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**“HOLDING SOCIETY
ACCOUNTABLE”:**

**THE THERAPEUTIC CONSEQUENCES
OF CIVIL ACTIONS FOR DAMAGES
AND COMPENSATION CLAIMS
BY VICTIMS OF SEXUAL ABUSE**

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**THERAPEUTIC CONSEQUENCES OF CIVIL ACTIONS
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by Bruce Feldthusen, Olena Hankivsky and Lorraine Greaves*

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INTRODUCTION

Therapeutic jurisprudence is now recognized as an important model for assessing the impact on participants of various aspects of the legal system.¹ By uncovering the therapeutic and anti-therapeutic consequences of legal processes, therapeutic jurisprudence can contribute to reshaping and reforming the law. While therapeutic jurisprudence has traditionally been applied in the context of mental health law, its boundaries have been expanded to include, among other subjects, examinations of the possible therapeutic benefits of tort claims filed by sexual battery victims against their assailants.² Survivors of sexual abuse are bringing more civil actions and compensation claims against perpetrators and responsible third parties than ever before. During the last decade, claims by victims of incest and other sexual abuse have proliferated in Canadian civil courts and provincial compensation boards. A number of unique procedures have also been developed to process claims directly against provincial governments. However, there have been relatively few assessments of the impact these actions have had on the lives of those who brought them forward.³

This paper reports the findings of a two-year study that examined how victim/survivors of sexual wrongdoing experience civil litigation and government compensation procedures. Three different subject groups were studied: claimants for compensation from the Criminal Injuries Compensation Board of Ontario (CICB); claimants under the Grandview Settlement Agreement, a unique compensation agreement negotiated by the Government of Ontario to deal with claims of abuse by former inmates of a training school for girls; and civil plaintiffs who had commenced court actions for damages for sexual battery. We attempted to identify survivors' expectations upon entering these legal processes, and to examine how they assessed the therapeutic consequences of the processes upon completion. The findings reveal both therapeutic and anti-therapeutic consequences of each legal procedure, as well as ways in which each process could be improved. For reasons explained more fully below, it was not possible to conclude accurately that one process was superior to another on therapeutic grounds.

1. See generally, David B. Wexler and Bruce J. Winick, Essays in Therapeutic Jurisprudence, North Carolina: Carolina Academic Press, 1991; and David B. Wexler and Bruce J. Winick, Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence, North Carolina: Carolina Academic Press, 1996.

2. Bruce Feldthusen, "The Civil Action for Sexual Battery: Therapeutic Jurisprudence?"(1993), 25 Ottawa Law Review 203 .

3. A call for investigating rather than theorizing the law's actual therapeutic or anti-therapeutic impact on consumers themselves has been emphasized by numerous therapeutic jurisprudence scholars including David B. Wexler in "An Orientation to Therapeutic Jurisprudence," Criminal and Civil Confinement, vol. 20:2, 1994.

PART I - METHODOLOGY

(A) The Total Subject Pool

The sample in this project included 87 survivors ranging in age from 19-59 who have sought civil remedies, made criminal injuries compensation claims,⁴ or received an “award for direct financial support” from the government of Ontario under the Grandview Agreement.⁵ This total includes:

- 48 participants who filed compensation claims with the Criminal Injuries Compensation Board of Ontario, arising from crimes of a sexual nature;⁶
- 26 participants whose claims were validated under the Grandview Agreement; and
- 13 civil litigants who commenced actions for sexual battery.

The separate subject pools are described in more detail below.

Ninety-eight per cent of the respondents were female, of whom 3% self-identified as lesbians.⁷ Twenty-three per cent were unemployed and 13% reported receiving disability payments. The balance were gainfully employed or reported being full-time mothers or students. Thirty-four per cent were single, 30% were married or living common-law, 26% were divorced, 6% separated, 1% widowed. Twenty-five per cent were university graduates or had some university, 27% had some college or a college degree, 14% had grade 12 or 13, and 34% reported having grade 11 or less. The only significant difference among the three pools in these respects is that 65% of the Grandview applicants had a grade 11 education or less.

All subjects in each group answered the same interview schedule with certain minor modifications to reflect the differences in the processes. Telephone interviews ranged in length from one to one and

4. Some of the civil plaintiffs had previously made claims and received awards under the CICB scheme.

5. Grandview was a government operated training school for girls. This unique compensation process is described in an agreement known as the Agreement Between the Grandview Survivors Group and the Government of Ontario and is discussed more fully below. A copy of the agreement may be obtained from the Office of the Ministry of the Attorney-General of Ontario, Queen's Park, Toronto. See also Susan Vella, The Healing Package Negotiated By The Grandview Survivors' Support Group: An Example of Alternative Dispute Resolution and Societal Accountability in Action, Toronto: Goodman and Carr, 1996 (on file with authors).

6. A random sample was derived from files pertaining to sexual assault, child abuse, domestic assault, and elder abuse from 1988 onwards supplied by the Criminal Injuries Compensation Board.

7. Within the Criminal Injuries Compensation Group there was one male and one transsexual.

one-half hours. Survivors were questioned about their decisions to take on a civil action or make a compensation claim. They discussed their personal experiences, their therapeutic expectations and their perception of the outcomes. Survivors also made suggestions on how to improve all three processes.

(B) Limitations

There are a number of limitations to the study. Most of the questions were designed to elicit open-ended responses, rather than selections of pre-determined options. This makes strict empirically valid comparison problematic. It was felt more important, this being one of the first such studies ever undertaken, that the subjects be relatively free to express themselves in their own words. Not all respondents answered all questions in the interview schedule. Ninety-eight per cent of respondents were women. Results of the study may be gender specific. Studies should be undertaken with male survivors to assess whether similar concerns regarding the procedures can be observed. While approximately 10% of those who were eligible under the Grandview Agreement were interviewed, the sample size for the other two groups is smaller. The number of civil litigants interviewed is so small that it can be misleading to describe and compare their responses in percentage terms. Without information about those who settled their litigation claims voluntarily, we can only portray an incomplete picture of civil litigation.

(C) The Criminal Injuries Compensation Claimants

The Criminal Injuries Compensation Board is a statutory body to which victims of crime in Ontario may apply for partial restitution if they suffered physical or psychological injury during a violent attack, including sexual abuse and sexual assault.⁸ The applicant, with the assistance of staff, is responsible for compiling and submitting documentation demonstrating that a crime occurred, that the victim was injured or died, and that there were financial losses as a result. It is not necessary to prove a prior criminal conviction; the crime may be established in the proceedings before the Board. The decision whether to award compensation is made by a quasi-judicial administrative tribunal. Claimants may elect to make their claim by documentary hearing. Otherwise an oral hearing is held and evidence taken under oath.

Compensation claimants were contacted with the complete cooperation of the CICB of Ontario. A random sample of 200 victims of relevant offences was selected. Board staff contacted those selected by letter to explain the project. Forty subjects then contacted the researchers and agreed to be interviewed by telephone. Another eight women contacted the researchers directly, after reading about the study in the media. The subjects interviewed had their compensation hearings between 1988-1997, the majority between 1995-1997.

8. The Compensation for Victims Crime Act, R.S.O. ch. c-24. See especially, ss. 7, 12, 14, 18, 19, and 26.

(D) The Grandview Training School Claimants

Grandview Training School for Girls was a custodial institution for girls between the ages of 12-18. Originally named the Ontario Training School for Girls, the school was open from September 7, 1933 to July 6, 1976. While some girls who attended Grandview had committed minor crimes such as shoplifting, many were sent to Grandview because they were found to be “unmanageable” under the *Juvenile Delinquents Act*.⁹ They were often sent to the school simply because their parents or guardians could not or would not provide for their social, emotional and educational needs. Under *The Training Schools Act* of Ontario, these girls became wards of the Province of Ontario upon entering Grandview. Many experienced physical, sexual and psychological abuse while in custody.¹⁰

In 1991, former residents of Grandview formed The Grandview Survivors Support Group. In 1994, the group successfully negotiated the terms of an “Agreement Between the Grandview Survivors Group and the Government of Ontario.”¹¹ The first paragraph of the overview to the Agreement states:

(S)ociety has a direct responsibility to provide the support necessary to facilitate the healing process of survivors of sexual and institutional abuse...It also recognizes that current individual-based solutions offered by the civil justice system are inadequate responses to institutionalized and sexual abuse.

The Agreement, too complicated to summarize properly here, provided for a compensation process markedly and deliberately different from either civil litigation or CICB claims. It permitted all former Grandview residents to apply for specific medical and other benefits. Additional financial and other benefits such as vocational and educational training and therapy, tattoo removal,¹² scar reduction programs, and access to a crisis line were available to those who had their claims of abuse “validated” through an alternative dispute resolution process. An award for direct financial support to a maximum of \$60,000 was also available upon validation.

There were six adjudicators, mutually agreed upon by the parties to the agreement, appointed to hear and validate the claims. All six were female, five law professors and one practising lawyer. Hearings were private, and held in public buildings, or occasionally in hotel rooms. It was not the purpose of

9. The *Juvenile Delinquents Act* was first enacted by SC 1908., c.40. After various amendments it was consolidated as R.S.C. 1952, c. 160 and consolidated again as R.S.C. 1970, c. J-3. It was repealed SC 1980-81-82-83, c. 110, s. 80, effective 2 April 1984.

