

## SUBMISSION

To: Chair and members of the Joint Select Committee on the Royal Commission into Institutional Responses to Child Sexual Abuse – Oversight of Redress Related Recommendations

From: Professor Kathleen Daly, Griffith University,

Date: 21 November 2018

via Committee Secretariat email address: [institutionalresponsestoabuse.sen@aph.gov.au](mailto:institutionalresponsestoabuse.sen@aph.gov.au)

### Professional summary

PhD 1983, Sociology, University of Massachusetts

State University of New York-Albany, 1982-83 (Assistant Professor)

Yale University, 1983-92 (Assistant and Associate Professor)

University of Michigan, 1992-95 (Associate Professor)

Australian National University, 1995-96 (Senior Fulbright Scholar)

Griffith University, 1996-present (Associate Professor and Professor)

Publications: Over 100 refereed journal articles and book chapters; h-index 47

Six books or edited collections

<https://www2.griffith.edu.au/professional-page/professor-kathleen-daly>

Since 2010, research focus on redress for institutional abuse of children

- *Redressing Institutional Abuse of Children* (Palgrave, 2014); analysis of 15 redress schemes in Australia and Canada; four journal articles or book chapters on redress; three articles in *The Conversation* on redress
- Australian Research Council Grant (2017-2020): Redress for Institutional Abuse of Children: Australia in International Perspective (\$530,000 sole CI)

Member, Commonwealth Independent Advisory Council on Redress, 2017-present

### Background to this submission

I am Director of the International Redress Project, funded by the ARC (2017-2020).

The research team is gathering and synthesising evidence and documents on all world redress schemes.

To date, 15 jurisdictions have established or concluded redress schemes (Appendix 1).<sup>1</sup> As of January 2018, the Project lists 56 unique redress cases.<sup>2</sup> Established after this date, Australia's National Redress Scheme (NRS) will increase the number of cases.

Of 56 cases, most are government-led (73%). Australia has a large share of cases (34%), as does Canada (29%), who together currently comprise 61% of cases.

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<sup>1</sup> Five other jurisdictions have conducted inquiries or proposed schemes and may establish redress schemes in the future (Åland, Denmark, England & Wales, Finland, and Northern Ireland).

<sup>2</sup> This is an undercount: there are likely to be more non-government (largely faith-based) schemes, and we know there are more Scottish council schemes and many more in Norway.

Redress schemes use different money logics to calculate the monetary payment, and some cases combine more than one. For example, *Queensland Institutions* combined a flat payment and an individualised assessment of abuse. Of 56 cases, 50 have one money logic, and six have two, for a total of 62 money logics. Of these, most use an individualised assessment (76%) (like the NRS). The rest use a flat payment (13%) or other formula (11%).

The NRS is *unique* in the world of government-led redress in the diversity of claimant groups.

Other government schemes have only addressed abuse of care leavers, but the NRS is to address abuse of both care leavers and non care leavers.<sup>3</sup> This has implications for inequalities of redress, unless corrective action is taken (Daly 2018).

Of all schemes using an individualised assessment, the NRS is the *largest*.

Finity Consulting (July 2015) estimates 60,000 eligible claimants.<sup>4</sup> By comparison, the next two largest cases are Canada's *Indian Residential Schools-Independent Assessment Process (IRS-IAP)*, 30,659 awards) and Ireland's *Residential Institutions Redress Board (RIRB)*, 15,579 awards).

As a government-led scheme, the NRS is unusual in addressing sexual abuse alone (17% of government schemes do).<sup>5</sup>

In my submission, I draw from research on redress schemes (both mine and that of others), together with my Project's dataset of 56 cases, to address questions that have arisen during the Committee's deliberations on the Royal Commission's (2015) redress-related recommendations.

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<sup>3</sup> Care leavers were abused in 'closed' institutions (residential care, foster care, and detention); and non care leavers, in 'open' settings (churches, schools, clubs, or by personnel using their institutional power) (see Daly 2018). Based on the Royal Commission's private sessions data to May 2017, of 6,875 survivors, 44% were care leavers, and 56%, non care leavers (my figure adjust the Royal Commission's statistics to add to 100%) (Royal Commission 2017b, Preface and Executive Summary: 11).

<sup>4</sup> From 60,000 eligible claimants, I estimate a minimum of 76,000 applicants to the NRS. My estimate is based on the mean validation rate for 27 schemes that have used an individualised assessment and for which we have complete data (78%).

<sup>5</sup> By comparison 67% of non-government schemes (all faith-based in the Project's dataset) address sexual abuse only.

## 1. Eligibility: exclusion based on criminal history

Based on my knowledge of world government schemes, none has excluded applicants on the basis of their criminal history.<sup>6</sup>

**Recommendation 1:** An *a priori* criminal history exclusion, and the related ‘special assessment’, should be removed from the NRS. It does not comport with world practice.

