

Minister's Reference
on Institutional
Child Abuse

Discussion Paper



LAW COMMISSION OF CANADA
COMMISSION DU DROIT DU CANADA



Preface

Physical and sexual abuse of children in government-funded or government-run institutions has shattered the lives of many Canadians. How could we have allowed this to occur? What should we do now?

In 1997, the Minister of Justice of Canada asked the Law Commission of Canada to examine and assess processes for redressing the harm inflicted on our children. This Discussion Paper is an important part of the Law Commission's research process. It draws together the major findings of the background studies prepared for the Law Commission this past year and outlines the key lessons we have learned so far.

This Discussion Paper aims to increase public awareness of why children were placed in institutions, what happened to them there, and the types of redress that have to date been made available to them. It seeks to promote reflection, not to prove a case.

In circulating this Discussion Paper we hope to encourage Canadians to share their opinions and concerns with us. We want to learn how Canadians react to this tragedy and how they think that we as a society should begin to repair the damage that has been done to these children, their families and their communities.

The Law Commission expects to release a Final Report sometime next spring. This Report will take account of continuing research, feedback generated by this Discussion Paper and other material collected by the Law Commission. Our Final Report will contain detailed accounts of experiences in Canada to date, a careful analysis of the social and legal issues involved, an evaluation of redress processes that have been undertaken, and specific recommendations for action.

This Discussion Paper is an invitation to reflect upon the issues that will have to be addressed in our Final Report. We welcome your comments and ideas.

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Executive Summary

The Issue

In the last ten to fifteen years, child abuse has surfaced as a painful issue in our society. With greater public discussion has come greater awareness that children have been abused not only in their own homes and by strangers but also in institutions where they were placed for their education, welfare, rehabilitation or even protection. Many of these institutions were run by or with the support of federal, provincial and territorial governments. As increasing numbers of survivors of institutional child abuse reach adulthood and achieve a clearer understanding of the impact of the injuries they sustained, governments have become concerned about how to address these harms.

In November 1997, the federal Minister of Justice asked the Law Commission of Canada to examine processes for addressing the harms caused by physical and sexual abuse of children in government-run, government-funded or government-sponsored institutions. As a preliminary matter, the Commission decided it must assess the various actual and possible processes for redress from the perspective of those who themselves experienced abuse as children in institutions. To properly address their needs as expressed, the Commission concluded that it could not look solely at processes that sought to redress physical and sexual abuse. It would have to evaluate how well these processes dealt with all the related types of abuse to which children may have been subjected in institutions, including emotional, psychological, cultural and spiritual abuse.

What Happened

The Commission starts from the premise that children do not choose to live in institutions. Most often, in fact, they have no say in the decision to place them there. The Commission looked at cases of abuse that occurred in residential schools for Aboriginal children, special needs schools for children with disabilities, child welfare facilities and youth detention facilities.

As a rule, the types of institutions where abuse took place can be described as total institutions, where virtually every facet of the children's lives was determined by those in charge, and contact with their families, their home communities and the outside world was very limited. Children who lived in such institutions experienced some measure of the following conditions: disconnection, powerlessness and degradation.



While the scope and scale of abuse may have differed from one institution to another, the overall pattern of abuse of power and betrayal of trust is sadly similar. In addition to the abuse itself, there is an equally disturbing pattern of failure by those in authority to effectively deal with complaints of abuse, even when the identity and activities of the perpetrators were well known. Official reaction often demonstrated more concern for protection of the institutions than for the well-being of the children in them.

The Needs of Survivors

The Law Commission of Canada believes that, in assessing what processes are best suited to redressing the harms of institutional child abuse, the needs of survivors are the benchmark that matters most. Research papers commissioned for this project therefore include one focussing specifically on the needs of survivors of residential schools for Aboriginal children and one focussing on the needs of survivors of the other types of institutions noted. This research revealed that survivors, as individuals, share the following kinds of needs:

- acknowledgment of the wrong, apology and commitment to prevention;
- establishing the historical record;
- financial compensation;
- access to therapy and counseling;
- access to education and training;
- punishment of perpetrators.

In addition to these substantive needs, the research concluded that approaches to redress can be more beneficial if they respect certain procedural needs of survivors. These set the tone and context for redress generally and include:

- ensuring that survivors are made aware of the redress options available to them, with the risks and benefits of those options;
- ensuring that survivors or their representatives participate in the design of the redress processes; and
- providing support to survivors as they go through a redress process.



The harms of institutional child abuse have an impact beyond the lives of the individual survivors. In recognition of this, the Commission considers that processes of redress must also take into account the needs of survivors' families, their communities and, in the case of Aboriginal people, their nations. Parents may need help dealing with the pain of having sent their children to a place where they were seriously hurt. Spouses, partners and children of survivors may have to cope with an all-too-common outcome of institutional child abuse—that many survivors have difficulty being nurturing parents and some become abusers themselves.

Communities may feel the effects of abuse in an increased need for social services, as they deal with the combined effect of the problems of individual survivors. The alienation of many survivors from their home communities can cause rifts of language and of spirituality. It can lead to deep distrust of institutions, such as churches, which had been a focal point of community life. Communities may also experience economic repercussions.

Aboriginal nations suffered in particular because, not only were their children abused, but their cultures were targeted for assimilation. These nations need to restore and maintain their identity and their strength. To do this, they need to preserve their languages, control the education of their children and keep a historical record of the experiences of survivors and the truth about residential schools.

Approaches to Redress

A guiding principle in any approach to redress must be: do no further harm. To date, most of the approaches adopted have relied on state-driven mechanisms and on initiatives controlled by the institution or its sponsor. These have included processes such as criminal prosecutions, public inquiries and compensation programs designed without the input of their intended beneficiaries. Other approaches have relied more on the initiative or the involvement of survivors. These have included: civil actions, community healing circles and negotiated compensation programs.

For the Law Commission, the main criterion for evaluating each of these approaches is how well they meet the needs of survivors, their families and their communities. Do they uncover the wrongs? Do they address the issues of accountability? Do they treat survivors with respect and engage them as fully as possible? Do they offer a real opportunity for healing? Do they seek to prevent further abuse? This Discussion Paper attempts to briefly assess how the various approaches to redress measure up in response to these questions.



The Way Forward

Using its benchmark of the needs of survivors, the Commission notes that each of the processes for redressing institutional child abuse that have been tried so far in Canada could be improved. Some preliminary avenues for improvement emerge from research papers commissioned for this project.

The Law Commission is of the view, however, that to deal comprehensively and meaningfully with the question how best to redress institutional child abuse, a new, all encompassing approach is indicated. If we rely on the piecemeal, case by case, reactive and largely adversarial approaches to redress which have been primarily used to date, it is likely to be a long, painful and expensive journey, both emotionally and financially, before the issue of past institutional child abuse is resolved. This journey will teach us few lessons about how to prevent, recognize and redress any abuse that our children may now be suffering in settings such as foster homes and organized sports programs.

Starting anew, with a more comprehensive approach focussed on survivors and sensitive to their individual needs would demonstrate that, as a society, we are not afraid to face up to the legacy of institutional child abuse. It would signal that we are willing, at last, to respond to the voices we have failed to hear for so long.



I To Begin

A. Why this issue is important

It is often said that children are our most precious resource. It is certainly true that they are our future. How we treat our children and how we allow them to be treated reveals much about ourselves and about our values as a society. The abuse of children in institutions run by or on behalf of governments raises serious questions about the health of our society and its processes of accountability. Those questions become even more urgent when the abuse continues undetected or ignored for long periods.

The importance of confronting institutional child abuse is undeniable. Over the last ten to fifteen years, child abuse has begun to be discussed more openly in society, and its long-term effects better understood. Increasingly, people who have suffered childhood abuse have found the courage to speak of their experiences and the impact of these experiences on their lives. They have begun to recognize the full force of the harm done to them and to assert their needs for healing through various channels. These needs extend beyond the individual survivors to their families, their communities and, in the case of Aboriginal people, to their nations. It extends as well to the families and communities of those victims who did not survive.

The Law Commission of Canada has been asked to assess the various approaches to addressing the needs of survivors and all those affected by institutional child abuse and to comment on which processes may best respond to their needs. This task is not, however, just about how to compensate a group of people for the wrongs of the past and it is not just about law. It is about understanding how our society views its children and how it allows them to be treated. It is about attitudes in this country toward Aboriginal peoples and the respect accorded to Aboriginal values. It is about facing up to some unpleasant truths, not only about abuse of power and the pedophiles in our midst, but about how people charged with the care of children can fail and in some cases deliberately refuse to protect them from those who have custody of them. It is about our faith in certain institutions, and how misplaced that faith can sometimes be. It is about wrenching families and communities apart through misplaced notions of cultural superiority. Above all, it is about our own failure, even today, to fully acknowledge the harm that was done and to take adequate, comprehensive steps to address that harm.



Finally, and perhaps most tragically, it is about the danger that we have not learned enough from the wrongs of the past. There are children today who suffer abuse at the hands of adults in whose care they have been placed. While children are no longer forcibly removed from their homes in order to attend school, for example, we have no cause to be complacent. Many children who would formerly have been placed in institutions are now placed in other settings, where the treatment they receive may not be easily monitored. Resources are needed first to support families so that children are able to live at home in security. Where that is not possible, we must not hesitate to invest in programs needed to select, train, supervise or monitor foster families or staff at any non-institutional setting where children now live. Other children, such as those with special needs, continue to require residential facilities for their care or education and so are still vulnerable to institutional abuse. If we choose to turn the same blind eye, or refuse to discharge our obligations, or persist in denying our responsibility, there is every chance that another group of survivors will be coming forward in 10, 15, 20 years from now.

Society itself and each one of us is damaged when we permit child abuse to be inflicted in the institutions that our governments establish or support. Understanding how that damage occurred and preventing it from recurring may well be one of the paths to individual and collective healing.

B. The Minister's Reference

In November 1997, the Honourable Anne McLellan, federal Minister of Justice referred a question to the Law Commission of Canada. In this Reference, she asked the Commission to examine the processes for addressing the harms caused by physical and sexual abuse of children in government-run or government-funded or sponsored institutions.

Research

The Reference raises complex issues. The Commission recognized from the start that they went well beyond the law. The Commission felt it must first understand what survivors and their communities need as a result of the abuse that they suffered in order to evaluate possible responses to those needs. In an Interim Report, the Commission tried to imagine what it should be asking. This led to the commissioning of four initial research papers:

- an account of those institutions where abuse occurred and an analysis of the processes used to address that abuse;



- an examination of the needs of those who survived residential schools for Aboriginal children;
- an examination of the needs of those who survived other institutions for children (e.g. schools for children with special needs, facilities for young offenders, orphanages, etc.); and
- an overview of how other countries have dealt with the effects of state-sanctioned systemic abuse, including the institutional abuse of children, from an international human rights perspective.

