



CAN I BE COMPENSATED BY THE IVAC AND ALSO SUE MY ATTACKER?

Joëlle was the victim of a violent crime that caused her serious injuries, some of which will never heal. Her attacker was caught and she is therefore thinking about taking him to court in order to be compensated for the harm she suffered. In addition, Joëlle was informed by the investigators in charge of her case that she could probably also obtain benefits under the *Crime Victims Compensation Act*.¹ She does not know which recourse to exercise and does not want to make the wrong decision; she is therefore hesitant to initiate proceedings.

She wonders whether she can sue her attacker in a court of law and, at the same time, file a claim with the *Direction de l'indemnisation des victimes d'actes criminels* (the "IVAC") in order to receive benefits. In such a situation, the law is very clear: By choosing one of these options, the victim does not lose the right to claim compensation under the other option. However, this does not mean Joëlle will be able to be compensated twice for her injuries!

In fact, if she files an application with the IVAC first and is granted benefits, the IVAC will be subrogated in her rights, up to the amount paid. This means that the IVAC will be able to sue the attacker, in Joëlle's name, in order to be reimbursed for the amounts it paid to her. As for Joëlle, she will be entitled to sue her attacker in the civil courts after having received benefits from the IVAC; however, the IVAC will have to be a party to the proceedings and any agreement between the parties will have to be ratified by it.

Moreover, if Joëlle chooses to go before a court of law first, she will be able to obtain benefits from the IVAC only if the amount she is to receive from the IVAC exceeds the amount obtained from her attacker under the judgment. In such a case, the benefits she will receive from the IVAC will be reduced by the amounts obtained in the civil proceedings.

However, there are two important points to keep in mind.

First, when referring to the amount obtained in civil proceedings, it is the amount the victim actually collects after the judgment, not the amount the attacker was ordered to pay, that is taken into account. In other words, if, for example, the attacker is ordered to pay Joëlle \$100,000, but when she tries to collect on the judgment, the attacker declares bankruptcy and only pays her \$5,000, the benefits Joëlle will receive from the IVAC will be reduced by \$5,000, not \$100,000.

Second, one must not forget the time limits for filing the recourses. If the victim decides to go to the IVAC first, the time limit for instituting civil proceedings will not begin to run until the IVAC has rendered a decision as to whether or not to pay benefits, provided the time limit set out in the *Civil Code of Québec* (usually 3 years) has not already elapsed at the time the victim files her application for benefits.

¹ R.S.Q., c. I-6.

Text prepared by
M^e Bruno Boucher,
lawyer at the
Montreal Sud-Ouest
legal aid office

Contact Us

Commission des
services juridiques
Communications
Department
2 Complexe Desjardins
East Tower
Suite 1404
P.O. Box 123
Succursale Desjardins
Montreal, Quebec
H5B 1B3

Telephone: 514 873-3562
Fax: 514 873-7046

www.csj.qc.ca

* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.



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However, if the victim decides to go before the civil courts first, no matter how long those proceedings last—and they can sometimes last several years—she will have a period of one year following the judgment within which to apply to the IVAC for benefits.

Given all this information, it would seem more prudent for Joëlle to file an application with the IVAC as soon as possible, since the process is simple and quick and the application for benefits form is available on the Internet at www.ivac.qc.ca. This would give her the time to consult a lawyer in order to determine whether it would be advantageous to sue her attacker in a court of law, a much more complex and costly process.

Text prepared by
M^e Bruno Boucher,
lawyer at the
Montreal Sud-Ouest
legal aid office

Contact Us

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Communications
Department
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