## 2. Maxima and average payments

A detailed analysis of scheme maxima and average payments (Appendix 2) shows that few schemes (N=6, or 16%) have maxima greater than \$147,000, and two of these are outliers. Of the four remaining, the average (median) is \$150,000.

There is no question that scheme maxima can have symbolic value. They ‘send a message’ to survivors about the degree to which society cares about those who suffered institutional abuse, both as a group and as individuals. When drawing on statistics reported for the *RIRB* (one of two outlier cases), however, we learn that a small number (.3 of 1%) was in the top award band of €200,000 to €300,000. The average award was €62,250 (AU\$91,508) in a scheme maximum of AU\$441,000) (McCarthy, *Comptroller and Auditor General Special Report*, December 2016: 29).<sup>7</sup>

Thus, scheme maxima alone are not a useful focus of the Committee’s deliberations because they do not tell us what, on average, people will receive.

It is better to ask what the average award will be and how this relates to the maximum, from which payment distributions can be modelled. In its submission to the Senate’s hearings in February 2018, DSS proposed \$76,000 based on its modelling, with a maximum of \$150,000. This produces a superior result for survivors, in my view, compared to a \$65,000 average, with a maximum of \$200,000, as the Royal Commission proposed. *My conclusion comes with two caveats.*

*Caveat 1.* It is unclear how DSS arrived at the \$76,000 average payment. If we do the sums, 60,000 eligible claimants times \$76,000 = \$4.56 billion. This amount is significantly higher than the Finity Consulting (2015) estimate of \$4.01 billion for redress payments, assuming the Commonwealth is the funder of last resort.

*Caveat 2.* The amount of the average monetary payment for abuse must be separated *entirely* from amounts required for counselling or psychological care. In light of the NRS proposed payment by *the type of abuse* (penetrative, contact, exposure), this becomes a critical concern. Does DSS’s modelled average include (or exclude) amounts for counselling?

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<sup>6</sup> In the guidelines to *South Australia Stolen Generations* scheme, which began in 2017, it says that consent is required for the assessor to undertake a check of an applicant’s criminal history ‘because any serious offending may be taken into account in the final decision by the Minister’. This is not a blanket exclusion, as proposed in the NRS, and it is not one I have seen in other redress scheme applications.

<sup>7</sup> I used the interbank exchange rate in CY 2017, for which the EUR was 1.47 times the AUD.

**Recommendation 2.1:** A maximum of \$150,000 and an average payment of \$76,000 should be considered sound. The maximum and average payment are in line with my analysis of the monetary payment for four of the six top world redress schemes.

**Recommendation 2.2:** The Operator should be asked to explain how it arrived at its modelling. It should be asked how it intends to monitor redress outcomes to ensure that an average of \$76,000 is maintained.

**Recommendation 2.3:** The Operator should be asked if its redress payment modelling is separate from (or includes) amounts for counselling. The two are separate amounts and must be treated as such (see further, item 4, counselling).

### 3. Assessment framework

The NRS assessment framework is unlike any other I have seen. It is not in line with other schemes in Australia or other countries with respect to publicly available information on individualised assessments of abuse.

It does not comport with what was agreed upon at an Advisory Council meeting in March 2017. After that meeting, council members did not see or review any assessment framework.

Members of the Advisory Council were led to understand that the assessment framework would be based on 40% abuse severity, 40% impact, and 20% other factors (such as being in residential care), adopting the Royal Commission's recommendations. I do not see this reflected in the current assessment framework. The concept of 'extreme circumstances' was not used by the Royal Commission, nor was it discussed in Advisory Council meetings.

I have assembled four frameworks from other schemes: the *RIRB*, the *IRS-IAP*, and two Canadian schemes (*Nova Scotia Institutions* and *Grandview*) (Appendix 3).<sup>8</sup> Note that for all four schemes, the monetary payment was not only for sexual abuse, but also physical abuse, and depending on the scheme, emotional abuse and neglect.

When reviewing three of the four frameworks we learn that prolonged penetrative sexual abuse is viewed as the most serious. As envisaged by Ireland's Compensation Advisory Commission [CAC] 2002, the *RIRB* points system is less clear in this respect.<sup>9</sup>

However, all the frameworks are similar in characterising abuse in a more gradational and contingent way and in showing ranges of abuse and ranges in monetary amounts. Further, it is difficult to comprehend why 'extreme circumstances' can only be taken into consideration for penetrative sexual abuse, and not for other forms.

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<sup>8</sup> The Committee may also wish to review those used in Australian state schemes (Royal Commission 2015, Appendix N).