The Commission also sought background research on how Aboriginal laws were violated through the residential school regime. This work was done by way of case studies of three Aboriginal communities.

Study panels and outreach

The Commission is authorized under the *Law Commission of Canada Act* to establish volunteer study panels to advise it on specific research programmes. In the case of the Reference, the Commission felt it was important to have a study panel which included survivors of institutional child abuse, therapists who have counseled survivors, lawyers who have sued on their behalf, prosecuted alleged perpetrators or participated in a commission of inquiry, as well as some representation from a police force and from government.

As part of its efforts to reach out to parties with an interest in the Reference, the Commission convened an informal Aboriginal information-sharing network, with representatives from various national Aboriginal organizations. The purpose of the network was to keep these organizations informed of the direction and progress of the Commission's work and to obtain their feedback. This group advised the Commission that it would be desirable to set up a separate study panel made up wholly of Aboriginal members, to focus primarily on the work of the Commission with respect to residential schools.

Acting on the recommendation of the Aboriginal information-sharing network, the Commission did establish two study panels. One panel, made up entirely of Aboriginal members, primarily focussed on the experiences of Aboriginal children who had attended residential schools. The other, which includes members from the Aboriginal panel, focussed primarily on the experiences of children who attended other institutions.

The Commission is indebted to the voluntary contributions of all its study panel members, who provided the invaluable benefit of their insight, experience and expertise. The Commission also wishes to take this opportunity to



thank the researchers who undertook daunting tasks with very restrictive deadlines. They all accepted the challenge and fulfilled the high expectations placed on them. This Discussion Paper draws on the information provided in these background papers and the hundreds of individuals and sources whose experiences are recorded in them, as well as on the comments of its two volunteer study panels.



II What Happened

A. Why children are in institutions

Children do not decide to live in institutions. As in all major decisions affecting them, this decision is made by others with legal control over them, who are presumed to be acting in their best interests. This means that parents, legal guardians or the courts are responsible for sending children to institutions. The reasons may range from special facilities for education (in the case of children with disabilities) to a statutory policy of assimilation (in the case of Aboriginal children) to detention for offences, often minor offences or behavioral problems, to name a few. Earlier in this century, parents of limited means chose, in some cases, to place children in boarding schools run by a religious order, to give their children access to a better material quality of life or a superior education.

Whatever the reason for the institutionalization, however, it must be recalled that from the perspective of most children, the impact of institutionalization is largely the same: the imposition of a major change in the child's life, usually without the child's input or consent. In attempting to understand the effects of abuse suffered in institutions, it is equally important to consider as a preliminary issue who are the children most likely to find themselves in institutions, and most vulnerable to abuse in those institutions. This raises questions about attitudes to race, class, ability and gender in our society. It is against this backdrop that the impact of the abuse itself must be assessed.

The Commission was not asked to judge the decisions of courts, legislatures and parents that resulted in the institutionalization of children nor was it asked to review the reasons for doing so in particular instances. It is, however, impossible to address the effects of institutional child abuse without taking note of the general attitudes, beliefs and values which landed so many children in places where so much harm was done to them. These factors may well have a bearing on the Commission's assessment of the most appropriate redress approaches.

Each of the decisions listed above must be considered in its particular context. Many Canadians continue to believe that some of those decisions, such as placing special needs children in schools equipped to meet those needs, are a valid choice to provide a necessary service which may be of great benefit to the child. Many institutions have provided and indeed continue to provide useful services to children. Other decisions, such as removing Aboriginal



IN MANY WAYS what has happened in hockey is like the revelations of the abuse suffered by boys while in the care of religious institutions. Both are what Steven Oritz calls “total institutions.”

“Monasteries, mental institutions, cults and professional sports teams fall into this category,” says Oritz. “They are enclosed, cut off from society, and have a very exclusive feel about them. The locker-room culture of sport is a good example. The rest of us would see a lot of what goes on in there as inappropriate behaviour. Women are denigrated, talked about only as objects, and men are afraid to say anything about intimacy with women, because it wouldn’t be manly. So their behaviour becomes normalized. Consequently, in order for people to be accepted by the team, they rationalize abnormal behaviour.

Oritz believes the team constitutes a “mobile total institution,” because of the highly transient nature of professional sport. Thus, with the player’s life in a constant state of flux, with the team often on the road and the constant danger of being traded or injured, the arena and the locker room are among the few stable elements in his existence. This enhances the sense that the arena is a bastion.

From *Crossing the Line* p. 57

children from their families, their communities and their culture, or incarcerating children for truancy, are now widely discredited.

The motives and objectives behind practices which are now discredited remain the subject of debate. Some view them simply as a reflection of the values of the era when they were in force. Others view the institutionalization and the harsh discipline practiced as excessive even by the standards of the time, and even in facilities for young offenders. In particular, there are those who view the policy behind residential schools as an attempt not so much to educate Aboriginal children as to permanently erase Aboriginal identity in this country. Many view this policy and practice of forced assimilation as cultural genocide.

No matter how one characterizes the various motives for placing children in institutions the stark fact remains: many children suffered terribly and endured lasting harm in places ostensibly intended to educate or protect them. The concern of the Law Commission of Canada is to understand the factors that made such abuse possible, to assess the various processes that have been used to redress the damage done and to identify which approaches respond best to the needs of those who experienced abuse as children in institutions. It hopes as well to learn from survivors how best to envision other approaches to redress. The Commission believes this understanding could help to prevent similar abuse in the future.

B. What it means to live in a “total institution”

To understand the impact of the abuse that was inflicted on so many of those who lived in institutions as children, it is necessary to understand the circumstances in which they lived. While each institution had its own individual characteristics, it is possible to make certain general observations about the institutions in which abuse occurred (and is still likely to occur). Observations about specific types of institutions follow.

Certain institutions may be characterized as “total institutions.” This term refers to institutions that seek to resocialize people, instilling them with new roles, skills or values. Their approach is to stamp out the individuality of those within the institution by more or less completely controlling all aspects of their lives. Prisons are an obvious example. The military and some private boarding schools are others. These institutions are characterized by a strict division between residents and those supervising them, with power concentrated in the hands of the supervisors. Rules govern every aspect of daily life and residents have little say in what those rules are or how they may be enforced.

More dangerously, life in such institutions may sometimes be governed more by arbitrary and unpredictable commands than by rules. This makes the possibility of effective protests or appeals even less likely. Residents have



little or no contact with the outside world. Contact with other residents, a potential source of support and strength, is also strictly limited. Consequently, they have little or no opportunity to voice complaints about the treatment they receive. Those who do voice complaints face the very real prospect of punishment from those about whom they have complained.

Unfortunately, in some respects the analogy between a prison and some of the institutions intended for the education or protection of children is very real. Institutions for children need not be organized and run as total institutions. As a rule, they should be open, nurturing, supportive and protective. Some may have been. Sadly, many were not. Consider that while children found themselves in institutions for very different reasons, the institutions imposed some or all of the following conditions on their residents, in varying degrees:

- disconnection;
- powerlessness;
- degradation.

Each of these played its part in facilitating both the infliction of abuse and its perpetuation.

Disconnection

Both physical and psychological isolation contribute significantly to the vulnerability of children in institutions. Physical isolation means that children cannot easily receive visits from family members or others concerned about their welfare. Psychological isolation is achieved by denying children access to direct communication with the outside world. This may involve, for example, censorship of incoming and outgoing mail, restrictions on telephone access or preventing contact with adults who may be in a position to act on a child's allegations. The isolation borne of a hostile, punitive or non-nurturing environment is deeper and more damaging than simply not seeing family or receiving mail. The greatest isolation may be the lack of ability to trust anyone.

Powerlessness

Power is not an attribute which children enjoy in their relationships with adults to any significant degree. Children who live with loving parents or concerned caregivers enjoy a sense of security and autonomy that is akin to power. They feel safe in the knowledge that someone is there to ensure that no harm comes to them, and that wrongs committed against them will be set right. They are also likely to feel comfortable contesting the power of

FROM THE CHILDREN'S point of view, placing their trust in anyone could result in betrayal. Being alone, therefore, first shows up as withdrawal from other children and from adults. ... Feelings of alienation that grew out of closing themselves off from the world of residential school were intensified for the children because "visits" with their families and community became increasingly strained and difficult. For some, feelings of anger and betrayal at being "sent away" to residential school contributed to "breaking" their connection with family. ... For others, feelings of "becoming ashamed of being an Indian" or "not being able to trust anyone" isolated them from their families.

From Breaking the Silence, p. 32



SHAMING AND HUMILIATION through put-downs and ridicule is another way of wounding children emotionally. Some children were subjected to this type of pain more than others; clearly though, even witnessing the humiliation, put-down or ridicule was still wounding. Numerous examples were given through the interviews: being repeatedly referred to ... as “savages” or “pagans”, being punished in humiliating ways, such as being made to lick milk from a saucer on all fours, like a cat, in front of a room full of children; being made to wear soiled pants over heads because they did not wipe themselves properly, having their heads shaved because they ran away; being made to eat food that they had vomited; being forced to wear a worn sock pinned to their collar all day.

From *Breaking the Silence*, p. 41

adults when they feel it is being exercised unfairly, knowing that they won't suffer serious harm as a result.

In an institutional setting, particularly one where the child is placed involuntarily, the child may easily lose any sense of safety or security. The knowledge of that fact itself reinforces the superior power of the adults in the institution and places children at their mercy. The condition of being a child resident in an institution may in many cases undermine the credibility of any complaints they do make. Their awareness that they may not be believed and may indeed be punished for making allegations of abuse contribute to the silencing of child victims.

The atmosphere of powerlessness may be pervasive in an institution even without a systematic infliction of physical or sexual abuse. It can be manifested and effectively conveyed simply in the arbitrary and discretionary granting and withholding of basics such as mail, school classes and even food.

Degradation

It is hard to manipulate strong people, easier to manipulate those who feel frightened, worthless, ashamed of who they are. One need look no further than army boot camp or frat house hazing to demonstrate the phenomenon of using degradation to make individuals fit in. Institutions are sites where degradation unfortunately can be used ruthlessly to enforce conformity and blind obedience.

Many institutions fostered such feelings in the children under their care by means of rejection and criticism of the children's behaviour, identity and heritage, as well as through punishment, humiliation, excessive discipline and a lack of affection, warmth, encouragement, nurturing or support.

