents of a Deceased Person with respect to compensation payable to such Dependents.

The form contains in capital letters and in bold at the bottom of the first page the same words as are set out above in relation to Form No 1.

At the bottom of the second page it says:

"**DEATH CERTIFICATES MUST BE PRODUCED FOR CONSIDERATION. FAILURE TO DO SO WILL DELAY CONSIDERATION OF THIS APPLICATION**"

This form, also, does not specify a date by which the form has to be completed.

7. On **13 December 2022** the CICB met by zoom and agreed, by unanimous vote, that the application was time barred and, therefore, the CICB could not accept it. On **28 December 2022** the Chair of the Board notified Valerie Raynor that the application, being more than two years out of time, was statutorily barred and that the Board was not permitted by law to consider it. This was the first time that she had learnt of the existence of any time limit. The letter notified her that if she wished to appeal she could make an application to the Court of Appeal within 21 days.

8. On **13 January 2023** Ms Raynor filed a Notice of Appeal. She relied on two matters (a) the application was not two years out of time - it was two months out of time; and (b) the decision of the Board was unreasonable because the application was only two months out of time (as was correct) and was submitted as soon as reasonably practicable given that she was not in possession of a death certificate until early September.

Christina Belboda

9. On **26 October 2018** Zayne Obileye, then aged just 1, sustained a head injury, while at the Heavenly Blessing Nursery, Pembroke, resulting in a fractured skull with a torn artery which caused an epidural haematoma and midline shift. The child had to be airlifted to Miami for emergency surgery. The fracture was caused by an act of grievous bodily harm of his teacher, Mrs Vernesha Symonds, who owned and operated the Nursery. The injury was caused to the

child as a result of his having been thrown into the air a few times on the last of which he fell to the ground head first.

10. An application dated **4 October 2022** was received by the CICB on **6 October 2022** i.e. almost four years after the date of the incident. (The date stamp originally, and mistakenly applied, was 6 September 2020). The application, which was made on Form 1 was accompanied by a substantial body of material in relation to the police investigation of the injury sustained by Zayne. That investigation had closed in **2019** for lack of evidence as to what exactly had happened. It was then re-opened in February **2020** as a result of the police being provided with a letter which detailed the incident which led to Zayne's injury. This was followed by the police interviewing the informant, a former employee of the Nursery on **13 July 2020**. On **23 October 2020** Ms Belboda, who appeared before us, was interviewed by the police. On **23 December 2020** Mrs Symonds was arrested on suspicion of causing grievous bodily harm, and cautioned, to which she made no reply. She declined the opportunity to provide a caution interview. On **4 February 2021** Mrs Symonds was charged with causing grievous bodily harm. Ms Belboda was given a leaflet by the police about claiming compensation which, so far as she recall, had no reference to a time limit. In **March 2022** Mrs Symonds appeared before a Magistrate and entered a plea of guilty. The case concluded – when she was sentenced - on **16 March 2022**.

11. The claim was rejected by the CICB as out of time at the CICB meeting on **13 December 2022.** A letter in similar terms to that referred to at [7] above was sent to Ms Belboda on **28 December 2022**. A Notice of Appeal was filed on **18 January 2023.**

12. Ms Belboda contends that the CICB has been unreasonable in its rejection of her application om the following grounds:

    (i) The method by which an applicant should seek compensation and the applicable time limits are not common or public knowledge;

    (ii) The application forms do not reveal any time constraints, let alone the ones provided for in the Act;

    (iii) Mr Kenneth Scott, the administrator for CICB, would not accept an incomplete application until Ms Belboda had all the court proceedings, conviction and supporting

documents to support the submission of her application, some of which documents were not available until after 16 March 2022;

(iii) The Act is ambiguous as to time limits;

(iv) She would not have been able to file an application or receive compensation under the Act as the case was closed in 2019; and even if an application had been filed the application would not have been entertained by the CICB in the absence of a criminal conviction or supporting documents to provide evidence of a criminal offence;

(v) There had been a lack of response to her request by email for the identity of the members of the CICB. She learnt later that Dr Brown, by whom she was employed, was a member. She took the view that he should recuse himself from any decision because there was a dispute between him and her, he having required her to pay back wages for the time she had had to visit Miami to address the progress of her son.