<sup>9</sup> The CAC (2002) report advised the Minister on creating the scheme. The scheme was for sexual, physical, and emotional abuse, and neglect; but the points system did not explicitly rank the differing types of abuse as the *IRS-IAP* did. The report said that 'someone who suffered the most several sexual, physical, and emotional abuse and neglect could on this system be given level 25 [the top level] in dealing with severity of abuse' (CAC 2002: 71). It is not clear from this statement if all four types of abuse had to be present. See further CAC (2002), chapter 7.

I am proposing that the NRS assessment framework should be presented in a way that shows the considerations that decision-makers will have in determining a payment. The four frameworks provide examples of how this can be done. The NRS framework must be more sensitive, appropriate, and relevant to the range of abuses that the diverse group of survivors has suffered.

I support knowmore's submission (August 2018) to the Committee at pp. 6-7, which drew from the Royal Commission's analysis of the experiences and impacts of child sexual abuse in its *Final Report* (2017b, Vol 3: 9). Specifically, the Royal Commission called attention to 'many complex and interconnected factors', including 'the characteristics of abuse (... type, duration and frequency); the relationship of the perpetrator to the child; the social, historical and institutional contexts of the abuse; [and] the victim's circumstances, experiences and characteristics ...'

The NRS framework restricts decision-makers to three types of sexual abuse, from which all subsequent determinations flow. This does not accord with the Royal Commission's conclusion that 'many complex and interconnected factors' affect victims, including how an institution responded.

The assessment framework poorly communicates to survivors how the monetary payment will 'provide a tangible recognition of the seriousness of the hurt and injury suffered by a survivor' (Royal Commission redress recommendation 15). Decision-makers may find it difficult to put the assessment framework into practice, and it is likely to hamstring just decisions.

Based on what is publicly available, I am not confident that the NRS assessment framework will promote decisions that will produce just outcomes for survivors.

**Recommendation 3.1:** The Operator should explain what sources were used, what advice was sought, and what principles informed the creation of the assessment framework.

**Recommendation 3.2:** The Operator should revise the assessment framework to make it more sensitive, appropriate, and relevant to the range of abuses that a diverse group of survivors has suffered.

The sparse research we have on survivors' judgments of monetary payments shows that they have mixed views (both positive and negative) or mainly negative views about the payments. The reasons for negative views are that survivors interpret the monetary payment as reflecting their 'value' as a person or the 'value' of suffering they experienced.

To address this problem, the Operator should communicate the rationale and meaning of the money payment (or offer) to survivors in a personalised decision letter. In *Grandview* the adjudicators gave written reasons for their decision to each survivor, and this went some way toward validating their claims (Daly 2014: 173).

**Recommendation 3.3:** The Operator should send a personalised decision letter to each claimant that explains the rationale for the award and the meaning of the monetary payment.

#### 4. Counselling

The NRS counselling component is unacceptable. When the Commonwealth redress bill was tabled in Parliament on 26 October 2017, many of us were disturbed to learn from the (then) Minister in an ABC radio interview that counselling would be capped at \$5,000 and that this would be in delegated legislation. Then, just before the NRS commencement date in 2018, we learned that it would be capped at even lower levels, depending on the kind of sexual abuse experienced. This is policy formation by stealth.

**Recommendation 4.1:** The NRS counselling component must not be limited or capped by the kind of sexual abuse experienced.

#### 5. Direct Personal Response (DPR)

Of the three elements of redress, the DPR is the least discussed by commentators, but it is the most distant from what the Royal Commission had proposed. Recommendation 5c identified three elements that institutions should provide ‘at a minimum’ (apology, opportunity to meet with a senior representative of an institution, and assurance to take steps to prevent future abuse).

Under the NRS DPR framework, ‘any one or more’ of these is acceptable (NRS Act s. 54(2)). Moreover, the institution need not provide a DPR at all; it is sufficient if ‘reasonable steps’ are taken (NRS Act s. 54(1)). It is the responsibility of the survivor to contact the institution to start the DPR process. The apology element has been diluted so that now, a statement of acknowledgement or regret is sufficient. These changes to the DPR favour the participating institutions and are not survivor-focused.

The DPR element was created from what survivors said to the Royal Commission in private sessions, and the Royal Commission viewed the three DPR elements as ‘a very important step in providing redress for a survivor’ (Royal Commission 2015: 10). The current DPR framework is weak, insufficient, and gives little incentive for institutions to be responsive to survivors’ needs.

The Royal Commission envisaged that ‘institutions should welcome feedback from survivors about the DPR they offer and provide’ (Royal Commission redress recommendation 5g). In s. 17 of the DPR framework, five reporting requirements by institutions to the Operator are given. A sixth should be added that itemises the complaints that were made to an institution and how the institution responded. The DPR framework says that each institution must have a process for dealing with complaints arising from the DPR process, but it currently does not require an institution to report these to the Operator.