It is in consideration of these factors (disconnection, powerlessness and degradation) and their impact on children in institutions that the Commission did not feel it could restrict its study to questions only of physical and sexual abuse. Quite simply, it is not possible to distinguish neatly between the harms suffered due to physical and sexual abuse, and those suffered through other types of emotional, psychological and spiritual or cultural abuse.

C. Residential schools for Aboriginal children

Residential schools for Aboriginal children were first established in Canada in 1880, as a result of an 1879 federal inquiry into the schooling of First Nations children. Funded by the Canadian government, they were run by churches and governments. Their personnel included missionaries, priests, nuns and lay teachers. Initially, the schools were the product of federal policy



with regard to First Nations. In 1920, the *Indian Act* was amended to *require* that all First Nations children attend a residential school for at least ten months a year. The number of schools went from 45 in 1896 to 80 in 1931. While the majority of residential schools ceased operating in the 1970s, the last one closed only in 1984.

The education of Aboriginal children at residential school was to be based solely on the language, religion and culture of those who ran the schools, not the students. Children were permitted to speak only English or French and were made to practice Christianity to the exclusion of their own spiritual beliefs and customs. Although children as young as three to five years old were removed from their parents and their home communities, siblings were generally not permitted to speak with one another.

In addition to the three factors conducive to abuse mentioned above, Aboriginal children in residential schools therefore suffered a special and especially damaging form of abuse, shared to a greater or lesser extent by all of them. These schools all set out to deprive them of the value and benefit of their language, their culture, their families, their communities. In short, these schools had, as an explicit aim, to deny these children the very essence of who they were. Many have struggled long years to recapture that sense of self. Many have committed suicide or lead self-destructive lives for reasons connected directly or indirectly with their residential school experience.

It cannot be emphasized too strongly that, for all the elements of similarity with abuse in other types of institutions, Aboriginal children suffered in a unique and seriously damaging way in residential schools. This is compounded by the sense that, for all the enormity of the dislocation and damage, over a period of generations, suffered by Aboriginal peoples in residential schools there has still been no comprehensive set of programs established by either governments or churches to redress the harm done. Some partial responses are now being made. Thirty years after the closure of most residential schools, the federal Minister of Indian Affairs issued a Statement of Reconciliation. Many Aboriginal people feel that the Statement did not, however, constitute a true apology.

D. Special needs schools

Children with special needs, whether physical or developmental, are even more vulnerable to abuse than other children. The isolation and powerlessness referred to earlier are more marked in their case, because the disability itself may cause or contribute to those conditions. Thus the very characteristic that makes institutionalization more necessary for disabled children also makes them easier targets for abuse once there.

[T]HEY WERE TRYING to make us into white people. You know, they beat on us all the time for our language and stuff, whenever we got any art work from home or beads or anything like that, they were pretty much confiscated.

From Indian Residential Schools: The Nuu-chah-nulth Experience p. 142



A CRITICAL FACTOR that remains a concern today is the inability of almost all parents, Jericho Hill School education and residential staff, of professionals, and of police to adequately communicate with children who are deaf. Few Jericho Hill staff had sufficient proficiency in ASL to hear what children said.

From Abuse of Deaf Students at Jericho Hill School p.41

STUDENTS IDENTIFIED the adults who had abused them. Students identified other children who had been victims of abuse. Students disclosed that they had, in turn, abused other children. Their stories were not acted upon by the police or the authorities responsible for their care. With their expertise in child abuse investigations, the members of the MRH Child Abuse Team went on record with their belief that the children told the truth. Jericho Hill dormitory staff denied any knowledge of abuse and were believed, even though they could clearly be viewed as in a position of conflict, needing to protect their own self-interests. It appears that some staff were aware of abuse situations. Those who disbelieved attempted to discredit and remove the advocates who persisted in presenting the children's disclosures as credible.

From Abuse of Deaf Students at Jericho Hill School p. 40

Deaf children are a case in point. The physical separation from family was compounded by a language barrier. While Deaf children learned American Sign Language (ASL) or the Langue des Signes Québécois (LSQ), in the institutions reviewed by Commission researchers, most of the staff was not Deaf and was unable to communicate in sign language. Even the parents of these children in many cases were not familiar with ASL. English or French is a second language for these children; their literacy in English or French therefore tend to be much lower than for other children of the same age. This language barrier therefore severely restricted the number of persons in authority to whom the children could disclose the abuse they had experienced or witnessed.

Given that many students could not properly communicate the abuse to their parents in the two months of the year when they were home, they lost even this notion of a safe haven to turn to for protection. For many children, this has caused serious, perhaps irreparable damage to their relationship with their parents. The parents, in turn, suffer tremendous guilt for not having been aware of the abuse their children endured, and to which the parents returned them year after year.

The isolation factor and the lack of adequate supervision of staff seems to have resulted in what the author of one inquiry into the Jericho Hill School in British Columbia described as a "culture of sexual abuse" with almost nightly sexual activity extending over a period of thirty years. The pervasive nature of the abuse was such that it extended to abuse not only by male and female staff, but by students as well. This creates problems of disclosure for survivors who fear punishment for the abuse they themselves committed, as well as reluctance by their victims to accuse fellow students.

E. Child welfare facilities

Children are placed in child welfare facilities because they are "in need of protection", as that is defined in provincial child welfare legislation. This is an example of the state (through its child welfare agencies) using its statutory authority to step into the role of the child's parents. This may be, for example, because the parents are deceased or ill or imprisoned, or because the child has been abused, seriously neglected or abandoned. In all of this, of course, the child is an innocent victim of unfortunate circumstances. The state intervenes for the purpose of saving the child from harm.

Ironically, the very reasons such children were placed in these facilities made them more vulnerable to abuse within those facilities. When perpetrators select child victims, in virtually any setting, they choose those who have the least protection in the form of caring adults. By definition, these children lacked a family that could be counted on to look after their interests or even



to inquire after their welfare. These children are then obvious targets for physically abusive or sexually predatory staff.

Moreover, in many cases children taken in by the state for their welfare were placed in residential facilities that also served as penal detention centres. There would seem to be no rationale for mixing these two youth populations, other than administrative convenience or cost saving. Neither can be reconciled with the state's obligation to act in the best interests of the child.

F. Youth detention facilities

All the general factors discussed earlier operated in these facilities. In addition, children in detention facilities had the stigma of a criminal conviction. Already earmarked by society as meriting punishment, they were obvious targets for degradation and rough treatment, which in certain cases, spilled over into physical and emotional as well as sexual abuse. Their problems are exacerbated by the fact that their credibility as complainants may be tarnished by their own association to those institutions.

What is particularly disturbing about youth detention facilities is that many children who were incarcerated in them should never have been incarcerated at all. Minor offences such as truancy were sufficient to land a child in one of these facilities. Girls were often placed there for behaviour that was considered difficult or socially unacceptable. In other words, these children were made to feel like criminals, and were treated like criminals, for behaviour that should not have been judged so harshly. One must ask whether children of privilege were ever sent to "reform school" or to youth detention centres for skipping school or for acting out in any of the ways that adolescents commonly do.

* * *

The three factors listed at the beginning of this section, taken singly or together (and this list is by no means meant to be exhaustive) contribute to an atmosphere where a child must cope daily with the threat or fear of abuse or ill-treatment, in an atmosphere where there is no prospect of a haven or escape from that fear. Certainly, not all children who lived in institutions suffered and those who did, did so to differing degrees. The task of the Commission, however, is not to determine how many children were harmed, but to comment on how best to address the needs of those who *were* harmed. For this, the Commission must be especially sensitive to the harms suffered, as expressed by the survivors themselves.

In each of the kinds of institutions noted above, inquiries and police investigations have revealed a depressingly similar pattern of long-term abuse, whether by one or two or a wider collection of individuals. The abuse was known, sometimes widely known, by people with the authority to report,

JOHN WILLIAMS, a retired Ottawa police constable, told the *Ottawa Citizen* how he had often visited St. Joseph's as a volunteer on the annual sports day. During one of those visits, wards at the training school tried to complain about the abuse, but were ignored. He said he had found hidden inside his sports day program a typewritten note describing the physical abuse being inflicted upon the boys by the Christian Brothers. The note told of an eleven-year-old boy who, after defecating in his bed, had been left to stand outside in the winter cold with the excrement-covered sheets wrapped around his head until they froze to his face. It described how, as punishment, boys were forced to stand, clad only in their shorts, in front of open windows in midwinter, how they were forced to perch on their toes with tacks under their heels to make sure their feet didn't touch the ground.

... Williams said he discussed the allegations with a senior officer who also attended the same sports day, but was instructed to ignore it. They were bad bastards and probably deserved everything they got, the officer told him.

From *Boys Don't Cry* p.189



AFTER CONDUCTING LENGTHY investigations, Chairman Gordon Winter and his four-member commission concluded that, contrary to Penney's earlier claims, the Archdiocese of St. John's had, in fact, learned about allegations of child sexual abuse on several occasions before the crisis of 1988, and that "the Archbishop did not take effective measures to address these issues, even after serious problems occurred with some priests who were acting out their sexuality."

The Winter Report found that the alleged sexual activities of at least five priests were personally known to the Archbishop, either formally or informally, but that nothing was done about the situation. The case of one of those priests, James Hickey, had been brought to Penney's attention a full four years before he was convicted on twenty counts of sexual assault involving young boys. In the 1984 incident, the Vicar General, Monsignor Raymond Lahey, informed the Archbishop that the Royal Newfoundland Constabulary had concerns about an alleged sexual assault Hickey had made on a juvenile in his Portugal Cove parish. Instead of taking action, His Grace chose not even to raise the matter with Father Hickey because he felt that would be an invasion of the priest's privacy. The matter was dropped without further investigation.

From *Unholy Orders* p.371

investigate or put a halt to it. Repeatedly, what we see is a pattern of these people refusing to believe or address the complaints that did emerge from the children or from staff or others. We see a closing of official ranks that served to protect those administering institutions and those with authority over the children. We see resistance to public accountability and particularly, a resolve to avoid any legal liability, and we see these concerns far outweighing any sense of duty or concern to protect the children at risk of further abuse.

Sometimes this pattern was repeated for years, sometimes for generations. The closing of ranks was not unique to one group or one organization. The reluctance to acknowledge the harm done is shared, to a greater or lesser degree, by the churches, other organizations and the provincial and federal departments responsible for these facilities. Many have now come some way to acknowledging their part of responsibility, whether moral or legal. Typically, however, they have done so reluctantly and late.



