



The Law Society of
Upper Canada

Barreau
du Haut-Canada

The Provision of Legal Services in Cases Involving Claims of Sexual Abuse – An Educational Guide for Lawyers and Paralegals

Note: This Guide should be read in conjunction with the *Guidelines for Lawyers Acting in Cases Involving Claims of Aboriginal Residential School Abuse* available at <http://rc.lsuc.on.ca/jsp/equity/guidelines-for-aboriginal-residential-school-claims.jsp>

Comments about this guide are welcome. Please contact the Equity Initiatives Department at [email address] or [phone numbers] to comment if you have comments about this guide.

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The Provision of Legal Services in Cases Involving Claims of Sexual Abuse – An Educational Guide for Lawyers and Paralegals

I. Purpose

The document *The Provision of Legal Services in Cases Involving Claims of Sexual Abuse – An Educational Guide for Lawyers and Paralegals* (the “Guide”) is provided as a tool primarily to assist lawyers and paralegals who provide legal services to claimants acting in cases of sexual abuse where the claimants have, as an objective, the pursuit of compensation. The purpose of the Guide is to propose appropriate practices and to foster professional and ethical conduct in the representation of claimants in such cases.ⁱ

The Guide was prepared, in part, in response to the recommendation of the *Cornwall Public Inquiry* that self-governing professional bodies whose members are in contact with persons who may have been sexually abused “promote education in this field and, if appropriate, make amendments to relevant guidelines and standards related to professional competence”.ⁱⁱ

The Guide, which is educational in nature, is meant to provide guidance for those acting for claimants in cases involving sexual abuse. It should be read in conjunction with the *Rules of Professional Conduct*ⁱⁱⁱ and the *Paralegal Rules of Conduct*.^{iv} Reference may also be made to the Law Society of Upper Canada’s *Practice Management Guidelines*,^v which offer practical tools to assist lawyers in assessing, maintaining and enhancing the quality of their service and to the *Guidelines for Lawyers Acting in Cases Involving Claims of Aboriginal Residential School Abuse*.^{vi}

The Guide is not intended to replace a lawyer’s or paralegal’s professional judgement or to establish a one-size-fits all approach to the practice of law in this area. Subject to the provisions in the Guide that incorporate legal, by-law or rules of conduct requirements, a decision not to follow the Guide will not, in and of itself, indicate that a lawyer or paralegal has failed to provide quality service. The circumstances of each individual

case must always be considered and, in appropriate circumstances, it may be necessary to deviate from the Guide.

In recognition of the fact that sexual abuse often constitutes a crime under the *Criminal Code of Canada*, the Guide is informed by the Ontario *Victims' Bill of Rights, 1995*.^{vii} This statute recognizes the following:

Victims' Bill of Rights, 1995

Persons "who have suffered harm and whose rights and security have been violated by crime should be treated with compassion and fairness."^{viii}

"The justice system should operate in a manner that does not increase the suffering of victims of crime and that does not discourage victims of crime from participating in the justice process."^{ix}

Victims of crime should be "treated with courtesy, compassion and respect for their personal dignity and privacy by justice system officials."^x

Victims of sexual assault are "presumed to have suffered emotional distress."^{xi}

II. Overview – Guiding Principles

The following three guiding principles should be taken into account when acting for claimants in sexual abuse cases:

- respect,
- engagement, and
- informed choice.^{xii}

Their ultimate aim is to enhance access to *quality* justice in Ontario. It is incumbent on lawyers to recognize the gravity of abuse allegations for both the claimants and respondents. Accordingly, although the Guide applies primarily to lawyers acting for claimants in sexual abuse cases, it is also relevant to lawyers acting for respondents.

Sexual abuse claims are both legally and factually complex. Lawyers who are retained to act for claimants in such cases should ensure that they have the necessary and requisite knowledge of these types of claims and claimants. Some background information and reference material available to assist lawyers in providing legal services to claimants are described in Appendix A. Lawyers should also be mindful of the *Rules of Professional Conduct*, and particularly the Rules that follow.

Rule 1.03(1) (b) of the *Rules of Professional Conduct*^{xiii} addresses the responsibility of lawyers to “respect human rights laws in force in Ontario”. When providing legal services, lawyers should recognize that no one is to be denied services or receive inferior services because of a prohibited ground enumerated under human rights laws in force in Ontario. Lawyers acting for claimants in sexual abuse cases should take into account the fact that the vulnerability of claimants is often compounded by their gender, age, race, ancestry, disability, sexual orientation or other human rights-protected personal characteristics.