**Recommendation 5.1:** The Committee should seek ways to make the DPR framework more survivor-focused and to hold participating institutions accountable to the spirit and principles of the DPR, as recommended by the Royal Commission.

**Recommendation 5.2:** Institutions should be required to report the number and nature of complaints made to them in respect of the DPR process, and how they responded, as part of their annual reporting requirements to the Operator. This could be item (f) in s. 17 of the DPR framework.

## 6. Other

There are other points to bring to the Committee's attention, including the application process, the impact of Forde Foundation grants on NRS awards, and complaints mechanisms. These are better expressed in a Q & A format.

### References (includes those in Appendices 1 and 2)

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Carman, Tara (2014). Woodlands victims wait years for decision on compensation. *Vancouver Sun*, 28 July 2014.

The Compensation Advisory Committee (January 2002). *Towards Redress and Recovery*. Report to the Minister for Education and Science, Dublin.

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Mangione, Kendra (2018). Survivors of Woodlands asylum receive compensation for abuse. *CTV News Vancouver*, 8 October 2018.

McCarthy, Seamus (16 December 2016). *Cost of Child Abuse Inquiry and Redress*. Report of the Comptroller and Auditor General (Report number 96), presented to the Dáil Éireann (Assembly of Ireland).

Ritchie, Sarah (2016). N.S. Home for Colored Children victims still waiting for lawsuit payout. *CTV Atlantic*, 26 July 2016.

Royal Commission into Institutional Responses to Child Sexual Abuse (2015). *Redress and Civil Litigation Report*. Sydney: Commonwealth of Australia.

Royal Commission into Institutional Responses to Child Sexual Abuse (2017a). *Analysis of Complaints of Child Sexual Abuse Received by Anglican Church Dioceses in Australia*. Sydney: Commonwealth of Australia.

Royal Commission into Institutional Responses to Child Sexual Abuse (2017b). *Final Report*. Sydney: Commonwealth of Australia.

DALY  
 Appendix 3

Extracted from  
 CAC (2002: 70-74)

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### Residential Institutions Redress Board Materials

This set of materials appeared in pages 70 to 74 of the 'Towards Redress and Recovery' report prepared by the Compensation Advisory Committee and presented to the Minister for Education and Science in January 2002. They have been cut and pasted for ease of reading.

#### Redress Bands

| REDRESS BAND | TOTAL WEIGHTING FOR SEVERITY OF ABUSE AND INJURY/EFFECTS OF ABUSE | AWARD PAYABLE BY WAY OF REDRESS |
|--------------|---|---------------------------------|
| V            | 70 OR MORE  | €200,000 - €300,000             |
| IV           | 55 - 69   | €150,000 - €200,000             |
| III          | 40 - 54   | €100,000 - €150,000             |
| II           | 25 - 39   | €50,000 - €100,000              |
| I            | LESS THAN 25  | Up to €50,000                   |

#### Weighting scale for evaluation of severity of abuse and consequential injury

| Constitutive elements of redress | Severity of abuse | Severity of injury resulting from abuse         |                        |                     |
|----------------------------------|-------------------|---|------------------------|---------------------|
|                                  |                   | Medically verified physical/psychiatric illness | Psycho-social sequelae | Loss of opportunity |
| Weighting                        | 1-25              | 1-30  | 1-30                   | 1-15                |



**Non-exhaustive examples of factors to be considered in weighing severity of abuse**

| TYPE OF ABUSE   | EXAMPLES  |
|-----------------|---|
| SEXUAL ABUSE    | <p>Violent anal or vaginal penetration.</p> <p>Victim made to masturbate member of staff or perform oral-genital acts.</p> <p>Sexual kissing; indecent touching of private parts over clothing.</p>   |
| PHYSICAL ABUSE  | <p>Serious injuries requiring hospitalisation; profound deafness caused by blows to ears.</p> <p>Severe beating causing e.g. a fractured limb or leaving permanent scars.</p> <p>Corporal punishment more severe than was legally sanctioned at the time, but leaving no permanent physical signs; Gross over-work involving inadequate rest, recreation and sleep.</p> |
| EMOTIONAL ABUSE | <p>Depersonalisation e.g. through family ties being severed without justification or through deprivation of affection.</p> <p>General climate of fear and apprehension.</p> <p>Stigmatisation by staff, e.g. through repeated racist remarks or hurtful references to parents</p>   |
| NEGLECT         | <p>Severe malnutrition; failure to protect child against abusive placements; inadequate guarding against dangerous equipment in work-place.</p> <p>Failure to provide legally prescribed minimum of school instruction; lack of appropriate vocational training and training in life skills.</p> <p>Inadequate clothing, bedding or heating.</p>                        |