III The Needs of Survivors

Understanding the needs of survivors is the most crucial element of the Commission's work, because it is on the basis of this understanding that the Commission intends to assess the efficacy of the various approaches to redress. The Minister's letter left it to the Commission to decide how to evaluate processes for addressing the harm done. There are certainly other criteria that the Commission could use to make this assessment. How much does it cost? How long does it take? How does one determine who is entitled to compensation? Who would set the amount?

These are questions one might ask about any compensation process, but they are not the primary focus of the Commission's work. In commenting on the various possible approaches to redressing the harms of institutional child abuse, the Commission's focus is first and foremost on those who were abused. They have too often been seen as incidental to other concerns, such as punishing perpetrators. By identifying survivors' needs as they themselves define them, the Commission changes the focus. It establishes a human benchmark to measure the legitimacy of the various redress options. This is the measure that matters most.

This does not mean that it is only the needs of survivors as individuals that must be addressed. While these are important, attending exclusively to individual needs might cause us to lose sight of the bigger picture. Children suffered as individuals, but many were institutionalized or targeted for abuse for broader reasons, such as their race, class or gender. These underlying causes of institutionalization and institutional abuse must be acknowledged in addressing the needs of survivors, because it places the abuse, in many cases, in a different context. It also widens the responsibility from the individual perpetrator to a broader societal level. It forces us to consider whether only compensating the individual is a sufficient response. It leads us to acknowledge that healing is a central goal. It confronts us with the fact that healing is not a task reserved exclusively for those who were victims of abuse. Helping survivors, their families and their communities—our communities—to heal is a responsibility of the society that allowed those children to be victimized. Each one of us is a member of that society.

A. As individuals

The needs of individual survivors are as unique and varied as are the survivors themselves. They are shaped by many factors, such as the circumstances



ONE FORMER WARD, Ralph Jackson, had already killed himself after his claim stalled somewhere in the system. “He believed he would never see compensation,” [Tina Lentz, Helpline co-ordinator] said. “He felt he had been abandoned. There are too many hoops, too many forms, too many delays.” She said it was proving too much for the former wards, many of whom had barely a Grade 4 education.

From *Boys Don't Cry* p. 288

under which children entered an institution, the type of institution, the nature and duration of the abuse, their age when the abuse began, their age when they disclosed the abuse (if they have disclosed), the circumstances of that disclosure, the stage of healing they are at, and the supports available to them, to name a few.

The differences among the particular needs of these individuals must not blind us, however, to the strong similarities in the kinds of needs they express. The following list sets out six kinds of needs that appear to the Commission to be widely shared by those who were abused. At this stage, we make no comment on the means to be used to fulfil these needs. Those options will be discussed in the next section. The categories of needs identified are:

- acknowledgment of the wrong, apology and commitment to prevention;
- establishing the historical record;
- financial compensation;
- access to therapy and counseling;
- access to education and training;
- punishment of perpetrators.

DISCUSSION POINTS:

Do individuals who were abused as children have other fundamental needs? How can these needs be satisfied?

In addition to these substantive needs, there are some needs of a more procedural nature that should be borne in mind when considering how to achieve redress. One is to ensure that survivors are aware of all the redress options available to them and that they are informed as to what each one offers in terms of possible risks and benefits. Another is to ensure that, where a program is being designed specifically to assist a group of survivors, those survivors are fully engaged (or at least have the opportunity to be fully engaged) in the design of that program. This serves two purposes. It restores to them some measure of control over their lives, thus countering the powerlessness which contributed to the abuse originally. It also reduces the extent to which the redress processes themselves will cause further harm (often referred to as revictimization). Such protection can be enhanced by providing support to survivors as they go through a redress process (e.g. victim-witness coordinator, counselor, etc.). These categories of procedural needs may be summarized as:



- informed choices/options;
- engagement;
- support.

Finally, many survivors express a strong need to prevent further abuse of children. This desire, which provides no tangible benefit to them, nevertheless can constitute a major psychological benefit for survivors. It puts them in the role of protectors—a powerful, beneficial role. It also puts to positive use the knowledge they gained through their experience of abuse, giving some meaning and purpose to their suffering.

Acknowledgment of the wrong and apology

The primary need identified by most survivors, across a wide range of abusive experiences and from a wide range of institutions, is an acknowledgment that what was done to them was wrong. Some desire a public (and collective) apology, others would prefer it to be private and personal. Whatever the format preferred, there appears to be broad consensus that acknowledgment and apology are fundamental.

Why do we specify both acknowledgment and apology? Survivors, when expressing this need, usually refer to the need for an apology. Recent reaction to some apologies demonstrates, however, that saying “I’m sorry” may not be enough. A sincere apology should be absolute, unqualified and offered voluntarily. How well an apology is received turns on a number of elements, but key among them is what the persons or organizations are apologizing for and how the apology is expressed. Have they admitted that they did something wrong, that their actions (or failure to act) caused harm? Or have they simply said they are sorry that harm was caused, without explicitly acknowledging either the wrong that caused the harm or their role in committing the wrong or allowing others to commit it?

Just as it would be insufficient to acknowledge that a harm was done without apologizing for it, it is also insufficient to apologize to people for their pain without explicitly acknowledging the wrong that caused it. Specifically, stating that the treatment they endured constituted abuse, and that the survivors themselves share no blame for those acts, can be a significant event for survivors. It may be a first step on the path to healing; it may be the element required for some kind of closure.

While acknowledgment that a wrong was committed is likely to have a positive effect on survivors, a refusal to acknowledge the occurrence of abuse is equally likely to prolong the hurt and delay healing. It is ironic that where a natural disaster such as a flood occurs, communities and governments rush forward to offer assistance to those affected. In the face of the intentional and

... **NEITHER** Gerry Belecque nor David McCann saw the verdict as cause for celebration. Although the conviction was important to them, it brought them no cheer. Belecque said he would have been happier if Bergeron had admitted molesting the boys. Instead, the man continued the denial that he and the others had lived with their entire lives. “If the man had apologized, it would have meant a lot more to me,” said Belecque.

From *Boys Don’t Cry* p. 188



generally much more damaging harm of institutional child abuse, however, the response of governments and other organizations which ran the institutions is often reluctance or refusal to acknowledge the harmful acts which were committed. This reluctance or refusal in turn impedes the development of a similar level of community support and assistance, both material and emotional. It maintains the survivors on the margins of society and perpetuates the power imbalance that, in some way, contributed to the conditions that made the abuse possible.

In distinguishing between these two societal responses, it is not enough to observe that one is a natural disaster, therefore unpreventable, while the other involves fault and consequently, legal liability. Property damage and personal loss in the wake of unpredictable but foreseeable natural disasters is also to some extent preventable through proper planning and preparation. Yet our instinct in the face of natural disaster is to help the victims first and to sort out the blame later. The discovery of institutional child abuse often comes after years of denial, and sometimes only after outside investigations or court actions force the facts into the public eye. The difference in societal reaction may have less to do with potential legal liability and more to do with the collective shame involved in admitting that we were in any way involved in allowing such abuse to occur.

Fear of legal liability is a reason that is frequently advanced to justify the refusal by governments or organizations such as churches to acknowledge institutional abuse. Is this reason adequate? Refusal to acknowledge responsibility will not stop police investigations and criminal charges. It will not stop civil actions by individuals and survivor groups against those responsible for the institutions where abuse was perpetrated. What it will do is send a message to survivors that they are still not believed, their experiences still not publicly and officially accepted as true. It forces onto them individually the burden of proof that they were harmed, and ensures that issues of fundamental importance to them will remain unresolved for years.

Apart from the substance of an acknowledgment and apology, there is also the question of timing. An apology delivered spontaneously when a pattern of abuse first comes to light carries far greater weight than one which comes after private law suits and criminal convictions have made the issue of acknowledgment almost redundant.

DISCUSSION POINTS:

**What makes an apology most meaningful and satisfying to survivors?
Can there be true forgiveness and reconciliation without a true apology?**

“IT’S NOT AN admission of guilt to help people.”

From *Unholy Orders* p. 18



Establishing the record

Many of those who suffered abuse have a vivid memory of the abuse and of the place where it occurred. However painful the sight of such an institution may be, to bulldoze the buildings (as was the case with Mount Cashel) can be worse. Many survivors have expressed the need to have a permanent, physical reminder to memorialize the fact of their abuse and to establish an archive of their experiences.

Survivors need to have a place where they can show others the evil, collect and record the names of those who were abused and remember those who did not survive. They also need to ensure that history will not be written or rewritten as continuing denial. Fulfilling these needs would help to set the record straight and would therefore be as much a benefit to society as it would be to survivors.

DISCUSSION POINT:

What forms of memorial or archives might there be?

Financial compensation

Often, descriptions of the needs of survivors will downplay the importance of financial compensation, emphasizing instead the need for apologies and counseling. It is as if there were something faintly distasteful about survivors seeking money for the harms they suffered.

We see no need to gloss over both the desire and the need of survivors for financial compensation. In this, they are no different from any other victims of criminal injury, or anyone who has suffered a civil wrong. They have been harmed, both emotionally and physically, by the intentional wrongful acts of others and by the failure of those in authority to fulfill their duty to protect them. In many cases, the harms suffered limited their ability to earn a living. In our society, financial compensation is a common response when people have suffered injury. This includes putting a dollar amount on pain and suffering. Financial compensation is the general way the law measures value. It is also a form of punishment for those responsible, directly or indirectly, for the harm.

The entitlement of survivors to compensation is clear—it requires no additional defence or justification. For some, particularly those who are older, money may in fact be the only tangible and useful form of redress. Some of these survivors feel that, for them, it is too late for education and training, perhaps even too late to undertake the difficult process of therapy or counseling. Delay in resolving their need for redress, however valid the reason for

BUT OUTSIDE the cold equations of judicial accounting, that futile process of attaching a monetary value to a child's tears, lay the emotional wasteland inhabited by grown men in whom the broken boy would live forever, beyond the reach of cash settlements, retroactive justice and the heartfelt sympathy of strangers. Every one of them had known from the beginning that once the flash bulbs had faded and the old judge gavelled the proceedings to an end, there would be a return to the here and now, that airless zone where life had to be re-invented out of the unholy memories of childhood gone desperately wrong.

*From *Unholy Orders* p. 375*



THEY WEREN'T JUST uneducated, they were arrested emotionally, cognitively, and intellectually. Most seemed to lack basic life skills, making it difficult to relate to them. "The abuse twisted their ability to connect in any meaningful way with the outside world," Landino noted. "If anyone looked at them on the street, they punched them out. They carried knives. Many of them had guns. They were mad at the world. My own honest opinion is that if they [hadn't] come to counseling, a lot of them would have gone out and committed suicide, or robbed a bank, or hurt somebody out there. There are quite a few who have attempted suicide, either by trying to hang themselves or taking overdoses."