10. *The Training Schools Act* was originally enacted as the *Boys' Welfare Act*, S.O. 1925, c. 80. This was eventually superseded by the *Training Schools Act*, S.O. 1931, c.60. It was last consolidated as R.S.O. 1980, c. 508 and repealed by S.O. 1984, c. 19, s. 12.

11. See supra note 3.

12. While resident at the facility, many Grandview residents had tattooed themselves with sewing needles and india ink. These tattoos were permanent reminders of the abuse they had received and their removal was an important part of the healing process.

the process to allocate blame to individual perpetrators. The Agreement provided that claimants would receive limited funds from the government for legal assistance. The subjects all had legal assistance in preparing their documentation, but only rarely did claimants appear for adjudication represented by counsel. The validation hearings for those eventually interviewed were held between 1994-1997.

The Grandview Training School claimants volunteered for this project through a number of survivors who were networked with the Centre for Research on Violence Against Women and Children.¹³

The Grandview subject pool therefore differs from the others in significant respects that make it difficult to draw direct comparisons. The Grandview process was consensual, and negotiated by a victim support group. The focus of the Grandview Agreement was explicitly therapeutic. An alternative dispute resolution process was adopted in part to avoid the perceived anti-therapeutic aspects of civil litigation.

(E) The Civil Plaintiffs

We attempted to interview every plaintiff in Canada who had taken a civil action for incest or other sexual abuse through to final judgment since 1985.¹⁴ We sought these subjects through published law reports. Many cases were reported only electronically on Quick Law. Almost invariably, the plaintiffs were identified only by initial. Therefore, it was necessary to try and contact them by sending a package of materials to their lawyers, along with explanatory material, and hope that the lawyer could and would successfully forward the materials to the former client. Sixty such letters were sent to lawyers across Canada, but only 13 subjects contacted the researchers and agreed to participate.¹⁵ The plaintiffs who eventually agreed to participate had gone to trial between 1991 and 1997.

13. A partnership of the University of Western Ontario, Fanshawe College and London Coordinating Committee to End Woman Abuse in London, Ontario, Canada.

14. It would certainly have been edifying had we been able to also interview a sample of plaintiffs who had commenced, and then voluntarily settled their lawsuits before trial. Without this information we may only be studying only the unusual, and possibly the more difficult, cases that actually go to trial. Arguably, voluntary settlement has unique therapeutic, or anti-therapeutic consequences. Perhaps lawyers and clients with particular characteristics are more inclined to settle than others. See N. Des Rosiers and L. Langevin, L'indemnisation des victimes de violence sexuelle et conjugale (Cowansville, Québec, Les Éditions Yvon Blais Inc., 1998), pp. 244-247, where the authors discuss ways in which out-of-court settlements could be framed with a view to affirm the survivor's version of events. The authors also refer to the therapeutic dangers of a lack of a complete acknowledgement of responsibility on the part of the perpetrator in the settlement, and the effect of a confidentiality provision.

15. Eleven respondents replied after receiving letters from their lawyers. Two respondents contacted the researcher directly after hearing of the project in the media. These two respondents had not gone to trial. One was awaiting a hearing date while the other abandoned her process after the death of her perpetrator.

(F) The Therapeutic Jurisprudence Framework

David Wexler and Bruce Winick, whose work has defined and shaped therapeutic jurisprudence, describe it in the following way:

Therapeutic jurisprudence is the study of the role of the law as a therapeutic agent. It looks at the law as social force that, like it or not, may produce therapeutic or anti-therapeutic consequences. Such consequences may flow from substantive rules, legal procedures, or from the behaviour of legal actors (lawyers and judges). The task of therapeutic jurisprudence is to identify – and ultimately to examine empirically – relationships between legal arrangement and therapeutic outcomes.¹⁶

Slobogin has expanded on this definition by explaining that the emphasis of therapeutic jurisprudence is to study “the extent to which a legal rule or practice promotes the psychological or physical well being of the people it affects.”¹⁷

As therapeutic jurisprudence moves beyond its original focus – the field of mental health – to a critical approach to law in general, there is a growing discourse about how to define and measure therapeutic outcomes, and psychological or physical well-being. We begin with the assumption that what may be understood as therapeutic in civil actions and compensation schemes are any outcomes which assist in the psychological recovery of the survivor. In her work Trauma and Recovery, Judith Herman provides an effective framework for identifying stages of healing for victims of trauma including sexual trauma.¹⁸ The three phases she identifies are establishment of safety; remembrance and mourning; and reconnection with ordinary life.

In an earlier work, Bruce Feldthusen identified the third stage – reconnection with ordinary life – as a possible therapeutic contribution of civil action.¹⁹ Herman’s understanding of reconnection with ordinary life is the attainment of power, control and autonomy on behalf of the victim/survivor of sexual abuse. Survivors who have reached the third stage of recovery are more interested in the present and the future than in the past.

While Herman’s framework provides a useful theoretical starting point for understanding psychological restoration, the approach used in our study also focussed on listening to the voices of the survivors themselves. In measuring therapeutic or anti-therapeutic consequences of civil litigation and government compensation programs, we compared survivors’ self-identified

16. Wexler and Winick, Essays in Therapeutic Jurisprudence.

17. Christopher Slobogin, “Therapeutic Jurisprudence: Five Dilemmas to Ponder,” in Wexler and Winick, Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence, p. 775.

18. United States: Basic Books, 1992, p. 155.

19. Feldthusen 1993, p. 217.

therapeutic expectations against their self-reported outcomes in relation to claiming process and the award or compensation eventually obtained. Then we asked the subjects to assess the experience once the entire process was over.

When one looks carefully at what survivors have reported in their own words, there may be reason to question Herman's recovery model, at least as the exclusive model that best interprets the data. As we shall see, survivors reported that they had initiated their claims to obtain public affirmation that they had been wronged; to seek justice; to obtain closure; to secure an apology; to prevent the perpetrator from harming others; and to take revenge. These professed goals are not on the surface entirely, or even mainly, consistent with a model that presupposes that victims are not coping and require a legal process to "recover". Rather, these motivations are consistent with well persons seeking appropriate social responses to injustice.

Many of the survivors' responses reported below are in line with Herman's model, although some would argue that Herman's model itself has been socially imposed on survivors of sexual abuse. Many other responses do not suggest "injured" or "damaged" survivors seeking aids to "recovery" at all. In this article, we shall employ the term "therapeutic" in a broad sense similar to Slobogin's.

PART II - THE FINDINGS

(A) Motivations and Expectations

Compensation claims for losses arising from sexual abuse are different from many other legal processes in one important aspect. Therapeutic effects are neither incidental nor unexpected. Rather, claimants enter the processes with explicit therapeutic expectations. They see the claiming process as having a role, often a critical role, in their recoveries, or well-being. Naturally, the therapeutic outcomes do not always match the expectations.

When asked what they had hoped to accomplish by taking civil action or filing for compensation, the majority of claimants identified therapeutic rather than monetary motivations.²⁰ Respondents consistently highlighted the desire to be heard, to have their abuse acknowledged and their experience validated, and to receive an apology.

The highest percentage of respondents, 82%, were seeking public affirmation of wrong, or closure. They emphasized that they wanted to be heard and to have their experiences acknowledged as hurtful and wrong. For example, responses included the following:

- *I needed to feel that I had done nothing wrong. I shouldn't have to hide. So, the public trial would allow me that.*
- *I wanted someone to acknowledge that I was there and went through hell and that it's responsible for who I am today.*

Many of the victim/survivors also emphasized a need to receive affirmation of wrong from a person in a position of power, someone they perceived to be "important," or a "legal authority."

Second in reported therapeutic importance was justice. Seventy-two per cent were seeking the justice that they felt they had been denied. A civil litigant explained:

- *I needed to feel that my father took the responsibility for what happened.*

When asked to explain what justice meant to her, a CICB claimant stated:

- *Justice in the sense that I had been misled by the legal system and I thought there would be more justice in the Criminal Injuries Compensation Board.*

20. This substantiates earlier observations made in Holly Jane Manley, "Civil Compensation for the Victim of Rape," in 7 Cooley Law Review, 193 (1990); Bruce Feldthusen, "The Civil Action for Sexual Battery: Therapeutic Jurisprudence," 25 Ottawa Law Review, 203 (1993); Bruce Feldthusen, "Discriminatory Damage Quantification in Civil Action for Sexual Battery," 44 University of Toronto Law Journal 133 (1994).

Thirty-eight per cent hoped that their suit or claim would deter the defendant and other potential perpetrators in the future from harming others. One survivor reported “*wanting to warn my family.*” Some explained a need to “*stop the cycle,*” and others felt a need to protect their siblings. As one survivor explained:

→ *I had a sibling at home and I didn't want her to come up to me 15 years later and say it happened to you, why didn't you do something to help?*

Overall, the same percentage of respondents, 38%, stated that they hoped to receive an apology from either the perpetrator himself, or from the responsible third parties. However, this varied dramatically from group to group. Apologies are unlikely in contested civil litigation. Only one of the civil plaintiffs expected an apology.