13. Mr Scott, who was the administrator for the CICB has filed an affidavit in which he acknowledges that between September and October 2022 Ms Belboda called to inquire about receiving a CICB application. He told her that he could email her one if she wished. She asked in the telephone conversation for the names of the Board, which with a little hesitation, he gave her. He subsequently emailed her the application form which she completed and produced at his office on 6 October 2022. In the same affidavit Mr Scott says that he would never refuse to accept applications and did not say to Ms Belboda that he would not accept an incomplete one.

14. Mr Scott observed that the application process is straightforward. The appropriate application form is to be filled in. What the applicants are instructed to compete is highlighted in red. He had never refused to accept an application as that was not within his role or remit. The CICB never received an incomplete application form from Ms Belboda nor did he refuse to accept one.

Outerbridge

15. On **17 October 2016** at about 9.46 pm Mr Eujonte Outerbridge, then aged 31, was at the Hamilton Parish Community Club (the Crawl Club) as a Security Officer. According to his application form he was sitting outside with friends when two men ran upon the crowd and opened fire. He ran into the establishment to seek refuge under a table and when doing so he was shot five times on various parts of his body. Two bullets grazed the right side of his head; a gunshot wounded

the back of his neck with the bullet lodged against the clavicle collarbone; another went into the middle of his back which resulted in the collapse of his right lung; and one to his lower back which resulted in nerve damage to the right side of his body which led him to have no mobility in his right foot. He was rushed to the KEMH where he spent 4 nights in ICU.

16. The Application was made on an earlier version of the Application Form dated **22 April 2019**, i.e. 30 months after the wounding, or 6 months after the 2 year deadline, and signed by Mr Outerbridge The form, which was completed by DV Bermuda Ltd. indicated that new information (unspecified) had revealed that the person who Mr Outerbridge believed to have committed the offence had himself been killed in a firearms incident outside St David's Cricket Cub on **29 December 2018**. The form does not, however, appear to have been received by the CICB until **17 September 2021**, the date of the Received stamp, i.e. nearly five years after the incident.

17. This application was considered on **13 September 2022** when the CICB decided that it was statute barred and that the CICB was not permitted to issue an award. We do not know why it took the CICB almost a year to address this application. Mr Outerbridge was notified of its rejection by a letter to him in England dated **21 September 2022**. The time for appealing from that decision expired on **12 October 2022.**

18. On **5 December 2022**, about 2 ½ months from the notification of 21 September 2022, Mr Outerbridge applied for an extension of time for filing a Notice of Appeal. In his affidavit in support sworn on that date he explained that his injuries and resulting limited mobility led to him breaking up with his girl fired; in **December 2016** he moved to live with his sister and then left Bermuda for the UK on **22 March 2017**. He did so in the light of intelligence he had received that had suggested that whoever had shot him was still attempting to kill him. Mr Outerbridge has not returned from the UK and did not appear in person before us, or by any representative.

19. Mr Outerbridge said that he learnt of the potential availability of compensation from the CICB after a relative, who was also a victim of gun violence, had successfully appealed to the Court of Appeal for an increase in the case of *Tajmal Webb v CICB* [2018} CA (Bda) 2 Civ, **23 March 2018**. His evidence is that following receipt of this information in or about April 2018 he made a series of enquiries with government departments as to how to go about making any applications

to the CICB. This was met by "*roadblock upon roadblock*" as no one seemed to know who was responsible for the administration of the CICB, and there was no publicly accessible application from either the Court house or an internet website.

20. In **November 2018** he read in the online Royal Gazette of another successful appeal in the case of *Lionel Thomas v CICB* [2018] CA (Bda) 31 Civ, 23 November 2018. As a result he recommenced his attempts to advance his own application. He made contact with Mr Quallo of the Registry of the Court of Appeal, who managed to obtain a blank application form and provided it to his aunt who was resident in Bermuda. He then had to particularise the level of award he was eligible for which could only be done with the use of the CICB tariff which did not seem to be publicly available. We note that, at paragraph 13 (c) of the decision in *Thomas* this Court had noted that one of three matters of complaint was that the Tariff was not available to the general public.

21. Mr Outerbridge submits that his inability to comply with the filing deadlines was a result of (a) the nature of his injuries and the degree of recovery; (b) his need to abscond the jurisdiction in order to preserve his life; (c) the efforts made to seek guidance from the Board in order to make a timely application; and (d) the lack of public information and guidance in relation to the Board and the rights and responsibilities of applicants when seeking assistance from the Board. He suggests that if he had been armed with the requisite material and information at the time he was making inquiries he would have made a timely submission.

