YOU ARE NOT ALONE.
IT WAS NOT YOUR FAULT.
YOU HAVE COURAGE.
YOU HAVE CHOICES.
YOU HAVE POWER.

We’re here to help.

Breaking the silence. Raising Awareness. Fighting for you.

A Guide for Childhood Sexual Abuse Survivors


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TRUST DESTROYED, SECRETS KEPT
Anyone can be sexually assaulted. Girls, boys, women and men can all be the victims of sexual predators.

Often the very people you're supposed to trust are the perpetrators of these horrible crimes.

Survivors of sexual assaults often keep these crimes secret because of threats, fear, guilt or shame.

UNDERSTANDING
If you were sexually assaulted, your life has probably been affected in many ways. Almost everything about you may have suffered — your relationships, your education, and your career may have all been hurt by the childhood trauma. You may have experienced fear, guilt, hopelessness, depression, anger and confusion. You may have turned to drugs or alcohol to numb the pain.

Many survivors of childhood sexual abuse come to the realization that the pain they have is rooted in the abuse they suffered as children. Sometimes decades pass before a survivor is able to break the silence and start healing.

YOU HAVE CHOICE. YOU HAVE POWER.
For some survivors, exploring the possibility of taking action against the abuser(s) is an important part of the healing process. There are options available.

This booklet is to help you understand your options and, in particular, help you decide whether suing those responsible for the sexual abuse is the right choice for you.

YOU HAVE COURAGE
If you are reading this, you have great courage. You are breaking the silence and exposing the secrets.

For many survivors of sexual abuse, the first step to recovery is telling someone.

“I don’t want to survive. I want to live.”
Those were words uttered by the first sexual abuse client that lawyer Simona Jellinek represented. Since then, Simona has been dedicated to helping her clients empower themselves and make healthy choices on their road to living a better life.
GOING TO THE POLICE

There is no statute of limitations for reporting sexual assaults. If there is enough evidence, the police will lay charges. It is important for any survivor to understand that even if the police do not lay charges, it doesn’t mean they don’t believe you. Rather, there may not be enough evidence to legally proceed. If the accused pleads not guilty, you will be required to provide evidence at the criminal trial and be cross-examined by the accused’s lawyer.

It is very difficult to get a conviction in a criminal case. For this to happen, the judge or jury must be satisfied ‘beyond a reasonable doubt’ of the guilt of the accused. This is an extremely high standard.

If the accused is convicted or pleads guilty, you may submit a victim impact statement to tell the judge how the assault has affected you. As a survivor, it is important for you to understand that while reporting the sexual assault to the police can be very empowering, once the police are involved your ability to control the process will be limited.

For information - www.torontopolice.on.ca/sexcrimes/

THE CRIMINAL INJURIES COMPENSATION BOARD

The Criminal Injuries Compensation Board compensates victims of violent crimes.

An application must be made within two years of the incident, although extensions are often granted for childhood sexual abuse. The application process may also include obtaining information from medical professionals and others. The offender may be notified of your application and hearing. The hearing can be in writing, or in person. The Board will notify you of its decision and you have a right to appeal the decision if you do not agree with it.

For information - www.cicb.gov.on.ca
SUING THOSE RESPONSIBLE

Sometimes, exploring the possibility of suing the abuser(s) is an important part of the healing process. If you sue, you will be asking the Court to compensate you for what happened. If a judge or a jury believes you were abused or otherwise harmed, you will receive compensation for the damage that was caused.

Although the direct goal of suing is obtaining compensation, sometimes the act of taking control and ‘doing something to them’ is an equally important component to survivors. Unlike reporting the crime to the police, if you choose to sue, you retain control of what happens. It is your decision to proceed to a trial, accept a settlement, or discontinue the claim altogether. For many survivors, having control is an integral part of the healing.

DO I HAVE A CLAIM?

If you were sexually assaulted as a child, you may have a claim against the person who assaulted you, and also against other people who can be found responsible. Often, the perpetrator of the abuse is dead or does not have any money to pay, so we look to see if there are institutions that may, in law, be responsible as well.

OPTIONS

WHO ELSE CAN BE HELD RESPONSIBLE?

- Children’s Aid Society for the assaults of a foster parent
- Religious institutions for the assaults of priests or ministers
- Children’s organizations, such as the Scouts Canada or Big Brothers, may be held responsible for assaults by their volunteers or employees
- School boards for assaults by teachers or staff
- Other institutions or government agencies, depending on your situation
In a civil case, you, the plaintiff, must prove your case on a balance of probabilities. That means that as long as your case is even a little stronger than the defendant’s case, you have proven your case.