→ *I was an innocent child and I was molested for years. I wanted them to apologize. I wanted rape to be on record. I wanted them to admit blame.*

Only 25% of the CICB claimants hoped for an apology. Few actually expected to receive one. Some, however, were disappointed.²¹ In the words of one woman:

→ *An apology – that more than anything else is what I wanted and it was the thing I didn't get.*

In contrast, almost 80% of the Grandview survivors expected an apology, and for good reason. Many of the Grandview survivors felt that the government had tried to “*sweep under the carpet*” the institutional abuse that had occurred at the training school. The Grandview settlement called for the Premier of the Province to make a public apology in the Legislature as well as a written apology to each validated claimant. The apologies have not yet been delivered, apparently because criminal charges are still pending. The delay in receiving the promised apology upset many.

→ *I won't feel relieved until I get a letter of apology and public apology. Only then will I feel complete closure.*

→ *I wanted an apology which I still haven't received.*

Finally, 29% of the respondents explained that they were seeking revenge. Again, there was considerable difference between the civil plaintiffs, 61% of whom reported revenge as a motive, and the others, where only approximately 25% did so. Revenge is not always considered beneficial or necessarily therapeutic. A key objective behind the Grandview settlement was to facilitate healing, and not to encourage survivors' motivation for vindication or revenge. However, for many of the other survivors, civil litigation and government compensation schemes seemed like the only way

21. As to the potential importance of apology in tort law, see Daniel W. Shuman, “The Psychology of Compensation in Tort Law,” in. Wexler and Winick, Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence.

to get back some of what they had lost. This is apparent in the feelings that came through in the interviews:

→ *I just wanted someone to pay for what happened to me.*

In the case of the civil litigants, it was important that the perpetrator in particular be made to pay:²²

→ *He (the perpetrator) didn't deserve what was most important to him – Money. He took from me...I took from him.*

→ *I wanted to get back at my father.*

Forty-one percent of all respondents included money as one of their reasons for making a compensation claim or taking civil action. For a small number, money was the only motivating factor. For most, it was described as being “*low on the agenda.*” Although they had other expectations, for many money was the only thing they were confident they would obtain from the process. In the case of one CICB applicant,

→ *I didn't really look to the Compensation Board for anything but money.*

One clear advantage of civil litigation over the other two schemes is that a successful plaintiff could expect to recover a great deal more money. The civil plaintiffs who answered this question reported an average award in excess of \$200,000, whereas the Grandview survivors interviewed received \$60,000, and most CICB claimants received in the \$5,000 - \$10,000 range. However, the prospect of receiving more money does not seem to have been significant to the civil plaintiffs. Only half of them identified money as a motivating factor, and of those, most identified the desire to make the perpetrator pay rather than the desire to receive money.

Most of the victim/survivors in our study reported hearing about civil litigation, the CICB or the Grandview Healing Package from their therapist, the police, a lawyer, family/friends, or other survivors. The decision to engage in these legal procedures was often brought on by a crisis, trauma, or transition period in their lives.

Participants often reported dissatisfaction with both the criminal justice system and therapy/counselling. Referring to the criminal justice system one civil litigant stated that:

22. According to Ernest Weinrib, the fact that compensation is paid to the victim *by the perpetrator* is the central and necessary element of corrective justice within the tort system. See e.g. “Understanding Tort Law,” (1989), 23 Val. U. L. Rev. 1. The role of corrective justice in tort law has consumed modern legal philosophers. For a brief summary with reference to other authors, see Jules Coleman, “The Practice of Corrective Justice” in David Owen (ed.) Philosophical Foundations of Tort Law Clarendon Press, Oxford, 1995, 53. Shuman, *supra* note 50, discusses a similar notion under the heading “equity theory”. He suggests that where someone suffers a loss that is disproportionate to their perception of their responsibility for causing it, compensation by a wrongdoer can restore that equity. He cites sexual abuse cases in particular as clear examples of such cases. For further discussion of this point, see *infra*.

- *He got a four year sentence but parole said he only had to serve a third of it or a year. Well he gave me a 16 year sentence. And, I figured what he got was not enough.*

Referring to lack of satisfaction with therapy, one woman in the study reported:

- *(Y)ears of counselling and I wasn't getting anywhere, I had a lot of unfinished business.*

Many victims/survivors saw these processes as the only remaining options for getting justice and experiencing closure. In the words of a CICB claimant,

- *I was at a breaking point...I felt it was a way of going public and getting the secret out..a way of holding society accountable to the issue out there.*

Similarly a civil claimant reported:

- *I thought if I didn't pursue civil litigation, I wouldn't get justice.*

Comments from the Grandview survivors included:

- *I had unresolved issues which I wanted resolved. I thought it was time to come forward and tell my truth.*
- *I wanted to put this behind me once and for all.*
- *It was about gaining my power, my dignity..to find myself and to get a sense of self-resolution.*

Having made their decisions to proceed, most respondents felt very decisive and committed to see the process through to the end. However, 50% of the CICB claimants, 42% of Grandview survivors, and 38% of the civil litigants reported that they had experienced second thoughts about proceeding with their cases and claims.

In the case of CICB claimants there was a fear of possibly having to face their perpetrators at an oral hearing. The CICB's policy about notifying the perpetrators varied throughout our sample period.²³

23. The CICB has always had discretion as to whom ought to be notified when a compensation claim is made. Prior to 1987, in cases of sexual assault, child abuse or domestic abuse, notification was not sent to the (alleged) offender. In other circumstances, notification of the offender was decided on an individual basis, depending on the applicant's circumstances. CICB records indicate that in November 1987, the then Chair of the board directed that a Notice of Hearing should be sent to an offender in all cases in which the offender had not been charged or not been convicted, or when the offender had been charged but not found "not guilty." In January 1989, the next chair ordered that no notification would be provided to offenders, whether or not the offender had been charged, in cases of sexual or

Almost every claimant objected to the policy of notification, especially those who had begun their claim without expecting that the perpetrator would be notified. As one woman survivor explained:

- *I had 2nd, 3rd, and 4th thoughts. I was very afraid I was placing me at risk.*
- *(W)hen they changed legislation and the possibility of sitting at the same table with the perpetrator (arose) I almost dropped the case...I was almost in a state of panic.*

Compensation claimants were asked whether they had considered civil litigation, and civil claimants were asked whether they had considered claiming from compensation schemes such as the CICB.²⁴ Almost 50% of CICB applicants reported having considered civil action, but for varying reasons had chosen not to follow through with this option. Their reasons included: the expenses of civil litigation, the possibilities of having to face the perpetrator in court, the length of time it would take, that the perpetrator had no money, and a belief that too much time had passed to undertake a civil action. Thirty-six per cent of Grandview survivors had also considered civil litigation. In comparison, 54% of civil litigants had sought compensation from the CICB, and 46% had actually received an award from the CICB before bringing their action.²⁵

(B) The Claiming Processes & Their Effects

Seventy-three per cent of civil litigants indicated that they had great difficulty with their hearings – both the pre-trial discovery process and the trial. Twenty-nine per cent of CICB applicants reported that their oral hearing was the most difficult part of process. In contrast, 85% of Grandview survivors reported an overwhelming approval of their adjudication experience. The civil litigant and

domestic assault. In the spring of 1995, another Chair oversaw the introduction of a new policy by which notification was given to offenders and alleged offenders in all proceedings in which they were named as a party. This policy applied equally to cases of sexual abuse and child sexual abuse. The Board's current policy is reflected in a memorandum from the Chair dated March 16, 1998. The policy states that the board will not send out notices of hearing to convicted offenders in cases of sexual assault, child abuse, domestic assault, elder abuse and homicide. (Information obtained in written correspondence from Michael Farago, Executive Assistant to the Chair of the CICB, September 18, 1998). Our interviews included subjects whose hearings were governed by each of these policies. 25% of CICB claimants expressed concern with the policy of offender notification.

24. Participants in the Grandview settlement were required to waive expressly their right to take civil action against the government in return for participating under the agreement. They were not required to waive their right to take legal action against individual perpetrators, but none of our respondents reported having done so.

25. Successful plaintiffs are required to reimburse the CICB from any duplicative damages received in the civil action. See *Compensation for Victims of Crime Act*, *supra* note 5, s. 26. Some lawyers report finding the CICB process a useful way to secure funds for certain medical reports and therapy for their clients, and to secure an award that can fund the disbursements in the law suit.

Grandview responses are consistent with the overall rate of satisfaction reported by members of these two groups.²⁶

Eighty-four per cent of all respondents reported some negative emotional consequences. These included a sense of loss of control over the process, mental anguish, depression, suicidal tendencies, frustration, anger, and a feeling that the system was not dealing with them in a responsive and personal manner. In addition, 53% reported physical side-effects including headaches, insomnia, hypertension, diarrhea, vomiting and other ailments which required hospitalization. This did not vary among the groups.

The significance of procedural fairness has been examined in some detail by Tom Tyler who has explained that “people’s evaluations of the fairness of judicial hearings are affected by the opportunities which those procedures provide for people to participate, by the degree to which people judge that they are treated with dignity and respect, and by judgments about the trustworthiness of authorities.”²⁷ His observations were confirmed by the study. The importance of these elements – participation, dignity and trust, the role of legal actors (including judges, lawyers, board and government representatives), as well as the impact of delay resonated in survivors’ accounts.²⁸

(1) Participation

According to Tyler, active participation in judicial procedures is key to one’s perception of fairness. He explains that participation can involve the presentation of evidence and one’s own views (voice and process control), shared decision-making (decision control) or both.²⁹ In the case of all survivors interviewed in our study, having an opportunity to share their story in an unhurried, comprehensive way in a safe and non-threatening environment was essential.