DAVID McCANN HAS little doubt where he would be without the therapy he has received through the deal. "I would not have survived the last six years," he said. "I would have killed myself. Counseling has permitted me to openly reach out and embrace those who love me."

From *Boys Don't Cry* p. 283

ONE THING THAT the Mohawk Institute took away from our people was a sense of family, because there you were taught survival of the fittest and the individual—the 'me', the 'I', was the most important thing. Because we didn't operate or function as a family there, we didn't learn the values of being a family, and so we didn't learn how to be parents because we weren't parented.

From *The Mush Hole* p. 390

the delay might be, just gives credence to those who take the cynical view that those responsible for the institutions where the abuse took place are simply waiting for them to die, and for their claims to die with them.

What is more difficult is establishing the right amount of compensation for injuries that are incomensurable in any true sense. Courts perform these calculations every day in civil actions for damages. In the last few years, courts have begun to accept the claim that institutions as well as direct perpetrators may be liable in damages for institutional child abuse. In fixing the amount of damages, courts have the benefit of hearing from the parties as to what amount they think would be appropriate. They also have general guidelines set through the precedent of other similar cases. Even so, assessing damages is a subjective and inexact process.

Governmental or privately-funded compensation programs for survivors are also a way of providing financial compensation. While typically the financial awards in these programs are smaller than civil damage awards, these programs do not require the expense of litigation in order for survivors to benefit from them. They also may not include the element of moral blame inherent in a court finding of liability and award of damages.

As in civil damage awards, calculating the amount of financial compensation in compensation programs involves the delicate and in some ways impossible process of equating the injury suffered with an amount of money. This is why it is so important to listen to survivors and how they describe their needs in determining the appropriate frameworks and amounts. For governments or institutions to fix financial compensation without the involvement and approval of survivors would be once again to disempower them and to make a unilateral judgment on the value of their suffering.

DISCUSSION POINTS:

How can we assign a monetary value to injuries while respecting the dignity of those who were harmed? Should financial compensation be assessed according to the nature of the injuries suffered or the effect of those injuries on the individual?

Access to therapy and counseling

While many survivors have succeeded in overcoming the harms of the past, all require assistance when faced with re-living those experiences. It cannot be emphasized too strongly that whatever process is chosen to effect redress will require the survivor to go back to a very painful time. In many cases, the very success which survivors have made of their lives is built on the repression of memories of that time.



Access to trained professionals or other healers acceptable to survivors is a necessary part of any redress process. That access, to be meaningful, must be available for a therapeutically realistic period of time. The harms of childhood abuse are not understood in a handful of weeks or months and may not be undone or resolved for years, if ever.

Counseling is necessary not only to deal with the effects of abuse on survivors personally, but also to deal with its effects on their partners, children and extended families. (These other needs will be discussed in the next section). It is particularly important that survivors who were raised outside their own families receive the support they need to become part of a family again. This will help to avoid passing on to another generation the negative effects of having been brought up in an abusive institution.

DISCUSSION POINT:

What are the most important factors in ensuring effective counseling for those who desire it?

Access to education and training

One of the less obvious but pervasive effects of institutional child abuse is that it took place in the setting where a child was supposed to be acquiring an education. This was certainly the case for residential schools and schools for children with special needs. All facilities for minors, even detention centres, include some educational component. To the extent that abuse or fear of abuse prevails in an institution, the environment for learning unquestionably suffers.

The quality of the child's education is therefore one of the casualties of institutional child abuse. Residential schools for Aboriginal children must be singled out in this regard, as education was the primary justification for removing these children from their homes. In fact, in many cases, education other than religious instruction was rudimentary, and children were treated as labourers more than as students. Many survivors emerged from their years at an institution, for example, with very low levels of literacy. Consequently, many survivors cite educational opportunity as a priority of redress. They may wish to complete high school, earn a degree, take specific courses or receive job training.

For Aboriginal survivors, redress through education may involve providing an opportunity to learn the language of their parents and their nation. It may involve learning about their own spiritual practices, their history and their culture.



Providing educational opportunities to those who were abused does more than just fill a gap caused by the poor learning environment and conditions of a child who was coping with abuse or the fear of abuse on a regular basis. It also assists in the empowerment of the survivor as an individual. We return repeatedly to the theme of powerlessness that is one of the keys to infliction of abuse and the (sometimes lengthy) impunity of perpetrators. Even into adulthood, survivors can continue to experience the imbalance between themselves and those that either perpetrated the abuse or failed to stop it.

Education is a means of acquiring power over one's own life—the power to make choices, to achieve understanding and to gain control over one's present and future. The opportunity to accomplish these goals through education and training is an essential part of healing for many survivors. Education and training are also roads to economic security and self-sufficiency, something many survivors have difficulty achieving.

Punishment of perpetrators

Many of those who physically and sexually abused children in institutions are now dead. Others are very old. Their age does not excuse their acts, however. Some survivors believe that explicit punishment of perpetrators is a necessary part of the process by which they can overcome the effects of the abuse they suffered.

In this case, punishment is not being sought as an expression of society's abhorrence of abuse. Rather, the goal is to satisfy survivors' need for retribution for harm done to them. The needs of those who were abused must be a primary consideration in deciding whether to initiate a process that results in punishment for those who were abusers. In addition, the process of determining an appropriate sentence following a criminal conviction must closely involve those who were victims of the offence. The state's law enforcement agents alone should not decide whether it is necessary to seek retribution and punishment. Nor should it be for the state alone, once guilt has been established, to determine what punishment would be appropriate.

DISCUSSION POINTS:

How can survivors express their views as to whether the state should pursue punishment and how much weight should those views have? Are victim impact statements given enough/too much weight in the sentencing process?

"I FEEL VINDICATED ...I'm glad I had a chance to testify. It's almost like going to confession—except that until a year ago, I thought I was the guilty one."

From *Boys Don't Cry* p. 199



B. As families

Institutional child abuse has repercussions well beyond the individuals who suffer the abuse directly. Parents who chose to send their children to an institution, or who were forced to do so, must deal with the pain not only of that separation, but also the pain of not having been able to protect them from abuse. In some cases, this pain is compounded by loss of the ability to communicate with them (as when Aboriginal children were prohibited from speaking their own language and eventually lost the ability to do so). The pain of this loss was shared by grandparents, aunts and uncles—the entire extended family. Aboriginal families also had to deal with the alienation of children returning to communities where they did not feel at home.

The spouses and partners of survivors are living with people for whom intimate relationships are likely to be difficult. Substance abuse and physical violence against family members are among the adult symptoms of child abuse. Not uncommonly, the partners and spouses of survivors endure these symptoms without knowing or fully understanding their cause.

The children of survivors may also have to cope with the effects of a parent's experience of institutional child abuse. At their worst, these may include alcoholism, physical or sexual abuse (of family members or others) and a lack of parenting skills. In the case of Aboriginal children, this pattern of parenting may have been repeated for two or three generations, as children of survivors themselves attended residential schools.

These family members are suffering the harmful fallout of institutional child abuse. They may be suffering in ignorance as well, since many survivors will not disclose their experiences, even to those closest to them. Like the families of anyone who has endured a damaging or traumatic experience, these families need help and support. They need help in understanding the causes underlying the survivor's behaviour; they need support in coping with that behaviour. Therapy may be as important for them as it is for survivors.

DISCUSSION POINT:

What are the best ways to support families that have been profoundly affected by institutional child abuse?

C. As communities

To this point, this Discussion Paper has reviewed the needs of individual survivors and their families. However, the damage caused by institutional child abuse, particularly abuse that has continued over a period of years, extends

SOME FAMILIES HAVE experienced tremendous guilt and anger because they did not take active steps to intervene when they were advised of allegations of abuse in the residence or when their children made it clear that they did not want to return. Some families did not know what their children were saying and sent their children back to the residence. These parents reported to us that they believe their adult children are now estranged from them as a result of their failure to protect their children. We believe that government has a responsibility to the families of the students who disclosed in 1982 and the students who were identified as victims of abuse in 1982.

From Abuse of Deaf Students at Jericho Hill School p. 47



beyond the individual victims and their families. The effects of the abuse may extend to communities, to Aboriginal nations and, less directly, but just as surely, to aspects of Canadian society as a whole.

What are the effects at the community level? First, what is meant by the word “community”? It means, of course, a group of people who live in a particular area and could include, for example, a neighbourhood, a First Nations reserve or a Métis settlement. For the purposes of this document, it applies equally to a group of people who identify with each other on the basis of common interests or common characteristics that draw this group together. In this broader sense, “community” would include, for example, the Deaf community, the Catholic community or the community known as the Duplessis orphans.

A community can be affected by institutional child abuse in profound and subtle ways, directly and indirectly. A number of factors influence the impact of institutional child abuse on a community: the pervasiveness of the abuse, its duration, the status of the perpetrators in the eyes of the community, the status of the institution where the abuse occurred, the extent to which the community is suffering as a result of the harm done to the individual survivors.

The effects on a community of long-term institutional child abuse can be widespread and diverse. It can affect communication between generations, as when Aboriginal children were forced to speak only in English or French and thereby lost their ability to communicate with their parents. Similarly, the enforced practice of Christianity to the exclusion of traditional Aboriginal spirituality can cause a rift within communities. The same type of rift can occur in Aboriginal communities that have adopted Christianity. For residential school students who embraced the religion of the nuns and priests who taught them, abuse at the hands of these representatives of the church caused a profound sense of betrayal. In many cases, it led to a rejection of the church, something their families and communities may have had difficulty understanding or accepting.

When generations of children are raised in institutions where physical and sexual abuse is common, communities must deal with generations of adults with little sense of how to be good parents. Cutting short this cycle of abuse is critical to the health of these communities.

Institutional child abuse also has economic repercussions on the community. When children are not provided with a decent education, as was particularly the case in residential schools for Aboriginal children, their prospects for employment are extremely limited. Disproportionate dependency on welfare becomes another community problem.

The difficulties experienced by the Deaf community are also severe. They are exacerbated by the relative isolation of community members from resources (e.g. for healing) in the hearing community. In a tightly-knit



community where virtually all members have passed through the same institution and been subjected to consistently high levels of abuse (in particular, sexual abuse), including abuse from other students, it is hard to know where the healing process can begin.