Lawyers should also be guided by Rule 4.01(1)^{xiv} that states “When acting as an advocate, a lawyer shall represent the client resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.” In

civil matters, it is important for lawyers to discharge their duty through fair and honourable means and in a way that promotes the parties' right to a fair hearing.

Rule 2.01 of the *Rules of Professional Conduct*^{xv} defines "competence". There are various unique features to sexual abuse matters that inform the meaning of competence. These features affect what lawyers need to do to be competent, or become competent without undue delay, when they undertake to provide legal services to claimants in cases involving sexual abuse.

Features specific to sexual abuse claims that have implications for the provision of competent legal services are best summarized by reference to the following:

- The unique needs of claimants of sexual abuse;
- The unique demands on this claimant group; and
- The multiplicity of forms of redress available to this claimant group.

A. *The Unique Needs of Claimants of Sexual Abuse*

The courts have consistently recognized sexual abuse to be distinctive.^{xvi}

It is distinctive by reason of its wrongful nature – that is, it is conduct that is intentional, inherently violent, represents an abuse of power, often reflects a betrayal of trust, and is an attack on a person’s dignity.

It is also distinctive by reason of its harms which, in addition to any physical injury caused, typically involve profound and long-lasting psychological damage that often manifests itself over time in various insidious and complex ways.

Claimants in sexual abuse cases are often vulnerable and psychologically damaged. This vulnerability and damage stems not only from the abuse itself, but also from conditions that may have predated the abuse and served to make them more prone to being abused in the first place (e.g., dysfunctional and neglectful family environments in the case of childhood sexual abuse), and conditions which, while potentially related to the abuse, post-date it, such as drug and alcohol dependency or re-victimization by other abusers. Claimants in sexual abuse cases may exhibit protective and avoidant tendencies that can make it challenging for lawyers to represent them. They may also have anger management issues. They often have significant difficulties with trust, which can extend to difficulty trusting a legal professional who is in a position of relative power and privilege.

Members of this client group are frequently isolated and stigmatized in society because of mental health problems, lack of resources, and feelings of powerlessness. Many are impoverished and live on the margins of society.

Claimants in sexual abuse cases may be prone to engage in risky and harmful behaviours, particularly towards themselves. These behaviours, which include alcohol and drug abuse or other addictions, suicide attempts, anger management problems and aggression, mean that safety concerns related to claimants’ self-harm are ever present when representing this client group.

Claimants in sexual abuse cases may also be prone to aggression and harmful behaviours towards others, including those who are trying to help them. They may have a poor sense of appropriate boundaries. Such behaviours may be challenging for lawyers to manage.

B. The Unique Demands that the Justice system Places on claimants of Sexual Abuse

Sexual abuse is rarely witnessed. There are also rarely any contemporaneous records that speak either to the actual incidents of sexual abuse, or their harmful consequences. The “invisible” nature of the psychological harms resulting from sexual abuse and the often delayed manifestation of some or all of the harms complicate the burden of proof to be met by claimants.

Claimants’ lack of self-esteem and confidence and the avoidant and destructive coping tendencies they often employ can make them particularly ill-suited to the demands of the justice system. For example, they may experience difficulties recounting what happened to them in the chronological, detailed, confident and consistent manner preferred by justice officials. They may also lack the insight necessary to identify their problems and the causes of these problems. When cultural, linguistic, social class and other personal characteristics are added to the mix, the ability of claimants to prove their case can be even further impeded.

Because claimants often delay confronting their abusers and the institutions that facilitated or are otherwise implicated in the abuse, the scope of the life events that are “relevant” in legal processes in which they engage can span many years and sometimes decades. This, in turn, may result in significant intrusions into claimants’ privacy rights as they are compelled to reveal highly personal details about themselves and disclose extensive personal and confidential records (e.g., medical, therapy, school, Children’s Aid Society (CAS), employment, criminal, etc.).

C. The Multiplicity of Forms of Redress Available to Claimants of Sexual Abuse

Sexual abuse is recognized as wrong in many branches of the justice system. This can give rise to multiple avenues of redress for individual claimants, depending on their particular circumstances, and result in overlapping legal processes. For example, sexual abuse that is proven beyond a reasonable doubt may constitute a number of different

criminal offences under current and previous versions of the *Criminal Code*, which can lead to an abuser being punished, potentially with imprisonment. Sexual abuse may also constitute an actionable wrong in the civil courts and give rise to claims for compensation not only against an individual abuser, but also others who employed or had charge of the abuser or claimant, or were otherwise implicated in the abuse, and possibly their insurers.