(i) CICB

In the case of CICB applicants, 29% elected to have a documentary hearing (all communication between claimant and adjudicator by letter). More than half of those who had a documentary hearing felt it was a good decision because they did not feel strong enough emotionally to attend an oral

26. See *infra* p. 12. The CICB claimants expressed a high degree of dissatisfaction with their pre-hearing dealings with Board staff. If these experiences are included as part of the procedural fairness assessment, there is also a correlation between CICB claimants’ opinions about their hearings and their overall satisfaction.

27. Tom Tyler, “The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings,” in Wexler and Winick, Law In A Therapeutic Key: Developments in Therapeutic Jurisprudence, p. 12. See also E. Allen Lind et al., “In the Eye of the Beholder: Tort Litigants’ Evaluations of their Experiences in the Civil Justice System” (1990), 24 Law & Soc’y Rev. 953.

28. See also Nathalie DesRosiers, Bruce Feldthusen, and Olena Hankivsky, “Legal Compensation for Sexual Violence: Therapeutic Consequences and Consequences for the Legal System?”, Journal of Psychology, Public Policy and Law (forthcoming, 1998).

29. Tyler 9-10.

hearing. This was expressed well by one CICB applicant who stated:

- *The documentary route seemed a lot less personal but at the same time, this is good because I couldn't take it if they had said they didn't believe me or didn't think it was so bad.*

Seventy-one per cent of the CICB applicants had an oral hearing. On average, the hearing took 1 hour and 45 minutes. Forty-seven per cent of those who had an oral hearing were satisfied. Their reasons for satisfaction included their ability to speak about their abuse and its impact, the fair treatment they received, and their ability to show their emotions freely. Those who were not satisfied objected to a lack of control at the hearing. One woman complained:

- *They wouldn't let me bring in my tape recorder into my oral hearing.*

In particular, many stated they did not feel that they had been given an adequate opportunity to tell their stories and were not “heard” by the Board. One applicant explained:

- *The man started to say 'get on with it'...it was too slow for him. He said to me 'let's cut to the chase.' I broke down. I lost it. I was crying. I didn't feel like I got to say everything I wanted to say.*

(ii) Grandview

The procedures under the Grandview Settlement Agreement were quite different than those facing the CICB applicants and civil litigants. Some of the survivors themselves were involved in developing and negotiating the Agreement.

A major concern was the lack of control many respondents felt once they decided to enter the process. Seventy percent described some loss of control once they had signed all the papers required to apply for compensation.

- *I didn't have any control. The lawyer was making all the decisions.*

(iii) Civil Litigants

A small number of civil litigants stated that they were excited to tell their story in a public forum. One woman said:

- *I was excited because I was happy to tell my story.*

Many more found that testifying was completely anti-therapeutic. Survivors detailed the trauma of testifying and reliving their abuse:

-
- *By the time the second day of the trial was over, I didn't care if I won or lost. I wanted to die. I was scared to tell anyone how bad it was.*

Civil litigants reported feeling re-victimized by the defendant's lawyer and being discredited by expert witnesses.

- *I felt victimized...it was like being confronted by my perpetrators.*

As in the case of CICB applicants many described the trauma of both anticipating and then actually facing their perpetrators in court. Survivors described the experience in similar ways:

- *I thought about him...wondering if he'd show up..seeing him and being forewarned that it was going to get dirty and ugly.*
- *The hardest part was being in the same room with him.*

(1) Dignity and Trust

The second element emphasized by Tyler is dignity. He explains that people react strongly to how they are treated by legal authorities.

We explored reactions to the treatment received by the CICB claimants from all Board members and staff with whom they had contact. For the Grandview claimants, we probed treatment received from the government officials who administered the settlement, and from the adjudicators. We asked the civil litigants how they were treated by the trial judges.³⁰ The therapeutic role of such actors should not be underestimated. Many claimants reported that they entered the process in question for the purpose of seeking validation and affirmation of their sexual abuse from a person in authority.

(i) CICB Claimants

When asked how they were treated by Board staff prior to their actual hearing, 51% reported dissatisfaction. They reported a lack of respect, sensitivity and empathy:

- *There was one receptionist...she was really snotty and rude. Because of her I felt almost like giving up on it.*
- *More empathy and understanding and personable skills were needed to deal with public that has gone through devastation.*

When asked how they were treated by the adjudicators who heard their application, the majority were satisfied. Forty-four per cent had negative reactions. They reported feeling scared, intimidated and further victimized:

30. See supra note 28.

- *The adjudicator diminished my experience.*

Some CICB claimants also described that inappropriate, offensive comments were made at the hearings:

- *Their inability to empathize...Their lack of understanding and off-hand comments like 'I know what you are going through'...*

There was also some sense that the adjudicators had not familiarized themselves with the details in applicants' files. Because the process of filling out the application form was so difficult for the survivors, the fact that someone had not read the file carefully was seen as insulting and disrespectful.

- *I felt the adjudicators hadn't read my file. They wouldn't let my support person in. I said "this is my hearing," and the adjudicator...she said, "this is not your hearing, it's my hearing."*
- *I experienced a third abuse by them...it's just too much.*

Avoiding confrontation or engagement with the offender is one of the primary reasons many women chose the government compensation afforded by the Criminal Injuries Compensation Board over civil litigation. For many of our respondents, the policy guidelines regarding notification of the perpetrator changed while their claims were already underway. Some were surprised and traumatized to discover that the perpetrators would be notified and invited to appear at the hearing. Many were fearful of retaliation and explained that this new policy made them feel that the process was more "dangerous."³¹ As claimants reported:

- *I received a letter stating that there was a new policy – everything I received he'd know about. I was freaked out. I had an oral hearing and he could be there. I don't know why he had to know."*

(ii) Grandview Survivors

The effort to create a unique, claimant-centred process for the Grandview survivors appears to have been successful. Most were satisfied with the "sensitive" and "caring" treatment they received from

31. Not all respondents felt the same way about facing their perpetrator(s). One CICB claimant said: "(T)hey're kind of really pushing to have the offender there (at the oral hearing). I think it's great. I think the offender should be there because I know that criminal injuries would not let any harm come to the application person. I know that." Some Grandview women felt they could not have closure unless they could face their perpetrators and have them formally charged in criminal court.

government officials with whom they came into contact throughout the process. As one of the respondents stated:

- *I have nothing but the highest praise for every single person I came into contact with. They never once said to me 'I understand what you went through.' They were never disrespectful. That touched my life.*

What really distinguishes the Grandview survivors is their reactions to their adjudication itself. When asked about their adjudication experience, the overwhelming majority of Grandview claimants (85%) reported feeling comfortable, calm, “*listened to*” and “*believed.*” Adjudicators were consistently described as respectful, considerate, empathetic, patient, fair and sincere as demonstrated by the following:

- *I was treated very well. I was treated with respect, listened to.*
- *She was very patient, very understanding, She was fabulous. It was helpful being able to bring a friend.³²*

There were a few who reported negative feelings about their adjudication.

- *“I took a break and when I came back the adjudicator said ‘I have a plane to catch’. That made me feel unimportant. I didn’t feel I could say what I needed to.*

(iii) Civil Litigants

Seventy-three percent of civil litigants were satisfied with their trial judge. Judges were described as “*thorough,*” “*competent*” and “*excellent.*” Specifically, civil claimants reported:

- *He was very empathetic. (W)hen he gave his judgment he said he couldn’t tolerate someone in his courtroom blatantly lying...that the things he {the perpetrator} had done to me were not excusable.*
- *The judge was excellent, fair. She was polite, nice, by the book. My criminal trial was so intimidating. The civil trial was different and I was happy to have a female justice.*

Those who were not satisfied, however, felt that the judge who heard their case did not treat them fairly and lacked understanding of the implications of sexual abuse.

- *They really have to do some work on those judges. They are ignorant of what*

32. Several Grandview survivors indicated how much they had appreciated being able to bring a friend. In contrast, as reported above, at least one CICB claimant reported frustration at not being allowed a supportive friend accompany her at the hearing. It would seem a relatively simple matter to permit this.

happens in the real world. They're taking these sexual abuse cases and treating them as if this man has come up and given you a pinch on the arm. They don't seem to go any deeper than that...(I)f you are abused as a six-year-old child it affects you for life. The judge can't see the damage. If you walked in there missing an arm, they can see this would affect your life forever, but if you walk in and you've been sexually abused and you're a strong person, you don't seem to be affected much. Can you teach an old judge new tricks?

Some civil litigants reported outrageous comments from judges:

- *He would say things like 'you went to a Catholic high school...weren't you taught what the Bible says?'*
- *(H)e said to one woman 'If you had put out more...then he wouldn't go after his daughter.'*

(2) Lawyers

The majority of all claimants, 61%, reported being satisfied with their lawyers. Care must be taken in attempting to draw comparisons between and among the role of lawyers in these three processes. The role of the lawyer is very different in each case.