These types of communities, where almost everyone has been touched, directly or indirectly, by institutional child abuse, face an enormous challenge. They must rebuild a sense of confidence in the community as a safe place for disclosure and healing. They must repair the rifts caused by recriminations among community members. They must replace (in the case of Aboriginal communities) or reform (in the case of the Deaf community) the institutions where the abuse took place, because the educational function performed by those institutions remains necessary and important.

DISCUSSION POINT:

What are the best ways to support communities that have been profoundly affected by institutional child abuse?

D. As nations

Aboriginal peoples suffered as communities and as nations. Aboriginal children were singled out and targeted for institutionalization solely because of their race. The policy of forcible assimilation that lay behind residential schools for Aboriginal children is clear, however one chooses to characterize it.

Aboriginal nations are now faced with the task of dealing with the fallout from the application of this policy, over decades and generations, to their peoples. In the efforts of Aboriginal leaders to reclaim the dignity, self-sufficiency and cultural integrity of their nations, redress for the collective harms of the residential school experience is a significant though by no means the only goal.

The needs of Aboriginal nations are expressed at the level of nation-building. They include support for the preservation of Aboriginal languages, Aboriginal control of education and child welfare, recognition of Aboriginal spirituality, public education regarding the historical facts surrounding residential schools and the treatment of Aboriginal people generally. The need for a central archive where accounts of the experiences of survivors may be collected for the benefit of future generations is powerful. Physical memorials and archival records of historic wrongs serve an essential function for nations, races or peoples. As a constant reminder of the wrongs that were committed, they serve as a warning to ensure these wrongs are never repeated.



IV Approaches to Redress

In the Reference letter, the Minister asked the Commission to examine processes to deal with institutional child abuse with a view to determining “what types of processes would best address wrongdoing, while affording appropriate remedies, and promoting reconciliation, fairness and healing.” In considering any approach to redress for survivors of institutional child abuse, a basic principle must be: do no further harm. The Commission has therefore chosen to evaluate approaches to redress on the basis of how well they meet the needs of survivors, their families, their communities and Aboriginal nations—in short, all those affected by institutional child abuse. This seems to the Commission to be the most valid standard for assessing their appropriateness.

Based on its understanding of the needs of survivors and their communities, the Commission believes its evaluation of each approach should consider the following questions:

- does it uncover the wrongs?
- does it address the issue of accountability for those wrongs?
- does it treat survivors with respect and engage them as fully as possible?
- does it offer a real opportunity for healing? and
- does it seek to prevent further abuse?

A. Uncovering the wrongs

The first step in addressing the harms caused by institutional child abuse is to identify what happened. This can take place in several ways. On an individual level, it starts with survivors being able and willing to disclose what was done to them. Not all survivors wish to disclose, not all survivors feel safe disclosing and not all survivors have access to someone to whom they wish to disclose. Whether a particular process for redress provides an appropriate outlet for survivors to disclose, and how sensitively it does so is therefore an important factor in evaluating the appropriateness of that process.

Individuals may also choose to launch civil actions for damages against those responsible, whether directly or indirectly, for the abuse they suffered. A primary purpose of such actions is to recover damages, if the plaintiffs can



establish the fault of the defendants. In order to make this determination, however, the court needs to know the facts. Indirectly, therefore, a civil action provides an opportunity for survivors to uncover, in an impartial official setting, the wrongs that were done to them. This uncovering of the wrong would also occur where a survivor makes an application to a compensation program.

At the level of the state, wrongs may be uncovered in a number of ways. Given that physical and sexual abuse of children is a crime, the response of the state could be a police investigation. If sufficient evidence is gathered, the investigation would ordinarily result in the laying of criminal charges, unless the alleged perpetrators are dead.

While police investigations provide an occasion for disclosure, they may do so in a way that does not take into account whether a victim is ready or willing to disclose. They may invade the survivor's privacy and force into the open an issue the survivor has not addressed and is not prepared to address with his or her family. They may also uncover buried wounds without permitting the survivor to communicate with other survivors, thus depriving the survivor of an important source of strength and support. This occurs because potential witnesses in a criminal case are prohibited from speaking with each other so as not to taint their testimony. This is one way, but not the only way in which the requirements of the criminal process may override the needs of individual survivors, even as it tries to punish those responsible for harming them.

The state may choose to launch a public inquiry or establish a truth and reconciliation commission. An ombudsman or a child welfare agency may also choose to initiate an inquiry. A commission of inquiry has a broader mandate than a police investigation. Its aim is not solely to find evidence to support criminal charges. The terms of reference for every inquiry are distinct, but inquiries tend to share certain broad objectives. These include: determining facts, assessing harm, holding people or institutions to account, recommending compensation, preventing recurrence. Communities and the media may also conduct their own investigation or fact-gathering missions.

Another option for uncovering wrongs is to establish a central archive or registry where stories can be told and recorded. This option could be initiated by a group of individuals, a community, a government or even an institution. As it is to be their record, however, survivors should be actively involved in the establishment of this kind of archival initiative.

DISCUSSION POINT:

Are there other ways in which the facts of institutional child abuse can be uncovered and properly documented?



B. Accountability

Perpetrators of physical and sexual abuse have committed criminal offences. One way to hold them accountable is through prosecution and conviction in a criminal trial. Other ways might include civil actions, where moral blame may attach to liability, and public denunciation in the media.

Accountability other than for perpetrators is a more complex issue. Responsibility for institutional child abuse does not begin and end with the direct perpetrators. Those responsible for institutions where abuse occurred are answerable for what went on in those institutions. They may fear the financial cost they imagine is inevitable if they acknowledge their responsibility.

This is a curious paradox. Refusal to acknowledge responsibility and to negotiate redress with survivors does not shield those responsible from legal liability. It only shifts the arena for the determination of liability, forcing survivors to turn to the courts for satisfaction. Awards of damages in civil actions tend to be significantly higher than negotiated compensation. There seems to be no advantage gained.

There is always the possibility that survivors will not sue, put off by the emotional and financial cost of litigation, the uncertainty of the result and the years it would take to achieve satisfaction even if ultimately successful. There is also the certainty that, if one delays voluntary redress long enough, many of the survivors will die, and their claims along with them.

This is the calculus one might engage in if one were concerned only about the financial cost of dealing with survivors. It is, of course, a gamble. One or two favourable precedents and generous awards could snowball into a mountain of claims with good prospects for success. These could well prove far more costly than negotiating reasonable redress packages with survivors.

Speculation about which approach is more expensive in a strictly financial sense misses a larger point, however. Accountability is measured not only in monetary terms. There is a price to pay of a different sort for failing or refusing to take responsibility.

DISCUSSION POINT:

Is there any way to adjust the civil litigation system to overcome these problems?

The danger comes from viewing responsibility only in terms of legal liability. When children move from their family home, whether voluntarily or by order of law, those responsible for the institution where they reside necessarily take on the role of parents, with all its attendant obligations.



When the body taking on that role is a religious or charitable organization, it must fulfil that role in a way that respects and reflects the spiritual and moral canons of that religion. When the body taking on that role is an organ of the state, it must fulfil that role in a way that reflects and respects the principles and values that govern that state.

By characterizing accountability as a legal issue only, church and state may be ignoring or glossing over the importance of moral and political accountability. A preoccupation with the financial calculus can easily be interpreted as the church and state showing themselves unworthy of the public's trust and respect. A church that refuses to take responsibility for the abusive acts of its clergy or employees may maintain its financial solvency even as it is judged to be morally bankrupt. A government that prefers to wait for the verdict of the courts before doing the right thing might find out that it has misjudged the verdict of the people.

Accountability, therefore, has a moral and political as well as a legal aspect. Parties whose approach to redress fails to take into account the importance of this broader accountability may find themselves more subject to attack in the legal arena, and less able to defend themselves.

A large part of the reluctance of church and state to take responsibility, acknowledge the wrongs that allowed institutional child abuse to occur and to apologize for them is the belief that such acknowledgment and apology would result in increased lawsuits and that courts will treat these apologies as admissions of legal liability. There is a certain amount of legal writing indicating that this view is without foundation. It is equally possible, moreover, that the very opposite is true. Survivors who may have been satisfied with full and frank acknowledgment and apology and a modest settlement early on may become angrier and more demanding when confronted by years of official denial and footdragging from church and state. This behaviour also leaves it open to courts to award aggravated damages where the denial of liability was unreasonable.

One is left to speculate, for example, as to the cause of the increase in civil suits by Aboriginal survivors of residential schools following the Statement of Reconciliation in January 1998. It may have been due to the view that this Statement could be used as an effective legal document to prove liability in court. It may just as easily have been that Aboriginal people who had held off suing felt the Statement was so disappointing that there was no longer any point in holding off.

How does one evaluate approaches to redress in terms of the criterion of accountability? Certain approaches assign accountability explicitly and officially, while others may or may not do so. Court actions, whether civil or criminal, result in findings of liability. Criminal prosecutions are of course restricted to finding guilt for criminal acts. This leaves them silent on all other forms



of wrongdoing. Civil actions cover a broader range of wrongful acts (such as breach of fiduciary duty and negligence) but are still limited to legal wrongs.

Only non-court-based processes or initiatives set no limits on the scope of a party's responsibility. Governments, churches and other parties involved in institutions for children are free to acknowledge any acts or omissions which may have contributed to institutional child abuse and their failure to deal with it in a timely and effective fashion. These could include policies, legislation, employment practices or bureaucratic attitudes, to name just a few. Such acknowledgment need not be restricted to physical and sexual abuse, but could cover psychological, emotional, spiritual and cultural abuse as well.

Courts do not generally deal with these less tangible harms. Public inquiries may do so, depending on the scope of their mandate. In the absence of such official, independent assignment of responsibility, it is left to governments and churches themselves to examine their actions and attitudes. It is up to them to summon the courage and honesty to say that they failed these children. This is important not only for the survivors but for the healing of these institutions and the restoration of public faith in them.

C. Respect and engagement

As stated earlier, any redress process should benefit survivors, but at the very least, it should do no further harm. A process that ignores or is indifferent to this absolute cannot be considered a complete success, even if it results in the conviction of perpetrators or puts money in the hands of those who were abused.

One of the chief harms of institutional child abuse is powerlessness. It is clear, therefore, that a redress process that accords little status to survivors or is designed without consulting them becomes part of the same abusive pattern. It sends a message to survivors that they are not important, even in a process that is supposed to be about them or for them.

To be of greatest benefit to survivors, therefore, processes to address institutional child abuse should try to promote the following goals:

- engagement of survivors, with full and informed consent, in the design of the redress process;
- access by survivors to independent advice regarding the redress options available to them;
- respect for and sensitivity to survivors when conducting these processes.