The following are examples of legal processes, aside from criminal and civil court cases, that may be available to claimants:

- disciplinary proceedings by self-governing bodies against member professionals such as teachers or health care providers, which can result in significant sanctions (e.g., revocation of a license);
- human rights proceedings, such as under the Ontario *Human Rights Code*, or, in the federal sphere, under the *Canadian Human Rights Act*, and yield compensation and/or other relief under those statutory regimes;
- alternative forms of compensation, funding or benefits from a government agency or regulatory body, such as, the Ontario Criminal Injuries Compensation Board;
- the Workplace Safety and Insurance Board;
- the federal government's and churches' court-sanctioned Indian residential school alternative dispute resolution process;^{xvii}
- provincial settlement packages;^{xviii} or
- governing health profession, e.g. the College of Physicians and Surgeons of Ontario and the College of Psychology make limited therapy funding available to patients who have suffered sexual misconduct by its physician members.

Sexual abuse can also represent a breach of contract or a breach of internal rules and/or policies, such as a collective agreement in a unionized workplace, or the internal rules of a religious entity (e.g., Canon Law in the Roman Catholic Church). It can be contrary to an internal workplace harassment or anti-violence policy. These violations can give rise to still further legal processes and forms of redress/punishment.

The above discussion is by no means intended to be exhaustive, but rather to highlight the breadth of the potential knowledge required by lawyers providing competent and quality legal services cases involving claims of sexual abuse.

III. Practice Tips

For ease of reference, the practice tips outlined below have been divided according to headings that reflect their primary (though not necessarily only) focus. These headings are:

- Competent Service,
- Communications, and
- Safety Considerations.

A. *Competent Service*

Given the complexity and multi-faceted nature of sexual abuse cases, lawyers who provide legal services to claimants should have or acquire, and maintain, the knowledge, skill, time and means to do this work effectively and responsibly. This includes being appropriately prepared for and supported when responding to the heightened emotional demands, and preparing and supporting staff for such eventuality. Lawyers are encouraged, for example, to provide access to employee assistance programs and counselling for lawyers and staff. It is also good practice to ensure that new staff members and lawyers are informed in advance of the heightened emotional demands that will often be placed on them. Complex demands of sexual abuse cases may place a practical limit on the ability of lawyers acting for claimants to take on these cases and/or on the number of such cases they can competently and responsibly take on at any one time.

Competent service includes being cognizant of the different avenues of redress available to claimants, how these various processes interact with one another, and whether there are limitation periods that may operate to bar claims.

Being competent includes knowing the law and the unique nature of these cases.

Lawyers may wish to educate themselves or gain an understanding of the following, if relevant:

- How and why progressive disclosure of abuse by claimants may occur.^{xix} This means being accepting of claimants who make progressive disclosure and not discounting or disparaging this disclosure, notwithstanding that it may reflect or appear to

reflect inconsistency in a claimant's prior account of events and experiences. In such cases, the lawyer may wish to prepare claimants for how progressive disclosure may be perceived and/or responded to by other participants in the justice system. It is important to foster and maintain lines of communication to avoid surprises from claimants and to be in a position to respond effectively to expanded allegations by claimants. It may also be helpful for defence lawyers to familiarize themselves with the concept of progressive disclosure.^{xx}

- Gain an appreciation for “recovered traumatic memory”. A lawyer facing a situation in which a claimant claims to have recalled an experience of sexual abuse decades after the incidents occurred may have to determine whether the memory of these incidents was consciously suppressed (in which case the process of memory retrieval is not likely an issue), or was unconsciously blocked and then recovered. In the latter case, lawyers should be prepared to learn about the process of traumatic memory recovery by engaging appropriate experts (typically psychologists who are traditionally the experts on the workings of memory).
- Understand issues surrounding the admissibility of hypnotically-revived memory.
- Understand issues that arise when multiple clients were abused by the same person(s) and/or abused in the same context or environment. In those cases it is important for lawyers to give careful consideration to the best method of proceeding. This can include multiple individual proceedings, a multi-claimant proceeding (e.g., group lawsuit), a class action or an alternative dispute resolution process. To assist claimants in making informed choices about how to proceed, lawyers may need to explain to claimants the relative advantages and disadvantages of each method of proceeding, including comparative delays, expense and ability to meet claimant objectives.
- Where there are settlement negotiations, one should be careful not to further isolate claimants or to leave claimants without supports, or deny appropriate healing opportunities as a result of a settlement, if this can be avoided. As much as possible, claimants should also not be left with the sense that what happened to them is shameful and secret and/or that they are influenced into remaining silent, as this may be experienced as degrading and cause further distress. Claimants' freedom of expression and choice as to whether to speak about their abuse and/or the harms flowing from the abuse should be respected to the fullest extent possible.