(i) CICB Claimants

Although legal representation was not required for making an application, 35% of CICB applicants had a lawyer. Of those, 65% reported being satisfied with their lawyers. On balance, lawyers were described as professional, positive, and respectful

- *She is one of the top people I could recommend.*
- *I didn't have to worry about anything.*

Those who were not satisfied reported that their lawyer had not provided them with proper information; that they had co-opted the hearing; and in one case that the lawyer turned on his client at the end when he realized he wasn't going to get the money he expected.

(ii) Grandview Survivors

The Grandview settlement provided modest amounts for legal services at the government's expense. Of those who reported having visited a lawyer, almost 70% expressed satisfaction.

- *I was pleased with her. She encouraged me to go through with it.*

→ *She was fantastic.*

Some respondents, however, felt the lawyers had too much of a workload and were overextended.

(iii) Civil Litigants

The highest approval rating for lawyers was in the case of civil litigants. Seventy-seven percent expressed positive feelings and satisfaction:

→ *He was very paternal, protective and only exposed me to what I really needed to be exposed to. He was excellent, very good.*

→ *My lawyer became my role model. I loved her to pieces.*

Some also acknowledged the difficulty of taking on such cases. As one woman explained:

→ *I think it's really hard on a lawyer when someone walks into his office and says – here's my life. You have to help them. They don't know your needs until you tell them.*

A very small number complained that meetings with lawyers were difficult, legal terminology was hard to understand, their lawyer had 'let off' the perpetrator too easily; and that their lawyer did not have an adequate understanding of recovered memory syndrome. Most negative feedback about lawyers in the civil process was geared towards the defendants' lawyers:

→ *He is the one who re-victimized me.*

→ *The way he acted was atrocious. He was yelling, screaming, and calling me a liar.*

(4) Delay

Most subjects expressed a real sense of frustration over the time it took to complete the process. Interestingly, 63% of CICB applicants and 46% of the Grandview survivors complained of delay, whereas only 38% of the civil litigants, whose cases actually took the longest to complete, did so.³³

Some of the civil litigants expressed their frustration with delay this way:

33. It took an average of four years for civil litigants to get to trial. While not asked the question specifically, most CICB applicants revealed that the process involved took two to three years. Grandview survivors in comparison, appeared to have the shortest waiting periods between the time of application, hearing and adjudication decision – one to one and one-half years in length. However, many survivors were involved in or aware of the negotiations leading to the agreement and would have included that period in their assessment of delay.

- *The system itself has to move more quickly. There is no time to heal when you are sticking it out for seven years.*
- *It has to be swift. It costs everyone so much money. The emotional stuff is draining and taxing health wise. It's not necessary to drag it out...it's only lawyers who benefit.*

However, speedy resolution is not necessarily in the best interests of all litigants. The plaintiff has to be ready to go ahead. One litigant complained about her lawyer as follows:

- *I was in early stages of recovery and she put me on 'fast track' to quicken up court procedures. But I didn't have a quarter of my memory. I was so confused. She put me on a treadmill. Actual discovery was horrible. I was shaking so hard. I should have never been put on fast track because I was highly disassociative.*

Many CICB applicants also felt that they had been misled by staff about how long the whole process would take. Their comments included:

- *It shouldn't take 2-3 years to resolve.*
- *(T)he waiting . . . was what almost drove me bonkers.*

Even the Grandview survivors, whose process was the fastest, complained about delay:

- *I think it should have been wrapped up in 1 year instead of 3-4 years.*

(5) Support Network

All respondents emphasized the need to have strong support systems. As one woman explained:

- *It was the whole combination of support that pushed me along. Otherwise, I would have never even started it.*

More than half of all respondents indicated that their therapist/counsellor was their most important source of support. Roughly one-third of CICB applicants and Grandview women were encouraged to seek compensation by their therapists.

- *She (my counsellor) was the stabilizer. I refer to her as my lifeline.*
- *The (CICB) Board had impeded so much on my healing and therapeutic process that I needed my therapy.*

The support or lack of support from family and friends also had an impact on how difficult and

emotionally taxing the process was perceived. It would appear that the negative impact on family and friendship relationships varied little, if at all, with the particular process the subjects had chosen.

Eighty-five per cent of CICB claimants reported that they had received support from either family or friends. Thirty-three per cent described the negative impact that going through the process had on their personal relationships. In their own words:

- (The CICB process) *divided us.*
- *Mom, her way of thinking about it (was) to forget about it. . . (and hope it) it will go away.*
- *My best friend was very negative because he felt his taxes shouldn't go for such things.*

The Grandview results were similar. Fifty-four per cent of the Grandview survivors described either their family or friends as very supportive and very encouraging. Fifty per cent, however, noted that the process caused negative fall-out with their families:

- *It ended my marriage.*
- *I started to lose everything around me including a 12 year old relationship.*

Fifty-four per cent of civil litigants had the support of either their family or friends. Those who didn't had similar experiences to both CICB applicants and Grandview survivors:

- *My mother would say 'well maybe it happened but I didn't see anything'. This would shake my sense of reality.*

(6) Setting³⁴

Adding to Tyler's list of elements that are key to meaningful participation, we observed the survivors' needs for hearings and trials to take place in comfortable, safe surroundings. As one respondent explained, what she wanted most from the process was to "*Meet him {her perpetrator} in a controlled environment where I could speak my mind and be protected.*"

The lack of a relaxed and non-threatening environment caused participants stress, trauma and feelings of revictimization. There were numerous illustrations of how important the setting is to victims/survivors. This is especially true for government compensation claimants who specifically opted for these processes because they wanted to avoid going to court. For example, CICB applicants reported the following:

34. See supra note 28.

- *I didn't think it should have been in a courtroom setting. I think it should have been just in a room with some chairs, not too big and not too small. Something nice and cosy. It you could have water jugs on the table to make it more informal.*
- *I wasn't offered anything to drink...there wasn't any water. There was no kleenex. I'll never forget it.*

7. Effect of Compensation Itself

In our study, participants received strikingly different amounts of money depending on what scheme they employed. Civil awards ranged from \$42,500-\$479,000. Four of the eleven subjects did not reply, but the average award for the remaining civil plaintiffs was \$209,833. Nine litigants who answered spent an average of \$20,000 on their court case, ranging from \$1,500 (the lawyer for one litigant provided free legal services) to \$50,000. The Grandview survivors interviewed each received \$60,000. Most CICB claimants received from \$5,000 -\$10,000, although some received additional funds for counselling.

There was no shortage of respondents under the CICB and Grandview schemes who felt that the amount they had received was inadequate:

- *It doesn't compare to the hurt, suffering misery. It doesn't even give me \$20,000 for every year I was there.*

Nonetheless, approximately 34% were satisfied with their outcomes in terms of financial compensation.

Many respondents linked the award to their self-reported therapeutic priorities. They explained that the financial award was gratifying because it symbolized an acknowledgement and understanding of the impact of their experiences of assault and abuse. Claimants reported:

- *To me it wasn't the award. I was more glad that someone had believed what happened to me.*
- *The wording was just as important as the money.*

Failure to achieve one's compensatory goals poses a serious therapeutic risk. Those who did not receive an award, or received one they felt was below average, were deeply hurt. Referring to an award she felt was grossly inadequate, one respondent stated:

- *I felt kind of like I wasn't worth very much. The past six years didn't mean anything to them.*

In addition, some respondents felt that their financial award was “dirty money,” “hush money” and

“blood money” and it made them feel degraded.

→ *I felt like I had been paid off. Was I really that cheap?*

One respondent in particular felt insulted that there was an assumption that she could be paid off. She explained:

→ *My brother said ‘At least you got something for being in there.’ I said ‘Do you think that everyone has a price?’*

Many survivors also reported difficulties with accepting and enjoying their financial award. The money was a constant reminder of their trauma and abuse:

→ *I’m sitting here with a \$9,000 cheque because an asshole raped me and I got money because he did. Can I win money to feel good about it? Do I have to be raped to get money like that? I gave my kids the money...I didn’t want it for myself.*

For those who went into the process expecting only money, awards brought them some satisfaction. These respondents reported that financial compensation gave them the ability to purchase goods and services that had previously been beyond their reach. A number of respondents also funnelled their awards to programs and services that support abused women. They noted:

→ *I went out and bought myself some things.*

→ *(T)he best thing was the counselling fee*

However, for those survivors who were seeking restorative outcomes, monetary compensation on its own does not appear to provide the therapeutic benefits most survivors were seeking going into the process:

→ *Money helps but does not heal.*

→ *For some stupid reason I thought the money would heal the wound. It hasn’t.*

The majority of all respondents stressed that money could never compensate for their experiences. They said:

→ *Money does not compensate in any shape or form...All those years of getting screwed up – you can’t compensate for it. It is so devastating.*

→ *You can give a person money and it doesn’t fix anything. It doesn’t take anything away.*

One CICB respondent appreciated that the Board had acknowledged the inadequacy of financial compensation:

→ *(I)t was nice that they mentioned that no monetary value can replace what you lost.*

(8) Confronting the Perpetrator

Confronting the perpetrator was never an option in the Grandview process. As mentioned earlier, some claimants chose the CICB in preference to civil litigation precisely because they wanted to avoid confronting the perpetrator. They were understandably upset when the rules were changed to provide for perpetrator notification and attendance at the hearings. In contrast, it is inherent in civil litigation that the perpetrator would be notified and might well attend to defend the action. Not surprisingly, almost all of the civil plaintiffs who did have to face the perpetrator at trial indicated that this was one of the most difficult aspect of the process.