Some of the processes which survivors of institutional abuse can use were not originally designed with them in mind. Consequently, they present the greatest difficulties with respect to the first and third goals above. The criminal justice system is the prime example. The principal actors are the state (on behalf of society) as police investigator and prosecutor, the judiciary, as independent decision maker and the alleged perpetrator, as defendant. Victims play only a supporting role—an essential one, certainly, but one traditionally given little status or consideration.

Both police investigations and the criminal trial itself are hard on survivors, for various reasons. Sometimes involvement in a police investigation is involuntary. Even when a survivor initiates the contact, police investigations may be disruptive of family and work life, may involve multiple interviews and, for the sake of preserving the validity of testimony, may impose restrictions on survivors speaking with other survivors, thus cutting off a possible source of support. Attending a trial to testify may be a significant financial hardship on survivors. Many left the region where they grew up because of its painful associations. There is little or no financial assistance available to them as witnesses for their time off work or their travel costs. Testifying at the trial may involve facing their abuser. They must relate the details of their abuse in open court, as no special protective mechanisms are available for adult witnesses (e.g. screens, videotaped testimony). They must then endure cross-examination—an attack on their credibility reminiscent of the lack of credibility they suffered as child victims of powerful adults. Similar problems may pertain at civil trials and public inquiries, although inquiries are more flexible and can be less formal. Inquiries also tend to be less coercive—there is often no requirement to attend and testify, as there may be at a criminal trial.

Although the format and structure of criminal investigations and prosecutions cannot be significantly altered to accommodate survivors, certain improvements are possible. Police could be trained specifically for these types of investigations. They could work in teams that include those who could provide support to survivors throughout the investigation. Victim-witness support persons could be available during the pre-trial and trial process and beyond, to ease the strain of testifying and help deal with the aftermath. They can also help to prepare victim impact statements.

Civil actions for damages allow greater scope for achieving the goals of respect and engagement because, as plaintiffs, survivors are principal actors in the process, which they are not in either criminal trials or public inquiries. In this role, survivors have greater control in shaping the cause of action, its direction and termination. Control is greater than in a class action, where no one member can shape the action. In either case, control may be enhanced by lawyers who make their clients partners in decision-making, as much as possible.



Only in non-court-based redress can survivors truly have the opportunity to shape the scope and design of the process and the possible outcomes. To differing extents, this may be true of public inquiries, compensation schemes and any process based on negotiation such as alternative dispute resolution. This is where there is the greatest opportunity for negotiation on an even playing field. This is where input from survivors is critical, because there are no barriers to their participation and therefore no reason for not engaging them fully.

D. Healing the harm

The need to uncover the wrongs committed in institutions for children, to acknowledge responsibility and apologize for those wrongs and to be respectful of survivors and engage them as much as possible in shaping the processes intended to redress those wrongs is fundamental. But it is also important to address the ways in which redress processes may alleviate or heal the harms of institutional child abuse.

In general, the types of outcomes that survivors seek are known. These were reviewed in the section on the needs of survivors. Now the question is: which processes are best suited to satisfying those needs? This means not only which processes reach the right outcomes, but which ones do so in ways that themselves promote healing and reconciliation. How do the various processes affecting survivors measure up?

1. Investigative processes

a Public inquiries and other independent public investigations

Public inquiries provide no direct material benefit to survivors and could, if handled without sensitivity, actually be harmful to survivors. They rely on survivors to testify, yet the publicity which at times surrounds them may be very unwelcome and difficult for survivors. Other inquiries such as those conducted by an ombudsman or a special counsel tend to be conducted in a way that maintains the confidentiality of survivors, although their findings are made public.

Public inquiries and similar processes can benefit survivors in a number of ways. They can give publicity to the wrongs committed and, through their official status, they legitimate the grievances of survivors. This public acknowledgment of what happened, while not redress in itself, brings pressure to bear on those who can provide redress. Public inquiries can therefore serve as a catalyst for redress.



b Police investigations

Police investigations are usually a prelude to criminal prosecutions. They are a concrete demonstration that authorities are treating allegations of institutional child abuse seriously. Any investigation of past abuse will necessarily be difficult for survivors. If handled with the proper expertise, sensitivity and respect, however, a police investigation can give survivors an empowering sense that they are personally assisting in bringing perpetrators to justice.

c Investigations by journalists

While court processes are public and may be intimidating or costly, disclosure to the media can be confidential and free. Media investigations have sometimes succeeded in uncovering criminal acts which official institutions, for one reason or another, have not pursued. The media may also bring public attention and therefore public pressure to bear on issues in a way that survivors often cannot do.

DISCUSSION POINT:

Which investigative processes are best suited to cases of institutional child abuse?

2. Court processes

a Criminal prosecutions

As discussed earlier, criminal trials can be very hard on survivors—emotionally, psychologically, financially. There is no guarantee that this grueling process will result in a conviction. Even if it does, survivors often find the sentences handed down to be disappointingly light. What, then, are the benefits to survivors of going through this process?

When the process results in a conviction, it is proof of society's serious condemnation. A criminal conviction and sentence demonstrate society's abhorrence for the acts committed. It is a form of collective retribution for the abuse. While not all survivors need this public symbol to heal and move on, many find it not only satisfying but necessary as a step in their healing. It is certainly a concrete vindication that the blame for the abusive acts lies entirely with the perpetrator, and not with the victim. For those who have lived with confusion or shame in connection with the abuse they suffered, this public condemnation of the abuser may be significantly therapeutic.



b Civil actions for damages

Civil actions instituted by survivors may be directed against the perpetrators as well as whoever was responsible for the institution (usually a church or government). The standard of proof is lower than in criminal prosecutions (balance of probabilities as opposed to beyond a reasonable doubt), but the burden is on the survivor taking the action to make the case. Contingency fee agreements between lawyers and clients and class actions have increased the accessibility of such remedies.

As with criminal trials, the survivor will have to testify, raising the same emotional issues. Moreover, as this is a private, not a state, action, the burden of financing it, as a rule, falls on the plaintiff survivor. The benefits of a successful action, however, are more concrete. These must be weighed against the very real possibility that it could take years to finally determine the case, if it proceeds through all avenues of appeal.

First, there is the award of damages. Courts can only award monetary damages, so all the harms suffered by the plaintiff must be quantified. This is, of course, the most tangible benefit. There is a psychological benefit as well, however. A successful civil action means that the court accepts the link between the wrongful acts of the defendant(s) and the damages—physical, psychological, financial—suffered by the plaintiff. The establishment of this causal link is the same kind of vindication of the plaintiff's experience as a criminal conviction. In fact, it may be even more powerful, because it relates to the plaintiff personally and it benefits the plaintiff directly.

When a group of survivors wins a class action, the entire class is vindicated. This is a benefit not only to the individual members of that class, but to the community to which those people belong.

The civil action does not permit the court to order the defendants to provide certain services or perform certain acts. A plaintiff might wish, for example, to compel a church to adopt a stricter screening protocol for its clergy and lay employees. Currently, courts can only put a dollar amount on the plaintiff's damages.

DISCUSSION POINT:

Aside from different ways of awarding monetary damages, what new kinds of civil remedies would be responsive to survivors' needs?

3. Restorative programs

Earlier, this Discussion Paper referred to compensation programs, a term sometimes used to describe a package of financial and other types of assistance offered to survivors. In some cases, the terms of the program are



negotiated with survivors to avoid court proceedings—a process often referred to as alternative dispute resolution or ADR.

It would be preferable to use the term restorative programs in describing those redress processes that rely on negotiation among the affected parties to resolve the issues they face. As noted, these issues go beyond financial compensation and include: acknowledgment of the harm done, apology, funding for therapy, funding for education, financial counseling and any other relevant services.

Restorative programs, unlike courts, have no pre-set constraints on what they can offer survivors. Only budgets and creativity limit the scope of the benefits they may include. Unilateral and negotiated restorative programs may offer similar types and amounts of compensation, but the process used to create the package may affect how well it is received by survivors.

a Unilateral restorative programs

Unilateral restorative program is a term that describes redress processes conceived, designed and implemented by the party offering the compensation, without real input from those for whose benefit it is intended. A government department, a church group or some other body might design a restorative package and offer it to survivors of abuse at an institution for which it was responsible. There is no doubt that any compensation package offered without the need for litigation or even negotiation will be attractive to survivors. By and large, they are not well off, and the uncertainty of other options (as well as the cost and effort they require) may make a solid offer appear irresistible. The success of a program, therefore, cannot be reliably measured by the number of survivors who accept the program. As discussed earlier, many may feel that civil litigation is too difficult to attempt. They would therefore not see that they have any option but to accept.

For this very reason, the desirability of a unilateral compensation program is questionable. While it undoubtedly provides a tangible benefit to survivors, it does so through a process that seems to discount the needs of survivors while capitalizing on their neediness. It may be that the party offering the program in fact has little flexibility in terms of the amount of compensation it can offer. Even so, to sit down with survivors or their representatives and discuss this openly would provide an opportunity for joint decision-making regarding how the compensation should be structured or allocated. It would also help to dispel some of the cynicism that will inevitably greet any unilateral compensation program.

Survivors are children no longer, and if they have learned one thing, it is to distrust the institutions of power and authority that failed to protect them and for years ignored or denied their allegations of abuse. This cynicism or at least, scepticism, is particularly prevalent among Aboriginal survivors. The



process can send a message. The message of a unilateral restorative program is that things haven't changed much. Just as a redress process can be part of the healing, it can equally be part of the harm.

b Negotiated restorative programs

Negotiated restorative programs include all situations where those offering redress sit down with the intended beneficiaries and they decide jointly the nature and scope of the redress package. This can include immediate financial assistance that is made without prejudice to the survivor's right to withdraw from the negotiations and to sue, until all the details of the program have been settled. The advantage to survivors of this type of process is that it can cover different types of needs, as defined by the survivors themselves. The advantage to the funding party is that it can be fairly certain that what it offers will be well received by those it is intended to benefit. Consequently, the risk that survivors will reject the package and opt for litigation can be reduced.

This emphasis on process has a tangible as well as a symbolic benefit. The tangible benefit to designing a compensation program together with those who are to be compensated is that it ensures that the program is directed to the areas that survivors identify as priorities. Given that funding for these programs will not be unlimited, making the right resource allocation decisions is critical to the success of the program. Success in this context means a high level of satisfaction with the program among survivors.