- As many claimants have objectives, or “healing and reconciliation” needs,^{xxi} that extend beyond simple monetary compensation (e.g., preventing a repetition of their abusive experiences by others), lawyers acting for them may want to look for opportunities to advance claimants’ non-monetary goals.

B. Communications

The following Rules of Professional Conduct may be relevant:

Rules 4.01(2)(k) “When acting as an advocate, a lawyer shall not needlessly abuse, hector, or harass a witness”.^{xxii} In sexual abuse cases where claimants are vulnerable, lawyers on both sides should take particular care not to take unfair or improper advantage of the circumstances.

Rule 4.01(6), which states “A lawyer shall be courteous, civil, and act in good faith to the tribunal and with all persons with whom the lawyer has dealings in the course of litigation”,^{xxiii} may also apply. Lawyers should avoid being rude, provocative or disruptive in the course of litigation.

Lawyers should also be mindful that sensitivity should be accorded to claimants who are under a disability (as defined by Rule 1.03 of the *Rules of Civil Procedure*).

In the case of minors, it is important that a minor be aware of the intention to commence proceedings, and be engaged in the process to the extent feasible. Lawyers who accept these retainers are encouraged to meet and/or communicate with the minor(s) as early and as often in the proceedings as is feasible. Such meetings and communications usually give the lawyer an opportunity to begin to form an appropriate relationship of trust with the claimant, and to provide the claimant with a level of awareness and engagement, as appropriate to the claimant’s level of maturity and ability to comprehend. These interactions may also help the lawyer gauge whether the claimant is comfortable with the proceeding or whether the parent or litigation guardian is taking a course of action with which the claimant is uncomfortable.

Where no suitable adult is available to act as litigation guardian, lawyers are reminded to contact the Office of the Children’s Lawyer for assistance.^{xxiv} The same comments

apply to lawyers representing claimants with mental disabilities or challenges, and who require a litigation guardian. In the event no suitable adult is available to act as a litigation guardian, lawyers are reminded to contact the Office of the Public Guardian and Trustee.^{xxv}

In either situation, it is important that the lawyer undertake his/her own assessment of the claimant's ability to understand and relate to what is being said to her/him, no matter what the disability is, and then attempt to communicate with the claimant so the claimant is as engaged in the process as possible.

Because of the betrayal of trust experienced by many claimants and the fact they have had power and control taken away from them by virtue of the abuse they have suffered, lawyers interacting with this vulnerable client group (i.e., lawyers on both sides) should endeavour to ensure their communications with claimants are at all times respectful. This means not being judgmental, inappropriate, insensitive or inattentive when communicating with claimants. Lawyers acting for claimants should also approach the alleged perpetrators of abuse with civility and respect.^{xxvi}

Lawyers should also be mindful of Rule 4.01(4) (c) which states "Where the rules of a tribunal require the parties to produce documents or attend on examinations for discovery, a lawyer, when acting as an advocate shall not make frivolous requests for the production of documents or make frivolous demands for information at the examination for discovery."

Lawyers should proceed carefully when initiating contact with potential victims in sexual abuse cases, whether these are potential clients or witnesses (e.g., similar fact witnesses). This includes clearly identifying who they are and what their purpose or interest is. Where possible, lawyers should meet with claimants in person.

Subject to considerations of client confidentiality and privilege, lawyers representing claimants should be open to the presence of support persons, whether personal or professional, at all stages of the retainer. Where this happens, however, they also need to be mindful that the instructions they receive are from the claimants themselves and not from others serving as their proxies.

Lawyers may wish to explore with claimants, especially before the retainer relationship is established, the claimants' expectations of the legal process(es). This means determining what the claimants' objectives are. It also means advising claimants of what the justice system can and cannot deliver, and what considerations and factors may impact on the likely success or failure of a legal process.

It is important to be forthright and frank in explaining the significant intrusions on personal privacy that claimants may expect as the ones who bear the burden of proof in the legal process, and what reasonable efforts, if any, can be made to limit such intrusions and what the associated risks and/or costs of doing so are. For example, whether it may be necessary or prudent to conceal a claimant's identity through the use of a pseudonym or initials if legal action is to be taken is something that might need to be considered.