→ *Hell...the hardest part was being in the same room with him.*

→ *Having to face my father face to face (was the most difficult part of the process) – he had threatened my personal safety.*

Nevertheless, as noted earlier, obtaining compensation from the perpetrator was also important to many who chose civil litigation. One litigant whose perpetrator did not appear indicated that his absence was the most difficult part of the process. Another said:

→ *Going back to face him...was difficult, but empowering.*

The question of confronting the perpetrator cannot be looked at in isolation. Both the Grandview claimants and the CICB claimants may have been required to face the perpetrator in a criminal trial. They all have or had the option of confronting the perpetrator directly in a civil suit, although none of our respondents had chosen to exercise that option.

(9) After the Adjudication

When asked to how they felt at the very end, an average of 48% gave an overall positive response, reporting a sense of closure, validation, empowerment, or relief. The positive responses broke down as follows: 56% of CICB applicants; 35% of Grandview survivors; and 44% of the civil litigants. Overall, 10% reported mixed feelings, and 42% indicated they felt anger, frustration, disappointment and a lack of closure. The positive response rate from the civil litigants is much higher than might have been expected. For example, in a study published in 1991, only two of eighteen accident victims in England (11%) expressed positive feelings about their litigation, one of whom enjoyed

getting out to London to meet the solicitors, and another who enjoyed his supportive solicitor.³⁵

Although their claims did not necessarily provide complete closure, or meet all their expectations, it is revealing that when asked if they would recommend the process they had chosen to other survivors, 50% of the Grandview claimants answered a definite yes followed closely by CICB claimants at 42%. The similarity between some of the Grandview responses and Herman's reconnection stage for recovery discussed earlier is striking.

- *After my hearing – the next day I said to my friend ‘Something is different for me – I’ve let it go’.*
- *The process itself – going through it was very healing. I had to acknowledge what happened. This was very healing.*

The responses of the CICB claimants also highlighted the value of going through the procedure.

- *Absolutely – it’s worth it. It is traumatic and brings back a lot of memories you don’t want to remember, but it has to be done because it is self-cleansing.*
- *(W)hen you are done, there’s like a big weight taken off your shoulders, that you finally won. And it makes you feel good to have someone believe in you.*

Some also noted that the government compensation route is much easier than civil litigation:

- *It’s pretty straightforward. It’s much better than going civil – that can drag on for years. I would think it is like being put on trial. This was a private and fairly easy process.*

Although more CICB claimants expressed positive outcomes, it is important to note that many found the process unhelpful or even anti-therapeutic.

- *I was very frustrated. I didn't have a chance to tell my story.*
- *I expected I would get apology, healing ... (that) people would presume I was telling the truth. I felt they thought I was fabricating it. I did not get the level of healing, money or apology I wanted. I have enormous anger in me.*

More research is necessary to determine whether changes in the process would improve the therapeutic outcomes, or whether some survivors, at some stage in their healing, are more likely than others to benefit from the claiming process.

35. Renee L. Binder et al. “Is Money a Cure? Follow-up of Litigants in England”, (1991) 19 Bull. Am. Acad. Psychiatry and Law. 151:154.

Some CICB applicants who hesitated to recommend the process did so because of the policy regarding informing the perpetrator stating:

- *I would hesitate if someone's abuser is alive because of the possibility of them being at the hearing.*

In comparison to the government claimants, only 27% of civil litigants would recommend (without any hesitation or qualification) the process to others. Going through civil litigation is not, as one claimant put it *for the weak at heart*. Many did not think that the benefits outweighed the emotional costs. They commented that:

- *(A)lthough at some level I felt validated...in the long run the amount of stress wasn't worth it.*

However, an additional 55% stated that they would recommend the process to others with certain qualifications. Many reported positive therapeutic outcomes:

- *It changed my life. It has made me a very strong person.*
- *There is a god I guess. It has kind of restored my faith in the justice system. I was very disillusioned at criminal trial. It was the best revenge. I knew money is important to him. I knew he'd declare bankruptcy and lose (his professional) license. This was my best revenge. It helped me heal.*

A theme which emerged in all the civil litigation respondents' answers was the belief that only those survivors who were *strong enough, in the right state of mind, well grounded, having confronted their abuse, and at the point where they think they can deal with it* should take civil action. Almost every respondent discussed the importance of having a support system to survive the process.

There was little difference among the three groups when they answered whether going through the process had affected the way in which they look at life. Forty-two per cent of CICB applicants, 35% of Grandview survivors and 36% of the civil plaintiffs reported that the experience had given them a more positive outlook on life. They reported a sense of accomplishment and a feeling of being empowered and healed.

- *A lot of it has to do with the fact that I took the control.*
- *It changed my life. It gave me some assurances. It's made me a very strong person.*

Even those who did not believe that going through the procedure was life-altering could still feel some positive effects on their lives. As one survivor put it:

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- *I don't think it changed how I look at the whole picture, but what it did do is make me realize that there are people out there who have an understanding of what I've been through.*

The balance of respondents, however, explained that their outlooks had remained the same and some felt more negative. Those who reported negative effects stated:

- *The Board took something away and I lost trust in people. The Board 'viewed' me and I am very disappointed and feel more negative.*
- *There is no justice...there's no benefit of being a good person.*

PART III - SPECIFIC SUGGESTIONS FOR IMPROVEMENT

The study discovered many suggestions about how each process might be improved to minimize the negative consequences, and even to increase the therapeutic benefits. Most of these could be adopted without sacrificing any of the other important goals inherent in the schemes. These are summarized below.

(A) Before the Hearing

1. Provide accurate information about each procedure.

As far as possible, claimants want to know what will be required, what they should expect. CICB claimants in particular complained about being misled about how long the process would take. CICB claimants were also unpleasantly surprised by the hearing rooms, finding them much more formal than they had expected. Not surprisingly, claimants resented changes to the rules being effected in mid-stream. Some CICB claimants entered the process, and while their claim was being processed a new policy about notifying the perpetrator was adopted. Grandview survivors also complained about changes to the agreement being negotiated while the process was underway.

2. Provide claimants with a list of experienced lawyers and therapists.

In the case of lawyers, this means experienced both with the scheme itself, and with clients who have been sexually abused.

- *Maybe they should have one or two lawyers who only deal with CICB.*
- *(The lawyer) needs to understand the process of disassociation especially in beginning stages to know if client is strong enough to handle it.*

These suggestions, however sound, pose difficulties. If professional associations themselves do not certify specialists on these bases, members of the legal and therapeutic communities may object to being excluded from any such list. This is a role that may have to be assumed, albeit imperfectly and perhaps informally, by support organizations such as women's sexual assault centres.

3. Have a volunteer roster of women who have gone through the process.

- *If we are going to create a system, have a roster of women on call who are experienced and who have been there.*
- *If you could have the choice of someone to talk to even over the phone...someone who had gone through this. I should be very willing to help other people.*

4. When possible, provide a support person to help claimant through the process.

- *Someone who is qualified helping with the application and helping to get information.*
- *Assign a person to support each step and give more preparation on how much time, how long the process may be.*

With the Grandview claimants, there was a support group in existence. It is an unusual suggestion, but perhaps neither inappropriate nor overly difficult, for the CICB itself to maintain and circulate to similarly situated claimants a list of volunteer contact persons who have previously made sexual abuse claims. Few lawyers will be in a position to do this for their civil clients.

5. Ensure that claimants have adequate counselling before entering into any process.

- *My lawyer said she would not take my case unless I got counselling...counselling was probably the best thing that ever happened to me.*

Both the Grandview agreement and the CICB make funds available for therapy during the claiming process. Litigation lawyers with expertise in sexual abuse cases will be aware of the importance of therapeutic support.

(B) The Process Itself

1. Reduce the length of time that each process takes.

- *It has to be swift. It costs everyone so much money. The emotional stuff is draining and taxing health wise.*
- *The waiting and not knowing the real physical and psychological side-effects of the procedure.*

Our research demonstrates that delay is a serious problem for claimants. Lawyers, judges and CICB staff and adjudicators should be made aware of this so they can do whatever is possible within budgetary constraints. However, we suspect much delay is a resource allocation problem. The CICB and the court system compete for government funding.

2. Have responsive, sensitive people who are knowledgeable about sexual assault dealing with survivors through all stages of the process.

- *Really good to have people in the process know of sexual abuse.*
- *Provide all those involved with sensitivity training.*

This suggestion pertains mainly to the CICB. However, the CICB claimants' complaints about insensitive treatment at the hands of support staff, including receptionists, is relevant across the board.

3. In the case of government compensation hearings, have survivors as adjudicators.

- *They should really know what it is like.*
- *Those women who did well in their lives didn't look like victims and they were not always properly compensated.*

The adjudicator's role can be a difficult one. Several respondents expressed appreciation for the empathy their adjudicators extended. Others were angered by comments like *I know how you feel*. The authors are not in a position to determine whether it is financially feasible to appoint CICB adjudicators who specialize in claims relating to sexual abuse. If not, some appropriate training for the general pool of adjudicators seems reasonable. Mandatory training for judges, in this and other areas, has met with some strong resistance.