The symbolic benefits can be just as significant. If negotiations for the package are conducted in good faith, and survivors truly have a say in the design, content and delivery of the program, this in itself is an important benefit. It may well be the first time in their lives that some of these former victims have the opportunity to sit down with government or church officials and be treated as equals. This can be tremendously empowering. Conversely, if the negotiation is a sham, and the government or church has already made up its mind what it intends to do then the effort can backfire. Worse than a unilateral restorative program is one that cynically attempts to get survivors onside without in fact giving any weight to their views. This is likely to destroy the credibility of the compensating party and will reinforce the impression of some survivors that the church and state are not to be trusted. It will also deepen their feelings of powerlessness and exploitation and could drive them to take court action if they have not waived that right.

4. Community initiatives

The discussion so far has focussed on processes that depend largely on state mechanisms, such as courts, or on initiatives of the state or a church. If the



process for redress determines in some measure the effectiveness of the redress, then the most effective process should be one that originates with and is controlled by survivors themselves and their communities or nations.

Some community initiatives may operate through the courts, as when a group of survivors decides to launch a class action. Other such initiatives may be more inward-looking. For example, an Aboriginal nation may draw on its own resources to reclaim the language, spirituality and culture that was eroded, in part, by generations of residential schools or to rehabilitate the offenders in its midst and heal the survivors.

This is true empowerment. It is the community itself identifying what it needs in order to heal, and deciding on the steps it will take to fulfill those needs. Aboriginal communities and nations in particular recognize the importance of taking the initiative with respect to redress for survivors, as well as in other areas. Healing circles and survivor support groups are examples of such initiatives. Survivors have learned that sometimes it takes the commencement of a lawsuit in order to get the attention of the party with whom they wish to negotiate.

Compensation issues aside, communities and nations are seizing the initiative in other ways as well. One of the legacies of residential schools for Aboriginal children is the move toward Aboriginal control of child welfare services and control of schools. Communities are also holding healing circles, and developing their own programs for helping survivors to cope with the long-term effects of institutional child abuse.

In order to accomplish these tasks effectively, communities do require funding. The Aboriginal Healing Foundation is one program targeted at funding healing initiatives in Aboriginal communities. Redress processes that support the initiatives of survivors and their communities are clearly preferable to processes that primarily serve the interests of those responsible for the institutions where the survivors were harmed. These may include initiatives as diverse as truth and reconciliation processes, physical memorials and documentary films.

DISCUSSION POINT:

What are possibilities for other types of community initiatives?

E. Preventing further abuse

Many survivors who participated in the background research for the Reference did so because they hoped the work of the Commission would assist in preventing future child abuse. This desire to make a difference in the lives of children currently at risk of abuse is of prime importance to survivors.



Studies tell us clearly what needs to be done in order to reduce the incidence of child abuse. Measures such as properly screening and training staff, informing children of their rights, giving them access to an independent monitor and keeping an appropriate staff to child ratio would be of great assistance in preventing institutional child abuse and would allow institutions to do the good work of which they are capable. As well, measures should be in place across the country to ensure immediate and coordinated intervention when allegations of child abuse are made. Those who experienced institutional child abuse first-hand are an invaluable resource as possible members of institutional boards of directors and oversight committees or as advisers to ombudsmen's offices and child advocacy organizations, to cite just a few examples.

Taking concrete steps to put this knowledge into practice should be considered either as part of or as a complement to any redress process. While the "bricks and mortar" institutions for children may disappear, child abuse does not. It simply relocates. Revelations of abuse in the last few years suggest that foster care may be the "institution" we now have to worry about. Organized sport has also been exposed as a milieu where children can be exploited and abused for lengthy periods. Incorporating preventive measures in redress processes shows not only that we acknowledge and wish to compensate for the harms of the past, but also that we have learned enough not to repeat them.



V The Way Forward

We said at the start of this Discussion Paper that, in the Commission's view, assessing how to address the needs of those affected by institutional child abuse is about more than compensating a group of people for past wrongs. Appropriate redress depends on a clear understanding of the context in which the abuse occurred, the circumstances that permitted it to continue for lengthy periods and the effect on survivors and others of both the abuse and the delays in addressing it. Only once one understands the context, the circumstances and the impacts is it possible to fashion responses that address the factors of greatest concern to those affected, including healing and compensation, punishment and reconciliation, accountability and prevention.

The processes currently being used to address the consequences of institutional child abuse are often suited to some objectives while ignoring or even hindering others. For example, criminal prosecution can be an effective way to punish those who committed acts of abuse, but doesn't provide compensation and may be traumatic for survivors who are witnesses. Similarly, a compensation scheme that provides money and counseling services to survivors but includes no acknowledgment of responsibility, no apology and no public disclosure may be judged inadequate or even unacceptable by its intended beneficiaries.

A review of the various processes reveals that, from the perspective of those who suffered institutional child abuse, each one could be improved. Here are some observations drawn from the Commission's research.

Police investigations:

- Police should rely on survivors coming forward in response to appeals in the media, rather than appearing at survivors' homes or offices uninvited and without warning;
- When conducting interviews with survivors, police should be accompanied by persons knowledgeable about handling traumatic responses to such questions or be trained to handle these themselves;
- Police should minimize the number of times people are interviewed;
- Survivors should be given a choice as to the gender or race of the person who will interview them.



Public inquiries:

- Those affected by abuse should be involved in setting the terms of reference;
- The need for public awareness of what went on in these institutions must be balanced with respect for the privacy of survivor-witnesses, possibly by offering the option of private interviews.

Criminal trials:

- Crown witnesses must receive adequate information about the process prior to the proceedings, and adequate support during and after the proceedings;
- Financial assistance should be available to enable the participation of survivors as witnesses;
- In special circumstances, witnesses should be permitted to testify using a screen that shields them from the accused's view.

Civil actions:

- Reduce the lengthy delays and high cost of civil suits.
- There should be opportunities for mediation.

Restorative programs:

- Survivors or their representatives should be partners in the design of these programs;
- Those eligible for such a program should not have to give up their right to sue or to pursue other remedies until all the details of the program are known and have been presented to them in an impartial manner.

DISCUSSION POINT:

What other improvements/changes should be made to processes for redress?

Sometimes the requirements of one process undermine the benefits that may be gained from another, to the detriment of survivors. For example, prohibiting survivors of an institution under investigation from speaking with one another until the criminal trial is over is considered necessary in order to protect the validity of their testimony. This can impede their healing process. Similarly, civil trials may sometimes be put off pending the outcome of criminal trials involving the same alleged perpetrators. Given the uncertainty of



a criminal conviction and the lengthy delays often associated with criminal trials, it is open to question which process is more important for survivors and therefore deserving of priority.

DISCUSSION POINT:

Which redress processes offer the greatest opportunity for responding to the needs of survivors?

To deal fully with the issue of redress for institutional child abuse we should look beyond small improvements or minor adjustments to specific processes. We must consider developing a new, more all-encompassing approach to redress. The very fact that this Reference was put to the Law Commission of Canada shows that governments are aware of and concerned about the mounting evidence of child abuse in a large number of institutions, some of which are still operating. There is a growing wave of civil actions against governments arising out of institutional child abuse.

Legal processes that rely on finding specific individuals or organizations at fault (whether civilly or criminally) for specific harms committed on specific dates are not well suited to providing appropriate redress for survivors of institutional child abuse, for several reasons. First, the number of people affected is large and spread across the country. Second, the fact that abuse took place years, even decades ago and was carried out against children, including very young children, presents problems of proof that are significant in civil actions and almost insurmountable in criminal prosecutions. Third, mounting a civil action is costly. Many survivors do not have the resources to take on their former abusers, let alone the powerful governments and churches that ran the institutions. Even participation in a criminal proceeding can involve serious financial obstacles for survivors, without counting the emotional costs.

Non-court-based redress programs are perhaps easier on survivors, in financial and psychological terms. Often, however, such programs are not established until survivors have initiated legal proceedings of some kind. In those cases, the programs begin under a psychological cloud. Because the attitude of those responsible has been, by and large, to put off dealing with survivors until more or less forced to do so, these programs may look like strategies to minimize liability. This impression is even stronger when their scope and mandate are effectively set without the meaningful participation of survivors.

Survivors themselves have not been a powerful lobbying group, also for a variety of reasons. They are dispersed across Canada. In general, they lack the financial resources and the information (such as lists of residents of institutions) to organize effectively. Many of them do not wish to be identified publicly as survivors of acts that society stigmatizes. Many do not wish to be



identified as former residents of these institutions, and so would not necessarily participate in lobbying efforts. There may also be political reasons why survivors from one community see their issues as distinct from those of other survivors and therefore do not join forces.

All of these factors tend toward the conclusion that it will be a long, painful and expensive journey before the damage of past institutional child abuse is resolved. This doesn't speak at all to whether children are suffering right now in our present-day institutions and residential child care facilities.

DISCUSSION POINT:

What new redress processes for past abuse would make it easier to identify present abuse?

The evidence available suggests that it is now time for governments, churches and other organizations to sit down with survivors and review the whole situation. It is necessary to identify all the institutions where children resided. Have there been allegations of abuse at those institutions? If not, what steps are necessary to determine whether abuse did occur? Can we set appropriate benchmarks for the provision of counseling, education, training and other services to be offered? Can we promote public awareness of the realities of children in institutions by, among other possibilities, creating an archive where their experiences can be collected, recorded and corroborated by historical documents?

The idea behind this type of focussed effort at redress is that it would avoid the piecemeal and relatively passive approach that has so far characterized our response as a society to institutional child abuse. By concentrating resources and expertise, we could avoid the duplication and multiplicity of proceedings, most of which occur in isolation from each other. This would allow the sharing of models, experiences and lessons learned.

DISCUSSION POINTS:

If there is a comprehensive approach, who should take leadership: survivors, provincial governments, the federal government, an agency?

In contemplating the way forward, the Commission wishes to present the possibility of a new approach—a departure from the case by case, reactive, adversarial processes that have largely characterized this country's response to institutional child abuse. It wishes to encourage the development of an approach that accords power to those who have been powerless, acknowledges the credibility of their voice, respects the legitimacy of their needs and



seeks to enable them to reintegrate into the families, communities and nations from which they were disconnected.

Finally, such an approach could serve not only to redress the wrongs of the past but also to address the dangers of the present. Survivors have much to teach. Addressing their needs and listening to them can help us develop best practices for the care of children in institutional settings of all kinds. These include, for example, day care facilities, foster homes, organized sports programs, summer camps, as well as the kinds of institutions specifically the subject of this Reference.

We must take initiative. We must demonstrate that, as a society, we are not afraid to face up to the legacy of institutional child abuse and equally, that we will not tolerate its continuance through our complacency or denial.