Claimants in sexual abuse cases often do not appreciate that the personal matters they must disclose, both themselves directly and through the production of documents (e.g., school, medical, therapy, CAS, employment, income-related, criminal, etc.), extend well beyond the actual incidents of abuse themselves. Disclosure may also address how they have or have not been impacted by the abuse and/or by other adverse events in their lives. If not prepared for such intrusion into their personal affairs, claimants can experience the probing by their own lawyers, opposing lawyers and experts as an attack on them and feel overwhelmed and discouraged by the process. It is important for lawyers representing claimants to explain why questions about highly personal matters like intimate relationships, their sexuality and other aspects of their social and personal functioning may be relevant. Lawyers may also wish to consider whether limits might apply to what has to be disclosed, rather than simply assuming everything is to be disclosed.

Lawyers for claimants should endeavour to make their communications, written and verbal, as accessible as possible to claimants, depending on particular claimants' needs and abilities – which could include language and cultural factors. Lawyers should make all reasonable efforts to ensure claimants' comprehension, which includes, as appropriate, inviting questions from claimants and taking the time to answer these.

In multi-claimant proceedings, such as a group lawsuit, a class action, or an alternative dispute resolution process designed to address grievances and respond with appropriate redress on a large scale, lawyers acting for claimants should be particularly mindful of the need to foster and maintain effective lines of communication with claimants. This includes the development of an effective reporting mechanism so that claimants not only receive timely and consistent information and have opportunities to raise general questions, but also have avenues in which to have their specific needs and interests addressed.

Rule 3.01(2) of the *Rules of Professional Conduct*^{xxvii} prohibits lawyers from using marketing materials that are false or misleading, amount to coercion or harassment, or take advantage of a person who is vulnerable or has suffered a traumatic experience from which he or she has not yet recovered.

Lawyers should ensure, in compliance of Rule 2.08 of the *Rules of Professional Conduct*,^{xxviii} that the method(s) of calculation of fees and disbursements charged to claimants is (are) clearly communicated to them prior to entering a retainer relationship and thereafter as necessary.

Lawyers are reminded that the *Rules of Professional Conduct* set out strict prohibitions regarding fee sharing, splitting or division with a person who is not a licensee. Similarly, lawyers are prohibited from giving any financial or other rewards to any persons who are not “licensees”^{xxix} for the referral of clients or client matters. See Rule 2.08(8) of the *Rules of Professional Conduct*.^{xxx}

C. Safety Considerations

Because of the ever-present risk of harm to this psychologically fragile group of claimants, lawyers acting for claimants may wish to review, at the beginning and throughout their retainers, the personal and professional supports available to their clients and, where possible and appropriate, encourage and/or assist them to seek out the supports they need to safeguard their health and well-being. While bearing in mind client confidentiality and privilege considerations, it may be prudent for lawyers to liaise with claimants’ support networks as necessary to promote claimants’ safety and well-being.

Lawyers should be sensitive about how, when, in what form and forum, how often and to whom claimants are required to recount their abusive experiences given that doing so may cause claimants to “relive” their abuse, which in turn can put them at risk of harm.

Where minors have been sexually abused and guardians seek to initiate legal processes on their behalf, lawyers should proceed cautiously as to the timing of engaging a legal process and be aware of the potential for a conflict of interest as between minors and their guardians. It is particularly important that minors who have been sexually abused have robust supports in place, both of a personal and professional nature. The same considerations apply to persons who are mentally disabled or challenged.

Lawyers and staff members who routinely practice in this area may suffer from “secondary trauma” or “burnout” and should be cognizant of their own health: “Common signs to watch out for are feelings of powerlessness, anxiety, guilt, anger/rage, shutdown of feelings or emotional numbness, fear, helplessness, sadness, general depletion and hypersensitivity”.^{xxx}

Checklist

When representing claimants in cases involving sexual abuse, you may wish to consider the following:

- where possible, meet with claimants in-person, particularly before establishing a retainer relationship
- finalize the retainer agreement before taking steps on behalf of claimant
- follow the *Rules of Professional Conduct* on communicating the method(s) of calculation of fees and disbursements charged to claimants
- avoid fee splitting/sharing arrangements and financial incentives for client referrals with non-licensees
- review the personal and professional supports available to claimants
- be forthright and frank in explaining the very significant intrusions on personal privacy that claimants can expect and what reasonable efforts, if any, can be made to limit such intrusions and the associated risks and/or costs of such efforts
- in multi-claimant proceedings, ensure that effective lines of communication with claimants are fostered and maintained
- have or acquire and maintain the knowledge, skill, time and means to do this work effectively and responsibly
- be cognizant of the different avenues of redress available to claimants, how these various processes interact with one another, and whether there are limitation periods that may operate to bar claims
- be sensitive about how, when, in what form and forum, how often and to whom claimants are required to recount their abuse

Appendix A: Recommended Background Resources to Assist those Involved in the Provision of Legal Services in Cases of Sexual Abuse

General Information

Victims' Bill of Rights 1995, S.O. 1995, c.6, as amended.