4. Ensure comfortable hearing and adjudication settings. In the case of civil litigation, familiarize the client with the surroundings before the trial.

- *This includes water, kleenex and a non-threatening, private room.*

Physical setting is important. Many CICB claimants expressed surprise and dislike for the court-like settings in which their hearings were held. Having chosen to avoid the adversarial system altogether, there was no reason to expect the trappings of court. The authors do not see any obvious reason why compensation claims could not be adjudicated in less intimidating, albeit dignified, settings. At least civil litigants had a lawyer of their own choice at their side. Many compensation claimants were forced to come alone. On the civil side, witnesses found it exhausting to have to testify all day standing up. Again, seating the witness would not seem to threaten truth finding.³⁶

The option of a documentary hearing in the CICB process works well. It should be considered whenever adversarial proceedings are not required.

5. Rethink CICB policies that require victims of sexual abuse and assault to face perpetrators at hearings and trials.

- *I would have felt much more comfortable if I could have been just with my lawyers or done it on tape.*

36. The witness box in Canadian court rooms does not have a chair. Judges can offer witnesses a seat, but not all do so. Often the rail is so high that the witness must stand to be seen and heard.

The civil justice system is not a victim-centred system and it never will be. On the other hand, the CICB is supposed to be a system that exists to attend to the needs of victims. The CICB can make no findings that affect directly the rights or obligations of perpetrators. It can impose no sanctions on perpetrators. The only perpetrator notification policy that makes sense in a victim compensation scheme is one that gives the claimant the option to have the perpetrator notified. Some claimants may see that as therapeutic.

6. Provide a fair appeal mechanism.

→ *Give women an alternative forum to appeal their awards – only allowing Divisional Court appeal is problematic – Who has the money?*

(C) The Compensation Package³⁷

1. Do not give out awards on a sliding scale/matrix that allow for individual variation.

→ *Everyone should be treated the same...how can you put a figure on such crimes?*

→ *I don't know how it could change from woman to woman. No one suffered more and no one suffered less.*

The basic remedy in civil litigation is an award of compensatory damages quantified on the principle that the victim should be restored to the situation she would have been in had the wrong not been committed. The unique emotional and psychological impact of child sexual abuse and sexual assault including pain and suffering and lost quality of life make it difficult to place a value on such damage.³⁸ This commitment to the restitutionary principle in preference to less individualized compensation is a one highly touted virtue of the tort system over no-fault compensation schemes. Each plaintiff gets a unique award to reflect her unique loss. A good deal of interesting work could be done about the therapeutic implications of having to itemize financial and non-financial losses. For example, the tort plaintiff has to make herself appear more damaged to get more money. Is this beneficial? What therapeutic message does a low award send to a claimant? What message does a high award send? Our study showed that not everyone believed that individualized damage awards were therapeutic. The so-called meat chart approach to damage quantification appeals to many.

37. These observations have a more immediate application to the CICB and other compensation schemes than to civil damages. This is discussed more fully below.

38. See e.g. Daniel W. Shuman, *The Psychology of Compensation in Tort Law*, at p. 439.

2. Reimburse women for food and travel expenses incurred in relation to their hearings.

→ *Women and children and on welfare – I think it would be helpful if they provided her with bus fare and lunch money.*

3. Provide financial support/planning for survivors who receive monetary awards.

→ *There should be some organization out there or some section of the CICB that sits with you afterwards and say 'what do you want to do now?' You're left high and dry, here's your package, here's your award now go away. You are like 'huh?' I know for someone who has been...sexually abused, it's like what now? You get your retribution and your apology from the government but then they give you your money and just say 'have fun.' I definitely think – especially for younger people that there should be a section to help them.*

Certainly, no one could object to claimants being given advice as to how to employ their awards. The CICB, for example, might maintain financial advisors on staff, or routinely provide reimbursement for financial advice with any substantial award.

4. Support the development of survivor support groups/networks, crisis lines and healing centres.

5. Involve survivors in the design of compensation claims.

6. Develop more non-monetary supports benefits by listening directly to what survivors are seeking therapeutically.

Many of the respondents in the study stated that they had therapeutic priorities that had virtually nothing to do with financial compensation per se. These included:

- *support for school*
- *free access to drug rehab*
- *removal of tattoos*
- *a humble, sincere apology*
- *letters explicitly validating my abuse/experience*
- *more counselling – and counselling for families*
- *research into the positive results women experienced as a result of receiving the package - what they have accomplished*
- *commitments from those in power to put every effort into stopping institutional abuse*

Conceptualizing compensation solely in financial terms may tend to trivialize the survivor trauma and distract focus from more important therapeutic options. As one Grandview women put it:

→ *Money is not what it is all about – I know an addict that killed herself with her compensation money.*

The study suggests that non-monetary supports and benefits, as well as benefits in kind such as direct payment for counselling and certain medical procedures have an important role to play along with, or perhaps instead of, lump sum cash awards. Certainly, the Grandview survivors rated this aspect of their settlement highly.

The civil justice system is not well-designed to administer complicated support packages. The court makes a damage award, and it is the responsibility of the successful plaintiff to enforce the judgment. There has existed traditionally a complementary ideology that successful plaintiffs should receive lump sum damage awards and make their own arrangements thereafter. Much can be done by plaintiffs' lawyers. Lawyers can, for example, maintain information about reliable therapeutic, financial and medical support services and personnel, and impress on their clients the wisdom of making use of these.

PART FOUR - CONCLUDING OBSERVATIONS

The therapeutic implications of compensation claims by victims of sexual abuse cannot be overstated or ignored. Claimants enter the processes for explicit therapeutic reasons. They measure their success or failure in therapeutic terms. They experience significant therapeutic and anti-therapeutic outcomes. It is simply inaccurate to conceptualize, design, operate and evaluate civil law suits or compensation schemes on the assumption that they exist only to provide monetary compensation to deserving victims.³⁹ A compensation regime that does not take reasonable steps to address the therapeutic needs of the claimants is one that cannot achieve its professed restitutionary goals. Money alone cannot heal.

Studies in personal injury cases have shown that the way in which litigants experience litigation, as well as recovery rates after litigation, vary with many factors independent of the litigation.⁴⁰ Individual variations were obvious in our study. Our study did not isolate any single process as superior for all claimants in any respect, let alone overall. Perhaps the most important conclusion that should be drawn is that society ought to provide a number of legal options to victims of sexual abuse, so that survivors themselves can elect the appropriate balance of confrontation, vindication, monetary and in-kind compensation, and other variables, that best matches their therapeutic needs.

Even if we were able to address many of the complaints voiced by our research subjects – complaints about delay, or setting, or adjudicators, for example – we would not necessarily change significantly the therapeutic or anti-therapeutic consequences of the claiming process. Attention should also be paid to external variables, including learning to identify which claimants are most likely to find which, if any, compensation process helpful. Our study suggests some variables worthy of further consideration, including whether the claimant has a good support network of family and friends, and a good relationship with a therapist.

Despite the individual variations, however, the study revealed many common complaints about the processes and outcomes, and many features of each process that were viewed as anti-therapeutic by the subjects. Eighty-four per cent of all respondents experienced some negative emotional consequences and more than half experienced negative physical consequences. It is certainly disheartening to report that when asked, “If you could do this over again what, if anything would you do differently?”, 18% of all respondents stated that they simply would not go through with their actions and claims at all. Many reported feeling revictimized, likening their experiences to their sexual abuse:

39. In a civil suit, a deserving plaintiff is one who has established fault on the part of the defendant. This is a central aspect of the tort system. Our remarks here assume that fault has been established.

40. Daniel Shuman, “When Time Does Not Heal: Understanding the Importance of Avoiding Unnecessary Delay in the Resolution of Tort Cases” (1998) forthcoming, Psychology, Public Policy and Law. Shuman cites, citing Renee L. Bincer et al. “Is Money a Cure? Follow-up of Litigants in England”, (1991), 19 Bull. Am. Acad. Psychiatry & Law 151, 158; Jack M. Fletcher, “Behavioral Changes After Closed Head Injury in Children” (1990), 58 J. Consulting & Clinical Psychology 93, 98; George Mendelson, “Follow-up Studies of Personal Injury Litigants” (1984), 7 Int’l J.L. & Psychiatry 179, 180.

- *I felt sexually assaulted all over again.*
- *I felt like I had been raped. I didn't come out feeling empowered.*

However, it would be a mistake to over-emphasize the negatives. Many of the respondents would go through the process again. Significant numbers would recommend the processes to others, with that number increasing as one moves from fault-centred civil litigation to the CICB, and then to the special Grandview process designed with explicit therapeutic goals (ie. 27% civil, 42% CICB, and 50% Grandview). Approximately 35% of all subjects reported that the process gave them a more positive outlook. This number did not vary significantly across the schemes. It would be interesting to compare this success rate to that of other therapeutic options that exist for survivors of sexual abuse, including the option to do nothing.

Even when claimants have positive experiences, none of the three processes can be expected to provide in themselves complete closure or healing. Perhaps it is encouraging to observe that for a significant number of subjects, their participation in one of these schemes was at least somewhat beneficial, and might, with modest improvements, have been even more so.