**Non-exhaustive Examples of factors to be considered in evaluating severity of injury**

| NATURE OF INJURY   | EXAMPLES OF PARTICULAR FACTORS TO BE TAKEN INTO ACCOUNT   |
|--|---|
| <p>PHYSICAL OR PSYCHIATRIC ILLNESS</p> <ol style="list-style-type: none"> <li>1. Physical injury</li> <li>2. Physical illness</li> <li>3. Psychiatric illness</li> </ol>   | <ol style="list-style-type: none"> <li>1. Loss of sight or hearing.<br/>Loss of or damage to teeth.<br/>Permanent scar(s)/disfigurement.</li> <li>2. Sexually transmitted diseases.<br/>Respiratory diseases.<br/>Skin diseases.</li> <li>3. Severe depression with suicide attempts.<br/>Personality disorder.<br/>Post-traumatic stress disorder.</li> </ol>  |
| <p>PSYCHO-SOCIAL SEQUELAE</p> <ol style="list-style-type: none"> <li>1. Emotional disorder</li> <li>2. Cognitive impairment/<br/>educational retardation</li> <li>3. Psychosocial<br/>maladjustment</li> <li>4. Anti-social behaviour</li> </ol> | <ol style="list-style-type: none"> <li>1. Inability to show affection or trust.<br/>Low self-esteem; persistent feelings of shame or guilt.<br/>Recurrent nightmares or flashbacks.</li> <li>2. Literacy level well below capability.<br/>Impoverished thought processes.<br/>Limited vocabulary leading to communication difficulties.</li> <li>3. Marital difficulties involving sexual dysfunction.<br/>Low frustration tolerance.<br/>Shyness and withdrawal from mixing with people.</li> <li>4. Substance abuse.<br/>Compulsive stealing.<br/>Physical aggressiveness.</li> </ol> |
| <p>LOSS OF OPPORTUNITY</p>   | <p>Working below employment capacity, e.g. through having to refuse employment opportunity/promotion because of illiteracy.</p> <p>Need to concoct a false identity and to live a lie with workmates.</p> <p>Unable to pursue certain occupations, e.g. police, because of "record".</p>  |

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**SCHEDULE "D"**  
**INDEPENDENT ASSESSMENT PROCESS (IAP)**  
**FOR CONTINUING INDIAN RESIDENTIAL SCHOOL ABUSE CLAIMS**

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CONSOLIDATED IAP FOR CONTINUING IRS ABUSE CLAIMS

I: COMPENSABLE ABUSE

The following categories of claims are compensable within this IAP.

1. Sexual and physical assaults, as particularized in the Compensation Rules and Instructions below, arising from or connected to the operation of an IRS, whether or not occurring on the premises or during the school year, committed by adult employees of the government or a church entity which operated the IRS in question, or other adults lawfully on the premises, where the Claimant was a student or resident, or where the Claimant was under the age of 21 and was permitted by an adult employee to be on the premises to take part in authorized school activities.
2. Sexual or physical assaults, as particularized in the Compensation Rules and Instructions below, committed by one student against another at an IRS where:
  - a) the Claimant proves that an adult employee of the government or church entity which operated the IRS in question had or should reasonably have had knowledge that abuse of the kind alleged was occurring at the IRS in question during the time period of the alleged abuse, and did not take reasonable steps to prevent such abuse; or,
  - b) in a case in which the proven assault is a predatory or exploitative sexual assault at the SL4 or SL5 level, the defendants do not establish on a balance of probabilities that reasonable supervision was in place at the time.
3. Any other wrongful act or acts committed by adult employees of the government or a church entity which operated the IRS in question, or other adults lawfully on the premises, which are proven to have caused serious psychological consequences for the Claimant, as particularized in and causing the harms set out in the Compensation Rules and Instructions below. These claims are referred to in this document as "other wrongful acts"

For the purposes of this document, the above claims are collectively referred to as the "continuing claims".