Law Society of Upper Canada, *Guidelines for Lawyers Acting in Cases Involving Claims of Aboriginal Residential School Abuse*, (Toronto: Law Society of Upper Canada, 2003) online at http://rc.lsuc.on.ca/pdf/equity/guideline_aboriginal_res.pdf.

Ontario, *Report of the Cornwall Inquiry*, especially Volume 4, Phase 1 and 2 Executive Summary (Toronto: Queen's Printer, 2009), online at <http://www.attorneygeneral.jus.gov.on.ca/inquiries/cornwall/en/report/index.html>.

Daylen, J., van Tongeren, H. and O'Toole, D., *Trauma, Trials and Transformation: Guiding Sexual Assault Victims Through the Legal System and Beyond* (Toronto: Irwin Law, 2006).

Law Commission of Canada, *Restoring Dignity: Responding to Child Abuse in Canadian Institutions* (Ottawa: Law Commission of Canada, March 2000).

Grace, E., "Judging Cause and Effect: Challenges and Trends in Assessing Damages in Sexual Abuse Cases", in Law Society of Upper Canada, *Special Lectures 2005: The Modern Law of Damages* (Toronto: Irwin Law, 2006), at 177-264 and especially at 182-199.

Vella, S. and Grace, E. "Pathways to Justice for Residential School Claimants: Is the Civil Justice System Working?", in Magnet, J. and Dorey, D., eds., *Aboriginal Rights Litigation* (Toronto: LexisNexis Butterworths, 2003), at 195-273 and especially at 195-199 and 210-214.

Organizations

Assaulted Women's Help Line, 416-863-0511, www.awhl.org

The Assaulted Women's Helpline provides a 24-hour crisis line for women. It allows women to reach out for help, assured of their anonymity and confidentiality. A telephone counsellor provides immediate crisis counselling, safety planning, as well as referrals to local agencies and support for the ongoing struggle to name and act against abuse. Counsellors never meet clients face to face as this is a telephone service only.

The helpline seeks to improve barriers to service for immigrant and refugee women, women living with disabilities, Aboriginal women, lesbians, bi-sexual women, trans-gendered women and women of colour by referrals to culturally, linguistically, and "community appropriate" agencies. Service is provided in up to 154 languages. Deaf and hard of hearing women are served through the TTY line.

Canadian Association of Sexual Assault Centres www.casac.ca

CASAC is a Pan Canadian group of sexual assault centres who have come together to implement the legal, social and attitudinal changes necessary to prevent, and ultimately eradicate, rape and sexual assault. As feminists we recognize that violence against women is one of the strongest indicators of prevailing societal attitudes towards women. The intent of the Canadian Association is to act as a force for social change regarding violence against women at the individual, the institutional and the political level.

The Hospital for Sick Children (suspected child abuse and neglect), 416-813-6275, www.sickkids.ca

Indian Residential Schools Resolution Health Support Program

The Indian Residential Schools Resolution Health Support Program provides mental health and emotional support services to former Indian Residential School students and their families before, during and after their participation in Settlement Agreement processes, including the Common Experience Payments and the Independent Assessment Process, and those participating in Truth and Reconciliation Commission events and Commemoration activities. Information available at <http://www.hc-sc.gc.ca/fniah-spnia/services/indiresident/irs-pi-eng.php>. Ontario contact: 3rd Floor,

Emerald Plaza, 1547 Merivale Road, Nepean, Ontario, K1A 0L3, Telephone (toll-free): 1-888-301-6426, Teletypewriter: 1-800-267-1245 (Health Canada)

Kids Help Phone, 1-800-668-6868, www.kidshelpphone.ca, includes phone counselling and web counselling for ages 20 and under. It is a free service that operates 24/7. It is anonymous, confidential and non-judgemental.

Metropolitan Action Committee on Violence Against Women and Children,
www.metrac.org

METRAC works to prevent and eliminate violence against diverse women, youth and children. It is committed to the right of women, youth and children to live free of violence and the threat of violence. METRAC uses an integrated, multi-disciplinary approach and works in partnership with individuals, community groups, organizations and services, governments, institutions, educators, urban planners and health and legal professionals.

Oasis centre des femmes <http://www.oasisfemmes.org/>

Oasis offre des services de soutien et d'accompagnement en matière d'agression sexuelle et de violence conjugale ainsi que dans la recherche d'emploi et d'entrepreneuriat, pour les femmes francophones de 16 ans et plus, pouvant être touchées par la violence sous toutes ses formes.