22. As to his lateness in filing the appeal he relies on the fact that after the release of the Board's decision on **21 September 2022** he contacted Mr Scott, the administrator to inquire about his options, in the course of which Mr Scott indicated that "*Dr B is still fighting for me*". He understood that that meant that the Board or, at least, one of its members were considering alternative means of addressing his application. He asked if there was anything he could do further to aid the Board and was told "*nothing for now*". He heard nothing from Mr Scott until **27 October 2022**, when he contacted him for an update and then learnt that his matter would not be furthered by the Board. He suggests that, in those circumstances, the start point for calculating the time to appeal would be 27 October 2022 which would suggest that his Notice of Appeal

should be filed no later than 17 November 2022. What in fact happened is that he filed an application for an extension of time was on **5 December 2022**.

23. We do not have the notice of appeal said to have been exhibited at paragraph 4 of Mr Outerbridge's affidavit of **5 December 2022** in support of his application for an extension of time, nor do we have the exhibit referred to at paragraph 18, which was said to record his discussion with Mr Scott about his options.

Smith

24. On **24 December 2019** Tio Smith, an employee of the Department of Parks, was stabbed in the chest at 10.00 pm inside "Places" bar. The person who stabbed him was Jaha Mallory. Mr Smith appeared in person before us.

25. On **8 June 2022,** i.e nearly 2 ½ years after the stabbing Mr Smith filed an application for compensation, which was received, and stamped, on **30 June 20**22. The application was considered by the CICB on **15 November 2022** and rejected as being more than 2 years out of time (in fact some 6 months after the expiry of the 2 year period). Notice of this was given to Mr Smith on **28 December 2022**.

26. On **11 January 2023** Mr Smith wrote to the Court of Appeal a letter in which he asked that the Court of Appeal reconsider the decision of the CICB, He explained that it was not until **January 2020** that Mr Mallory appeared in the Sessions Court to answer the charges against him, shortly after which the Island went into lockdown on account of Covid. Despite various mentions it was not until **May 2022** that Mr Mallory changed his plea to guilty to wounding with intent and Mr Smith had all his paperwork to submit to the CICB for consideration.

27. On **16 January 2023** Mr Quallo, the then Clerk to the Court of Appeal, emailed Mr Smith to point out that the letter of **11 January 202**3 did not count as a proper Notice of Appeal and to inform him that if he wished to file a Notice he should do so in accordance with the rules on or before **18 January 2023** and fix revenue stamps on the back of the document before filing.

Nothing was filed thereafter. We are prepared to regard the letter of 16 January 2023 as a Notice of Appel, despite its defects in form.

Vincent Robinson

28. On **22 December 2019** Mr Vincent Jerome Robinson, who had already required left below knee amputation as a result of a road traffic accident in 2017, was shot in the left upper back. He was stabilised and treated at KEMH and then transferred by air ambulance to Health City, Cayman Island. His application to the CICB, dated 22 December 2021, drafted by him and his aunt, was delivered by her. There was some doubt as to when it was delivered. The letter accompanying it was signed by Mr Robinson on **22 December 202.** But it is apparent that the application cannot have been delivered before **23 December 2021** because this is the date when it was signed by Mr Robinson (see Tab 6/page 11 of the Record of Appeal); which tallies with the letter from the Board of **31 October 2022 (**see below**),** which told Mr Robinson that his application was not accepted, and referred to it as having been received on **23 December 2021**. We note that the form used does not contain the words in bold which we have set out in relation to Form 1 at paragraph [6] above. The application has a stamp dated **24 December 2021**. In addition, the letter of acknowledgement of its receipt dated (somewhat surprisingly) 25 December 2021 said that it was received on that date.

29. It seems to us that the likely date of delivery of the application form was, indeed **23 December 2021**. In that case the application was filed only a day after the expiry of two years after 22 December 2021.

30. The application was considered by the Board on **18 October 2022**. According to the Board's letter of **31 October 2022** the Board had fully considered the application and determined that it did not "*merit the exercise of its discretion to consider the Application submitted outside of the year of the date of the injury, as set out in section 4 of the Act"*. This is somewhat puzzling since the application would appear to fall outside the two year period - although only just, which, on the CICB's case would mean that it had no discretion to exercise.

31. On **27 April 2023** i.e. near six months later Mr Robinson applied for leave to appeal the decision of the CICB. In fact leave was not needed for that purpose. What was needed was leave to appeal out of time. The notice seeking leave to appeal did not give any explanation of the six months delay between the decision of the CICB and the 27 April 2023. The matters set out in the Notice for leave to appeal dealt with reasons for not filing the application with the CICB.