There are many reasons to be wary of comparing the three schemes to one another. The sample sizes are too small. The schemes have different purposes and constraints. It is not surprising that some of those who were eligible for a specially designed healing package would report more positive therapeutic consequences than those who went to civil litigation. What is perhaps surprising is that the therapeutic outcomes do not differ more than they do.

Our study sheds a little light on the question of whether no-fault compensation schemes (likely to be much faster than civil litigation) can accomplish the same therapeutic goals as civil litigation. The question is more complex than is usually assumed. One variant is whether the perpetrator or other tortfeasor is the party required to pay compensation. This is the distinguishing feature of the civil lawsuit. The literature differs markedly as to whether compensation *from the perpetrator or other wrongdoer* is important to victims.⁴¹ The numbers of our subjects who have elected to go to civil

41. Consistent with our findings, Shuman points out that civil plaintiffs seek more from litigation than money. See D. Shuman, "The Psychology of Compensation in Tort Law" (1994), 43 U. Kan. L. Rev. 39, at 50-51. However, this is probably a self-selecting group. Those who choose to litigate may do so *because* they seek compensation from the perpetrator, or from another party perceived responsible, including institutional defendants. Other victims may, as in our study, obtain satisfaction otherwise. Other studies supporting the importance of obtaining compensation from the perpetrator include Elaine Walster et. al., "New Directions in Equity Research" (1974) 25 J. Pers. & Soc. Psychol. 151, 164; and Andre deCarufel, "Victims' Satisfaction with Compensation: Effects of Initial Disadvantage and Third Party Intervention" (1981), 11 J. Applied Soc. Psychol. 445, 452. deCarufel's subjects were all college-age males to whom the importance of perpetrator loss may be different than for adult women. The no-fault compensation in his experiment was simply provided, not applied for and obtained through a victim-driven process like CICB or Grandview settlement. In contrast, and more consistent with our own findings, are British and Canadian studies indicating that most victims of accidents (as opposed to the deliberate sexual abuse under consideration here) care about compensation, but attach little importance to making the person who injured them provide the compensation. See A. Linden, "Osgoode Hall Study on Compensation for Victims of Automobile Accidents", Toronto: Osgoode Hall, 1965; and D. Harris et. al. Compensation and Support for Illness and Injury, Oxford: Clarendon Press, 1984. This is an issue where differences

litigation, some after making successful compensation claims, suggest that this route offers something unique to some people. As noted earlier, to many civil litigants it was important that the perpetrator pay the compensation.

But that is only part of the story. We also discovered that the need to obtain a formal finding of liability against the perpetrator, or to obtain payment directly from the wrongdoer, is not crucial for everyone. Many of our subjects achieved therapeutic benefits from the CICB and the Grandview schemes. Many chose to do so to avoid confronting the perpetrator. However, these are not pure no-fault schemes. In a true no-fault scheme, fault is entirely irrelevant, formally and informally. The claimant proves the injury to obtain compensation. It is irrelevant whether the injury was caused by the criminal or tortious misconduct of anyone. The CICB scheme, in contrast, is predicated on proof of a crime having been committed. Grandview is predicated on, at a minimum, government responsibility, and at least implicitly on perpetrator misconduct. These schemes do, indirectly at least, validate the victim's claim that she was injured by the fault of another. It follows that our research lends no support to an argument that pure no-fault compensation can fulfill the therapeutic role presently filled by civil liability or CICB claims. If anything, our findings suggest that a regime in which the victim's story (apart from an account of damage) was irrelevant could not possibly achieve the therapeutic goals identified in this study.⁴²

The research suggests a real need to provide a clear understanding of the risks and benefits of each process to prospective applicants or litigants.

Survivors continually emphasized their need to be heard, listened to and responded to with empathy and sensitivity. Accordingly, their experiences during the adjudication phase were emphasized as therapeutically critical. Negative experiences at adjudication led to frustration, anger, humiliation, re-victimization, trauma, and disappointment. The need to have a more humane response to survivors is more easily accommodated outside civil litigation. The special Grandview experience shows what it is possible to accomplish with explicit therapeutic goals. There is little to excuse the failure of any no-fault compensation scheme to make respectful adjudication a priority. The adversarial nature of civil litigation makes negative experiences at the hands of defence counsel probable, if not inevitable. On the other hand, most of our subjects had favourable comments about their own lawyers and judges. It may be that civil litigation can be best improved for plaintiffs by giving them full and

may exist depending on the type of wrong - deliberate as opposed to negligent, and also according to the national culture studied. The United States, for example, may attach much more importance to civil litigation than do countries in British Commonwealth.

42. This very issue lies at the heart of a controversial decision in the highest court in New Zealand, presently on final appeal to the Privy Council in England. New Zealand does not allow compensation for personal injury damages to be claimed in tort. These are compensated on a no-fault basis. Survivors of sexual abuse, among others, had, however, been bringing actions for punitive damages in tort. The Court of Appeal held that no action for punitive damages may now be brought in New Zealand in respect of any matter that had been or might be the subject of criminal proceedings. In part, the court was concerned with the plaintiffs circumventing the compensation scheme and obtaining compensation in the guise of punitive damages. The dissent expressly noted the therapeutic value of litigation. See Daniels v. Thomson [1998] 3 NZLR 22 (CA).

meaningful information, and ensuring that they have an adequate support system in place during the process. What little information we have indicates that most plaintiffs' lawyers are aware of and attentive to this.

In conclusion, this study reflects the experiences of claimants before the Criminal Injuries Compensation Board and under the Grandview settlement, as well as plaintiffs who have taken their case to judgment in civil court. It reveals, in the survivors' own words, that therapeutic healing is dependent on more than just a final outcome involving financial compensation. It is dependent on a procedure which does not further traumatize victims, but rather values survivors' dignity, participation, and worth as human beings. To reach their full restorative potential, these procedures need to take into account the self-identified therapeutic needs of survivors. Schemes that are devoted entirely to the therapeutic needs of survivors offer the greatest therapeutic potential. Nevertheless, the study indicates many positive aspects of the civil justice regime and the CICB process, as well as many improvements that might easily be adopted in all three schemes to improve therapeutic outcomes without sacrificing any other important goals.

Senator denies comments about defence cutbacks

Regarding Rory Leishman's column, *Why Canada was left out of NATO's strategy* (June 4).

While there is much to agree with in Leishman's recent article, there is at least one glaring factual error.

To suggest that I have consistently supported defence cuts and that I am currently responsible for the woes in the Canadian Armed Forces is completely incorrect and utterly false.

I have been a consistent critic of defence policy and a friend of the Forces since my election to the House of Commons in 1965. I was one of the leading opponents of unification, a policy that still haunts the Canadian Forces to this day. I served as the Progressive Conservative party's defence critic on several occasions and I am a member of the NATO parliamentary association. I have consistently fought for a modern helicopter to replace the Sea King.

Indeed, I have been labelled by some in the press as "the Senate's top sniper on defence issues." If Leishman had engaged in a little research, rather than rhetoric, he would have discovered that, since the start of this Parliament, I have spoken on defence issues no fewer than 200 times in the Senate chamber.

I am surprised that Leishman, or any Canadian for that matter, would find it acceptable for Canada's sons' and daughters' fate to be decided by the political leaders of other nations.

SENATOR J. MICHAEL FORRESTALL

LFP June 12/95 Ottawa

City should be proud of work on sexual violence

In her column, *Assault victims desire simple redress* (June 9), Helen Connell gave an excellent summary of the findings of a report by Bruce Feldthusen, a UWO law professor who examined the experiences of women who looked to the justice system for compensation for being sexually assaulted. It is important to note this work was done in collaboration with the Centre for Research on Violence Against Women and Children at the University of Western Ontario.

The report, which is being published by the centre, is an example of the "action research"

being promoted there. Action research strives to make academic investigation relevant to the lives of women and children. It is significant because it gives us tools to advocate for positive social change.

For years women have been coming to the Sexual Assault Centre in London and making the very points that Feldthusen's research highlights. Having this information published in an accessible, academic format lends credibility to our voices when we present concerns and suggestions to decision-makers for improving the response of the justice system to survivors of sexual violence.

London should be proud of taking a leading role in finding common ground and mutual interests between the university and the community.

BARBARA MacQUARRIE

funding and communications co-ordinator
Sexual Assault Centre London

London Hydro's actions prove need for competition

I must congratulate Jonathon Sher on his front page article, *New Hydro clients cry foul* (June 9), regarding London Hydro's demand for a security deposit from companies recently transferred to them as a result of annexation.

Whose idea was this and from what planet do they hail?

Hydro's actions simply cannot be justified and their attempts to do so are a farce.

Perhaps this monopolistic dinosaur wants one last bite out of its captive clientele before legislation yanks its fangs out — or maybe the marketing genius behind this move isn't the sharpest knife in the drawer.

While we may eventually be forced to cough up the deposit, all I can say is "bring on the competition."

SCOTT McLEAN

McLean Scale Co. Ltd.
London

Londoners fail to support great baseball effort

Last night we attended our first Werewolves game and had a fantastic time at Labatt Park. The kids are Kids Klub Members and for \$15 each they get free admission to six games, a Werewolves T-shirt, free popcorn at every game they wear their shirt and a free baseball