Oasis offre aussi des services de sensibilisation, prévention et d'éducation sur la violence faite aux femmes et les agressions à caractère sexuel pour la communauté, ainsi que des activités sociales pour briser l'isolement des femmes.

Ontario Coalition of Rape Crisis Centres,
<http://www.sexualassaultsupport.ca/Default.aspx?pageId=418508>

The objective of the Ontario Coalition of Rape Crisis Centres is to work for the prevention and eradication of sexual assault, including rape. The Coalition works to implement legal Social and attitudinal changes. In order for women of this country to acquire the power necessary to bring about such changes, they must organize their collective strengths in the anti-sexual assault movement. The Coalition is itself the collective efforts of the individuals and groups involved. The Coalition in no way substitutes for the work of autonomous Rape Crisis Centres and actively encourages growth and development of new centres. It will provide a mechanism for communication, education and mobilization to alleviate the political and geographical isolation of all centres in Ontario.

Ontario Network of Sexual Assault/Domestic violence Treatment Centres,
<http://www.satcontario.com/en/services.php>

The members of the network have significant expertise in the fields of sexual assault and domestic violence. In addition to working with victims and survivors of sexual assault and domestic violence on a daily basis, the members are also involved in lobbying for change, establishing standards for service delivery across the province and training and collaborative research.

ⁱ Note: The Guide uses the term “lawyers”, but applies equally to paralegals when they are providing legal services in the context of authorized activities. To determine the scope of paralegal authorized activities in cases involving claims of sexual abuse, please consult relevant laws, by-laws and regulations. Section 6 of By-law 4 – Licensing - outlines paralegals’ authorized activities when providing legal services. The By-law is available at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=5275>

ⁱⁱ The Cornwall Public Inquiry was established by the Ontario government in 2005, with a mandate that included inquiring into and reporting on “the institutional response of the justice system” in relation to allegations of historical abuse by young people in the Cornwall area”. See vol. 4 at 1. The *Cornwall Inquiry Report* is available online at

<http://www.attorneygeneral.jus.gov.on.ca/inquiries/cornwall/en/report/index.html>.

ⁱⁱⁱ In effect November 1, 2000, as amended, available online at <http://www.lsuc.on.ca/with.aspx?id=671>.

^{iv} In effect May 1, 2007, as amended, available online at <http://www.lsuc.on.ca/with.aspx?id=1072>.

^v The Practice Management Guidelines are available online at <http://rc.lsuc.on.ca/jsp/pmg/executiveSummary.jsp>.

^{vi} Adopted by Convocation in October 2003. Available online at http://rc.lsuc.on.ca/pdf/equity/guideline_aboriginal_res.pdf.

^{vii} *Victims’ Bill of Rights 1995*, S.O. 1995, c. 6, as amended.

^{viii} *Ibid*, preamble.

^{ix} *Ibid*, preamble.

^x *Ibid*, s. 2(1).

^{xi} *Ibid*, s. 3(2).

^{xii} The Law Commission of Canada, at the request of the federal Minister of Justice, undertook a comprehensive assessment of the various redress processes, existing and potential, for addressing harms caused by institutional abuse, which included sexual and physical abuse of children who were institutionalized. Among the evaluative criteria used by the Commission were the principles of respect, engagement and informed choice. This Guide seeks to give expression to the same principles. Law Commission of Canada, *Restoring Dignity: Responding to Child Abuse in Canadian Institutions* (Ottawa: Law Commission of Canada, March 2000), see especially pages 105-107.

^{xiii} In cases involving paralegals, see Rule 2.03 of the *Paralegal Rules of Conduct*.

^{xiv} In cases involving paralegals, see Rule 2.03 of the *Paralegal Rules of Conduct*.

^{xv} In cases involving paralegals, see Rule 3.01 of the *Paralegal Rules of Conduct*.

^{xvi} The Supreme Court of Canada notes “It is hard to imagine a greater affront to human dignity than non-consensual sexual intercourse” *Norberg v. Wynrib*, [1992] 2 S.C.R. 226 *per* La Forest J. at 265. In *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6 *per* La Forest J. at 17 recognizes that “The damages wrought by incest are peculiarly complex and devastating, often manifesting themselves slowly and imperceptibly...”. See also *M.C. v. F.M.* (1991), 46 C.P.C. (2d) 254 (Ont. Gen. Div.) *per* Keenan J. at 264; *R. v. Osolin*, [1993] 4 S.C.R. 595

per Cory J. at 669; *S. (J.) v. Clement* (1995) 122 D.L.R. (4th) 449 (Ont. Gen. Div.) per Lang J. at 520; and *Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (1998), 39 O.R. (3d) 487 (Gen. Div.) per MacFarland J. at 532.