Did the CICB have jurisdiction to entertain the applications?

32. Each of these applications was made more than two years after the crime in question was committed. The CICB submits that, in those circumstances, it has no jurisdiction to entertain them. Reliance is placed on sections 3 (6) and 4 (1) of the Act, which , for the sake of convenience, I shall repeat:

> "*3 (6) The Board shall refuse to entertain a claim for compensation where an application for compensation is made to the Board after the end of the period specified by the Board under section 4(1) in respect of the application."*
>
> *"4 **Application for compensation***
>
> *(1) An application for compensation shall be made within one year of the date of the injury or death in respect of which the application is made; but the Board may, if it thinks fit, extend the period of one year for a further period not exceeding twelve months.*"

33. The provision in section 4 (1) that an application for condensation "*shall"* be made within one year is imperative not directory. Section 8 of the *Interpretation Act 1981* provides in terms that:

> "*In every Act -*
>
> "*May" in relation to any statutory provision whereby power is conferred, shall be construed as permissive*
>
> *"Shall" in relation to any statutory provision whereby a duty is imposed shall be construed as imperative".*

34. Sections 3 (6) and 4 (1) envisage that the Board may grant an extension of up to one year but provides in terms that the Board shall refuse to entertain the claim after the period specified by the Board. That language might be thought to fit more readily to an extension made before the application is filed; but it is apt to cover an application which is made within the additional year and is then covered by an extension not exceeding one year. But no such extension could be

made beyond the additional year. So, in the present case, no extension could legitimately be made which would be of any utility.

35. The above analysis seems to me one from which there is no escape. The requirement to apply within a year is mandatory and was not complied with. It does not seem to me possible to construe the statutory wording as meaning that, if no extension is specified under section 4 (1) because the Board grants no extension , the Board is not bound to refuse the claim. It is so bound because a claim which is not made within one year of the injury or death, or within any one-year extension specified by the Board, does not comply with section 4.

36. Nor does it seem to me possible, by any proper method of statutory construction, to say that the one-year limit does not apply until the applicant knows or is put on notice that a crime has been committed. It is true that the Act provides, so far as presently relevant, for the payment of compensation where a person is killed or injured and that death or injury is directly attributable to the commission of a crime of violence. But the date by reference to which the one-year period begins is the date of the death or injury.

37. Accordingly, I would dismiss the appeals of **Valerie Raynor**, **Christina Belboda** and **Tio Smith**. I would grant **Eujonte Outerbridge** an extension of time in which to appeal to this Court, since he may have been given to understand that, despite the rejection of his application, the Board was considering methods of assisting him and delayed bringing the matter before this court (but not for very long) on that account; but I would dismiss his appeal. I would grant **Vincent Robinson** an extension of time for appealing to this Court despite his delay in doing so, because it would seem to me unjust to prevent him from challenging in this Court the decision of the CICB to reject an application that was only a day out of time; but I would dismiss his appeal.

38. I have reached this conclusion with profound reluctance. A system of compensation for those who have suffered injury from criminal acts, or whose relatives have died as a result of them, needs to be clear and fair. The applicants for such compensation (often litigants in person) will be people who are likely to have endured much suffering, as was apparent to us to be the case in

relation to all those who appealed to us. No one in whose veins blood flows could not but sympathize with their sorrows.

39. I accept, as of course I must, that the parameters of a compensatory scheme are for the Legislature; and that such schemes are a charge on public expenditure. That said, there are a number of facets of the existing scheme that strike me as profoundly unsatisfactory and deeply unfair.

40. First, it is apparent that what is, in effect, a limitation period for applications is not public knowledge. When I asked Ms Greenidge, who appeared for the CICB, where, otherwise than by looking at Bermuda Laws online and working through the interstices of the Act, one could discover what was in effect a one year, or at best, two-year limitation period, she told me that there was nowhere.

41. Second, the result of this is that applicants for compensation are simply left in the dark as to the existence of a legal guillotine which may preclude any claim. None of the appellants before us were aware of a limitation period until their applications were rejected by the Board. Moreover, the Board seems to have made no attempt to ensure that the one, possibly two, year period for making any valid application to it was public knowledge. Several of the appellants had been told by the prosecuting authorities that they might have a claim for compensation and had been provided with a leaflet with details. That leaflet was not made available to us.. None of them appear to have been told that there was any form of limitation period, and it is not even apparent to us that the prosecuting authorities knew that there was one. Nor was it clear to several of the appellants where an application form would be obtained.