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II: COMPENSATION RULES

|     | Acts Proven  | Compensation Points |
|-----|--|---------------------|
| SL5 | <ul style="list-style-type: none"> <li>Repeated, persistent incidents of anal or vaginal intercourse.</li> <li>Repeated, persistent incidents of anal/vaginal penetration with an object.</li> </ul>   | 45-60               |
| SL4 | <ul style="list-style-type: none"> <li>One or more incidents of anal or vaginal intercourse.</li> <li>Repeated, persistent incidents of oral intercourse.</li> <li>One or more incidents of anal/vaginal penetration with an object.</li> </ul>  | 36-44               |
| SL3 | <ul style="list-style-type: none"> <li>One or more incidents of oral intercourse.</li> <li>One or more incidents of digital anal/vaginal penetration.</li> <li>One or more incidents of attempted anal/vaginal penetration (excluding attempted digital penetration).</li> <li>Repeated, persistent incidents of masturbation.</li> </ul>  | 26-35               |
| PL  | <ul style="list-style-type: none"> <li>One or more physical assaults causing a physical injury that led to or should have led to hospitalization or serious medical treatment by a physician; permanent or demonstrated long-term physical injury, impairment or disfigurement; loss of consciousness; broken bones; or a serious but temporary incapacitation such that bed rest or infirmary care of several days duration was required. Examples include severe beating, whipping and second-degree burning.</li> </ul> | 11-25               |
| SL2 | <ul style="list-style-type: none"> <li>One or more incidents of simulated intercourse.</li> <li>One or more incidents of masturbation.</li> <li>Repeated, persistent fondling under clothing.</li> </ul>   | 11-25               |
| SL1 | <ul style="list-style-type: none"> <li>One or more incidents of fondling or kissing.</li> <li>Nude photographs taken of the Claimant.</li> <li>The act of an adult employee or other adult lawfully on the premises exposing themselves.</li> <li>Any touching of a student, including touching with an object, by an adult employee or other adult lawfully on the premises which exceeds recognized parental contact and violates the sexual integrity of the student.</li> </ul>  | 5-10                |
| OWA | <ul style="list-style-type: none"> <li>Being singled out for physical abuse by an adult employee or other adult lawfully on the premises which was grossly excessive in duration and frequency and which caused psychological consequential harms at the H3 level or higher.</li> <li>Any other wrongful act committed by an adult employee or other adult lawfully on the premises which is proven to have caused psychological consequential harms at the H4 or H5 level.</li> </ul>                                     | 5-25                |

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| Level of Harm | Consequential Harm   | Compensation Points |
|---------------|--|---------------------|
| H5            | Continued harm resulting in serious dysfunction.<br><u>Evidenced by:</u> psychotic disorganization, loss of ego boundaries, personality disorders, pregnancy resulting from a defined sexual assault or the forced termination of such pregnancy or being required to place for adoption a child resulting therefrom, self-injury, suicidal tendencies, inability to form or maintain personal relationships, chronic post-traumatic state, sexual dysfunction, or eating disorders.   | 20-25               |
| H4            | Harm resulting in some dysfunction.<br><u>Evidenced by:</u> frequent difficulties with interpersonal relationships, development of obsessive-compulsive and panic states, severe anxiety, occasional suicidal tendencies, permanent significantly disabling physical injury, overwhelming guilt, self-blame, lack of trust in others, severe post-traumatic stress disorder, some sexual dysfunction, or eating disorders.   | 16-19               |
| H3            | Continued detrimental impact.<br><u>Evidenced by:</u> difficulties with interpersonal relationships, occasional obsessive-compulsive and panic states, some post-traumatic stress disorder, occasional sexual dysfunction, addiction to drugs, alcohol or substances, a long term significantly disabling physical injury resulting from a defined sexual assault, or lasting and significant anxiety, guilt, self-blame, lack of trust in others, nightmares, bed-wetting, aggression, hyper-vigilance, anger, retaliatory rage and possibly self-inflicted injury. | 11-15               |
| H2            | Some detrimental impact.<br><u>Evidenced by:</u> occasional difficulty with personal relationships, some mild post-traumatic stress disorder, self-blame, lack of trust in others, and low self-esteem; and/or several occasions and several symptoms of: anxiety, guilt, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.  | 6-10                |
| H1            | Modest Detrimental Impact.<br><u>Evidenced by:</u> Occasional short-term, one of: anxiety, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.   | 1-5                 |

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| Aggravating Factors<br>Add 5-15% of points for Act and Harm combined<br>(rounded up to nearest whole number)    |
|---|
| Verbal abuse  |
| Racist acts   |
| Threats   |
| Intimidation/inability to complain; oppression  |
| Humiliation; degradation  |
| Sexual abuse accompanied by violence  |
| Age of the victim or abuse of a particularly vulnerable child   |
| Failure to provide care or emotional support following abuse requiring such care                                |
| Witnessing another student being subjected to an act set out on page 3  |
| Use of religious doctrine, paraphernalia or authority during, or in order to facilitate, the abuse.             |
| Being abused by an adult who had built a particular relationship of trust and caring with the victim (betrayal) |

| Future Care   | Additional Compensation (Dollars) |
|---|-----------------------------------|
| General – medical treatment, counselling            | up to \$10,000                    |
| If psychiatric treatment required, cumulative total | up to \$15,000                    |