^{xvii} For information about Indian Residential Schools Resolution Canada see http://www.tbs-sct.gc.ca/dpr-rmr/2007-2008/inst/ira/ira01-eng.asp#section1_1.

^{xviii} For example, in the Grandview Training School for Girls case, a precedent setting “healing package” was reached which included an apology from the Government of Ontario, various forms of compensation, and “in kind” benefits which were provided to women who, as girls, suffered physical, sexual and psychological abuse by staff.

In the cases of widespread physical and sexual abuse at the St. John’s Training School and St. Joseph Training School for Boys, the Roman Catholic Church and the Ontario government concluded a settlement including a compensation package, formal apologies, counselling and an “Opportunity Fund” which provided medical and dental coverage, job training, literacy training and other education for victims.

Other examples of funds created by churches include the United Church’s Healing fund, which was established as a way to live out the Church’s 1986 Apology to First Nations. The fund is being used to support many innovative and effective programs in Aboriginal communities to help in the healing process. The Church also created a Justice and Reconciliation Fund to assist the Church to understand the respond to the legacy of harm and broken relationships that have resulted from the Indian Residential School system.

^{xix} The Report of the Cornwall Inquiry identifies the justice system’s lack of understanding about how memory functions, particularly in historical abuse cases, as an obstacle to survivors of sexual abuse. It notes that, whereas the justice system favours as more accurate and reliable witnesses who are confident and not hesitant about recounting past events, memory can be fragmented. Report of the Cornwall Inquiry, *supra* note 2, vol. 4 at 7. For this and other reasons that include the shame that surrounds abuse and the reluctance claimants can feel about talking about their abusive experiences, especially to strangers, disclosure of abuse by claimants may be “progressive”, meaning that new added details about the abuse are disclosed over time, including subsequently disclosed further incidents of abuse.

^{xx} The Indian Residential Schools Independent Process Rule Book expressly acknowledges that progressive disclosure is “a possible explanation for inconsistencies”. See p. 13 of the Schedule “D” to the Indian Residential Schools Settlement Agreement. Available online at http://www.residentialschoolsettlement.ca/Schedule_D-IAP.PDF

^{xxi} The Cornwall Public Inquiry was mandated “to inquire into and report on processes, services or programs that would encourage community healing and reconciliation in Cornwall”, and as a result, it devoted Volume 2 and part of Volume 4 of its report to consideration of these issues. Report of the Cornwall Inquiry, *supra*, note 2, Vols. 2 and 4. Healing and reconciliation are important considerations in sexual abuse cases that can apply not only at a community level, particularly where abuse and its harms have been widespread, but also at an individual level.

^{xxii} In cases involving paralegals, see Rule 4.01(j) of the *Paralegal Rules of Conduct*

^{xxiii} In cases involving paralegals, see Rule 2.01 (2) of the *Paralegal Rules of Conduct*.

^{xxiv} For more information about the Office of the Children’s Lawyer, please consult the online site at <http://www.attorneygeneral.jus.gov.on.ca/english/family/ocl/>.

^{xxv} For more information about the Office of the Public Guardian and Trustee, please consult the online site at <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/>

^{xxvi} John Morris, a senior partner at Borden Ladner Gervais, called for greater civility from lawyers of both the claimants and defendants in this area in 2001 when speaking at a Canadian Institute Conference.

^{xxvii} In cases involving paralegals, see Rules 8.02 and 8.03 of the *Paralegal Rules of Conduct*

^{xxviii} In cases involving paralegals, see Rule 5 of the *Paralegal Rules of Conduct*.

^{xxix} “Licensee” means, a person licensed to practice law in Ontario as a barrister and solicitor, or a person licensed to provide legal services in Ontario.

^{xxx} In cases involving paralegals, see Rule 5.01(11) of the *Paralegal Rules of Conduct*.

^{xxxi} Mayer, Nancy, “Are Lawyers Affected by Trauma Cases?”, Ontario Trial Lawyers Spring Conference 2009. Assistance programs and psychological help ought to be sought in situations where a lawyer’s (or staff members) mental or emotional health is at risk. Asking for help and receiving help are not signs of weakness. Rather, “we, as lawyers, are not immune to the challenges that face all humans. We are not super humans”. Help can be obtained through the Ontario Lawyers’ Assistance Program or privately funded mental health professionals. To contact the Ontario Lawyers’ Assistance Program, consult <http://www.olap.ca/contact-and-directions.html>