42. Third, matters were made worse by some of the forms in use. The forms to which I refer in paragraph [6] above made it clear that the application would not be considered until all the relevant information was to hand. To an ordinary reader that would suggest that there was little point in submitting an incomplete application because it would not be considered until it was complete. What the forms did not say was that, even if the form was incomplete, it had to be submitted within a year of the death or injury. It cannot possibly be right to highlight in red the

fact that failure to provide all necessary information will delay consideration of the application but conceal the fact that after the expiry of one or, at best, two years, the claim will not be capable of consideration at all. It is the latter fact that should be highlighted in red, when in fact it was hidden from view.

43. Fourth, the one-year time limit, with the possibility of a one-year extension, is very short – much less than that provided for in the case of personal injury claims. The one year only extension was introduced by the *Criminal Injuries (Compensation) Amendment Act 2008* which (i) inserted section 3 (6) and amended section 4 (1) of the Act by deleting the word "*such further period as it thinks fit*" and substituting the words "*a further period not exceeding twelve months*". The former wording of section 4 (1) afforded the CICB the opportunity to do that which was just in any particular case, having regard, in particular to any mitigating circumstances (of which in practice there may be several – such as an unexpected pandemic). The new wording produced a very tight limit which might well be wholly inapposite in a case in which compiling the material, which might include detailed medical records from another jurisdiction, would take time; or where Covid restricted the availability of necessary material such as death certificates.

44. Fifth, since any compensation is to be in respect of a crime it is necessary to establish that a crime has been committed. In many case that is obvious. But in others it is not. If there is a fight it may be unclear whether the alleged assailant was committing a crime or simply defending himself. A shot that killed someone may have been fired by someone who intended to kill the victim; or it may have been fired in self-defence and hit the victim by accident. The victim or his dependents might in those circumstances regard it as appropriate to await the result of any trial – and the CICB would be likely to do so too.

45. The case of Ms Belboda is a classic illustration of the problem. For a long time, Mrs Symons maintained that Zayne had slipped; and, after a while, the police ceased their investigation. Then, when new evidence in the form of an informant appeared, they renewed their investigation and eventually charged Mrs Symons. It would seem odd that an applicant was bound to make his application at a time when it was not clear whether any crime had been committed at all. And even though there is a charge, it may not become clear that there was a crime until the case has

been heard. It makes much more sense to allow an application to be made within some specified time period after any conviction.

46. In the light of the considerations that I have set out in the preceding paragraph I propose that this judgment should be sent to the Minister of Justice and to the Board in order that:

(i) the Minister may consider whether an *ex gratia* payment of compensation should be made to the present appellants/applicants in the amount, to be determined by the Board, that they would have been awarded if their applications had been filed in time; and

(ii) the Minister and the Board may consider whether the change effected by the 2005 Act was fair and should be continued; or whether the legislation should be amended in all or some of the following ways (or others) :

a. to extend the base period from one to three years;

b. to allow an application to be made within a period amounting to a number of years after a relevant conviction;

c. to allow the CICB to entertain an application brought after the expiry of any relevant period as a matter of discretion.

(iii) the Board may consider how to make the applicable time limits (whatever they remain) readily apparent to would-be applicants e.g., by ensuring:

i. that the prosecuting authorities are fully aware of them, and of the need to advise potential applicants of their existence;

ii. that the Board's own application forms make it wholly clear, in bold terms, what the applicable time limits are;

iii. that the relevant application forms are readily available from sources to which the public has ready access

iv. that leaflets describing the compensation schemes are readily available which contain details of the limitation period applicable in clear terms.

BELL, J.A.

47. I agree with the judgment of my Lord President, and with the judgment of Justice of Appeal Kawaley which follows below.

KAWALEY, JA

48. I too agree that the appeals of Belboda, Raynor, Outerbridge, Smith and Robinson should be dismissed for the reasons cogently set out in the President's Judgment. I echo his concerns about the need for administrative steps to be taken to ensure that potential criminal injuries compensation applicants are made aware of the statutory time limits for making applications.

49. More so in 2023 than in 1973, the Act provides an important underpinning for the efficacy of the criminal justice system and, more broadly, respect for the administration of justice and the rule of law. Not only is it right and proper that the State should provide compensation for victims of crime who will in most cases be unable to obtain civil compensation from impecunious offenders. Today importance is also placed upon what might broadly be described as "witness support" in criminal cases. Because many victims require positive support and encouragement to make and or pursue complaints. One or more of the Appellants seemingly learned of their rights under the Act from the Office of the Director of Public Prosecutions.