| Consequential Loss of Opportunity |   | Additional Compensation (Points) |
|-----------------------------------|---|----------------------------------|
| OL5                               | Chronic inability to obtain employment  | 21-25                            |
| OL4                               | Chronic inability to retain employment  | 16-20                            |
| OL3                               | Periodic inability to obtain or retain employment   | 11-15                            |
| OL2                               | Inability to undertake/complete education or training resulting in underemployment, and/or unemployment | 6-10                             |
| OL1                               | Diminished work capacity – physical strength, attention span  | 1-5                              |

| Compensation Points | Compensation (\$)      |
|---------------------|------------------------|
| 1-10                | \$5,000-\$10,000       |
| 11-20               | \$11,000-\$20,000      |
| 21-30               | \$21,000-\$35,000      |
| 31-40               | \$36,000-\$50,000      |
| 41-50               | \$51,000-\$65,000      |
| 51-60               | \$66,000-\$85,000      |
| 61-70               | \$86,000-\$105,000     |
| 71-80               | \$106,000-\$125,000    |
| 81-90               | \$126,000-\$150,000    |
| 91-100              | \$151,000-\$180,000    |
| 101-110             | \$181,000-\$210,000    |
| 111-120             | \$211,000 to \$245,000 |
| 121 or more         | Up to \$275,000        |

Proven Actual Income Loss

Where actual income losses are proven pursuant to the standards set within the complex issues track of this IAP, an adjudicator may make an award for the amount of such proven loss up to a maximum of \$250,000 in addition to the amount determined pursuant to the above grid, provided that compensation within the grid is established without the allocation of points for consequential loss of opportunity. The amount awarded for actual income loss shall be determined using the legal analyses and amounts awarded in court decisions for like matters.



From: CAC (2002:98-101)

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**APPENDIX E**

**Two Canadian matrix schemes**

**Nova Scotia Redress Programme**

A memorandum of understanding to compensate victims of institutional abuse was agreed between the Government of Nova Scotia and counsel representing 350 victims. The amount of compensation varied according to the degree of abuse, which was classified into 12 categories. For example, those who suffered both severe sexual and physical abuse received compensation ranging from \$100,000 to \$120,000; those who suffered severe physical abuse up to \$60,000; minor physical abuse, up to \$5,000. Money was also provided for counselling. For those receiving social assistance, the compensation was not deducted from their regular benefits. Lawyers representing victims agreed to accept payment of fees from the Government as full settlement of their accounts, and agreed not to enforce contingency fee agreements against the victims.

The average award in 1,130 claims settled in 1996-1999 was \$25,440; on average an additional \$6,000 was paid for counselling.

**Compensation categories**

| Category | Description  | Range of awards       | Counselling allotment |
|----------|--|-----------------------|-----------------------|
| 1        | Severe sexual and severe physical                                      | \$100,000 - \$120,000 |                       |
| 2        | Severe sexual and medium physical<br>Severe physical and medium sexual | \$80,000 - \$100,000  |                       |
| 3        | Severe sexual and minor physical<br>Severe physical and minor sexual   | \$60,000 - \$80,000   | \$10,000              |
| 4        | Severe sexual  | \$50,000 - \$60,000   |                       |
| 5        | Severe physical<br>Severe physical and sexual interference             | \$25,000 - \$60,000   |                       |
| 6        | Medium physical and medium sexual                                      | \$50,000 - \$60,000   |                       |
| 7        | Minor sexual and medium physical<br>Minor physical and                 | \$40,000 - \$50,000   | \$7,500               |

|    |  |                     |         |
|----|--|---------------------|---------|
|    | medium sexual  |                     |         |
| 8  | Medium sexual  | \$30,000 - \$50,000 |         |
| 9  | Minor sexual and minor physical                            | \$20,000 - \$30,000 |         |
| 10 | Medium physical<br>Medium physical and sexual interference | \$5,000 - \$25,000  | \$5,000 |
| 11 | Minor sexual   | \$5,000 - \$30,000  |         |
| 12 | Minor physical and/or sexual interference                  | \$0 - \$5,000       |         |