50. The Belboda appeal raises a particular statutory deficiency with the existing scheme which warrants special mention. Whether her child's injuries were directly attributable to an act of criminal violence was not clear until after the statutory time period (which begins with the date of death or injury) had already expired. Does the Act really provide that the limitation period of one year starts running against an applicant who is not aware that they have been the victim of a crime? I initially was confident that it did not and that the contrary finding of the Board provided a ground for allowing her appeal. However, after careful reflection, I am bound to agree with the President's pithy conclusion on the construction of section 4 of the Act:

> "*36. Nor does it seem to me possible, by any proper method of statutory construction, to say that the one year limit does not apply until the applicant knows or is put on notice that a crime has been committed. It is true that the Act provides, so far as presently relevant, for the payment of compensation where a person is killed or injured and that death or injury is directly attributable to the commission of a*

> *crime of violence. But the date by reference to which the one year period begins is the date of the death or injury."*

51. This conclusion must be right because under the general law of tort, causes of action for death and personal injuries accrue when death and personal injury occur. Parliament mitigates the harshness of this by conferring a statutory discretion to extend the standard limitation period. This is the approach reflected in the Act's provisions. It is helpful to have regard to the analogous position under section 34 of the Limitation Act 1984. Here, the Court is expressly empowered to disapply the normal limitation period in cases of personal injury or death, and to take various factors into account. Those factors include (section 34 (3) (e)):

> *"(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages…"*

52. Ms Greenidge helpfully provided materials elucidating the legislative history of the Act to the Court after the hearing. When the Act was initially enacted in 1973, the CICB had an unfettered discretion to extend the standard one year time limit for applications to be made. Section 4 (1) provided:

> *"(1) An application for compensation shall be made within one year of the date of the injury or death in respect of which the application is made; but the Board may, if it thinks fit, extend the period of one year <u>for such further period as it thinks fit</u>."* [Emphasis added]

53. A hypothetical applicant under the original statutory regime would not have had to grapple with the dilemma of how they could be expected to make a claim before they knew that a crime had been committed (or arguably committed). They could simply invoke the CICB's broad discretion to extend time on any ground for making an application under the Act. The statutory remedy more or less mirrored the private law position for tort claims.

54. The *Criminal Injuries Compensation (Amendment) Act 2005* repealed the underlined words and replaced them with the current "further period not exceeding twelve months". The 2005

Amendment Act also reinforced the removal of the unfettered discretion to extend time by adding the following new subsection into section 3:

> *"(6) The Board shall refuse to entertain a claim for compensation where an application for compensation is made to the Board after the end of the period specified by the Board under section 4(1) in respect of the application."*

55. The Explanatory Memorandum sheds no light on the legislative intention behind the abolition of the broad extension of time discretion the CICB previously enjoyed. However, the enactment of section 3 (6) in my judgment makes it pellucidly clear that the only manifested purpose of the amendment to section 4(1) was to narrow the temporal scope of the CICB's power extend the primary limitation period to an additional one year. There is no basis to believe that any deliberate policy decision was implemented to extinguish the ability of the Board to entertain applications which were late because the applicant had no idea that they had a potential claim under the Act. Yet that was the consequence of the 2005 amendments.

56. Whenever time is extended based on the claimant's lack of knowledge under the Limitation Act, the evaluative assessment usually involves, in a practical sense at least, extending the start date of the primary limitation period. The question is asked when ought the claimant to have become aware of the existence of their claim? This is because it is generally recognised that standard limitation periods usually start running against the claimant from a date on which they are or ought to be aware that they have a potential claim. This will ordinarily be when the death or injury occurs in the vast majority of tort cases and criminal injuries compensation cases. But cases such as the present case and, for example, latent injury and historic sex abuse cases will from time to time arise.

57. There are a myriad of other individual circumstances where a rigid limitation period for filing claims is likely to work injustice. If anxieties exist about an open-ended discretion being conferred on the Board to extend time, the grounds on which more generous extensions can be granted could be statutorily defined. Sections 4 (1) and 3 (6), as presently drafted, will from time to time unfairly disqualify morally deserving claimants. This will not merely prejudice the private

interests of the disqualified applicants; it will also undermine confidence in the administration of justice overall.

58. The 50th anniversary year of the enactment of the *Criminal Injuries (Compensation) Act 1973* (the "Act") might be an appropriate time for the administrative and statutory workings of this important scheme to be revisited.