**Categories of abuse**

| Category        | Type of abuse   | Duration/number of incidents  | Aggravating factors   |
|-----------------|---|---|---|
| Severe Sexual   | Anal intercourse, vaginal intercourse, sexual intercourse, oral intercourse   | Repeated, persistent, characterised as "chronic" or "severe"                                  | Verbal abuse, withholding treatment, long-term solitary confinement, racist acts, threats, intimidation |
| Severe Physical | Physical assault, with broken bones (e.g. nose, arm, etc), or other serious trauma, with or without hands (i.e. objects), with evidence of hospitalisation or treatment or permanent partial disability | Repeated, persistent, characterised as "chronic" or "severe"                                  | Verbal abuse, withholding treatment, long-term solitary confinement, racist acts, threats, intimidation |
| Medium Sexual   | Anal intercourse, vaginal intercourse, sexual intercourse, oral intercourse, masturbation or fondling, digital penetration  | One or more incidents<br>Shorter duration<br><br>Numerous incidents<br>Repeated<br>Persistent | Verbal abuse, withholding treatment, solitary confinement, racist acts, threats, intimidation           |
| Medium physical | Physical assault, with broken bones (e.g. nose, arm, etc), or other serious physical trauma, with or without hands (i.e. objects), with evidence of hospitalisation or treatment if available           | One or more incidents   | Verbal abuse, withholding treatment, solitary confinement, racist acts, threats, intimidation           |

|                     |  |   |   |
|---------------------|--|---|---|
|                     | Chronic beatings over a significant period of time                           |   |   |
| Minor sexual        | Fondling, masturbation, oral intercourse, digital penetration                | Fewer incidents<br><br>Short duration   | Verbal abuse, withholding treatment, solitary confinement, racist acts, threats, intimidation |
| Minor physical      | Physical assault, with or without hands (i.e. objects) (aka common assaults) | Isolated incidents, short duration  | Verbal abuse, solitary confinement, racist acts, threats, intimidation                        |
| Sexual interference | Watching, comments, intimidation, touching                                   | Numerous incidents, repeated, persistent, one or more incidents, shorter duration | Verbal abuse, racist acts, threats, intimidation  |

### ***The Ontario "Grandview School" Scheme***

This scheme was arrived at in 1994 by a process of negotiation between the Ontario Government and the Grandview Survivors' Support Group. The settlement package consisted of general benefits (intended to benefit society as a whole), individual benefits (for those individuals who claimed specific incidents of abuse) and group benefits (for all former wards of the institution).

Persons applying for individual benefits were required to complete a sworn application and provide supporting documentation, including a declaration of independent legal advice. This was done to ensure that the individual understood the terms of the agreement and the legal implications of signing a release. The adjudicator determined whether the victim had been abused or mistreated; if satisfied on this ground, he/she then assessed the claim for direct financial support. In doing so, the adjudicator was obliged to use a "Matrix", but only as "a guide".

The full complement of benefits payable to an individual was as follows:

- \* A financial award for pain and suffering which ranged between \$3,000 and \$60,000, according to the matrix;
- \* Major medical/dental award: in addition to any direct financial award, the adjudicator could, in the absence of insurance cover, give directions for the payment by the Government to the service providers of additional sums not exceeding \$10,000 to cover exceptional medical or dental costs;
- \* Therapy/counselling to a maximum of \$10,000;
- \* Residential treatment (e.g. for substance abuse or sexual abuse) to a maximum of \$5,000;
- \* Funding for vocational or educational training, career counselling/psycho-educational assessment, financial training or budget counselling;
- \* A contingency fund of up to \$3,000 per individual to respond to individual needs for items (e.g. dental treatment) not sufficiently covered by specific benefits;
- \* An individual acknowledgement/letter of apology from the Ontario Government for the abuse or mistreatment

**Financial Awards Matrix**

| Acts alleged  | Harm/injury  | Evidence/proof   | Award range   |
|---|--|--|---|
| Repeated serious sexual abuse (sexual intercourse, anal or oral) and physical beating and threats   | Continuing harm resulting in serious dysfunction. Adjudicator applies standards set out in the Agreement.  | Possible: medical, psychological, therapist, police reports, direct evidence of victim if credible, witnesses, documentary, conviction of perpetrator. | \$40,000 - \$60,000   |
| Physical abuse involving hospitalisation with broken bones or serious internal injuries   | Harm sufficient to justify award must be demonstrated. Adjudicator applies standards set out in the Agreement.   | Same as above.   | \$20,000 - \$40,000<br>"mid range"  |
| Isolated act of sexual intercourse, oral or anal sex or masturbation, with threats of abuse of position of trust  | Harm sufficient to justify award must be demonstrated. Adjudicator applies standards set out in the Agreement.   | Same as above.   | \$20,000 - \$40,000<br>"mid range"  |
| No physical interference - forms of "mistreatment", i.e. cruel conduct that was prolonged and persistent. Confinement in segregation alone will not attract an award. Segregation may be justified in accordance with administrative authority. Abusive segregation cannot be so justified. | Long term detrimental impact - conduct must not have been lawful or condoned. The nature of the harm will determine, once proof of the acts is accepted, whether a minimal recovery or a higher award. | Same as above.   | \$3,000 on proof of acts of abuse or mistreatment.<br><br>\$10,000 - \$20,000, where serious harm found by the adjudicator. |