Because sexual abuse is by its very nature a secret crime, in most cases there is no ‘direct evidence’. Seldom do we have photographic proof of the assaults or eyewitnesses. Sometimes our investigations reveal previous complaints against the perpetrator or negligence on the part of the institution that allowed the perpetrator to commit the sexual assaults.

Sometimes the case rests on your own credibility. But, unlike perhaps when you were a child, your voice is heard.

**LIABILITY AND DAMAGES**

In order to be successful in a civil case, you must prove liability and that your damages were caused by the abuse.
DAMAGES

GENERAL DAMAGES

In 1977, the Supreme Court ruled that no matter how badly you were hurt through someone else’s fault, the maximum amount that could be awarded is $100,000. With inflation, the maximum recoverable today is approximately $340,000.

Cases of sexual abuse generally do not attract the upper limit of general damages. In fact, it’s rare for a case of sexual abuse to be awarded more than $250,000 for general damages. Although no two cases are alike, many awards for general damages fall in the $25,000 to $175,000 range.

When assessing general damages, courts look at many factors, including what happened, whether the perpetrator was in a position of trust over you, and how much your life has been adversely affected.

TWO IMPORTANT POINTS TO REMEMBER:

1. No amount of money will ever compensate you for what happened.

2. No matter the amount of compensation you receive, it is not a reflection of the worth of your life. It is only a symbol intended to recognize that something bad happened to you and it was not your fault.

SPECIAL DAMAGES

Past and future income loss, costs related to therapy, and medication and rehabilitation costs are all classified as special damages.

THERAPY AND MEDICAL COSTS

Many survivors need counseling and therapy to cope with the effects of their childhood trauma. Sometimes, medication is helpful with depression or anxiety. In most cases, claims can be made for both past expenses associated with care costs as well as future care needs.

INCOME LOSS

Many people who were abused as children have difficulties in school and later with their jobs. Some survivors find it difficult to live up to what they know is their potential, while others travel from job to job and feel they never fit in. Authority issues, trust issues and lack of self confidence often all contribute to survivors’ inability to obtain or maintain good jobs.

Courts are recognizing that childhood sexual abuse can have a long-term impact on a person’s education and career.

Compensation for income loss, both past and future, is available for survivors. However, it is very important to realize that although judges and juries are getting better at compensating for loss of income, it is not easy to prove these claims. Courts across the country have awarded survivors as little as $5,000 for loss of income, to as much as $500,000 for loss of income. Each case is different and evaluated on its own unique facts.
CAUSATION

WHAT IS CAUSATION

Simply put, causation is proving the harm that was done (the assault) caused the harm that was created (for example, pain and suffering or loss of income).

If you break your leg slipping on an icy sidewalk, your lawyers can point to the broken bone on an x-ray.

However, in cases of sexual assault, most of the injuries are not physical in nature, and the ones that are generally heal quickly. Most injuries caused by sexual assault are emotional and psychological in nature and, as such, are difficult to prove.

In order to show causation, all relevant documents such as medical and employment histories are obtained. Often psychological assessments and reports are requested to show the impact of the abuse.

Causation is not an easy concept to understand or apply. Judges and juries understand that childhood sexual abuse causes problems. The issue however is that there may be other factors in a survivor’s life experience that have also contributed to ongoing emotional and psychological problems.

WHAT CAUSES WHAT?

A court will look at all the bad and good things in your history to try and figure out the negative impact the childhood sexual abuse has had on your life.

Courts will not attribute all the bad things in your life to the sexual abuse alone. But, courts do understand that for many survivors, the sexual abuse is a major contributing factor to their difficulties.
HOW LONG WILL THE CASE TAKE?

Each case is different, but typically most cases take between two and five years. Some cases finish in less time and some last much longer.

A case can settle at any time in the process. Some cases settle shortly after they start, and some settle the day before the trial is set to begin.

Each case is unique, most cases follow a similar process:

1. Information gathering
2. Filing the claim
3. Exchanging documents
4. Examinations for discovery
5. Medical/psychological assessments
6. Mediation
7. Pre-trial
8. Trial

A lawsuit can settle prior to trial at any point in the process.
STEP 2 - FILING THE CLAIM
When we have all the information and records necessary, we file the Statement of Claim with the Court. This is the first official legal step.

The claim is then given to the defendants and they respond by giving us their Statement of Defence.

STEP 3 – EXCHANGING DOCUMENTS
During the case, we continually obtain records and documents about you. Likewise, the defendant(s) sometimes have records about you or other necessary documents. We must give our records to the defendant(s). Likewise, they must disclose their documents to us.

STEP 4 – EXAMINATIONS FOR DISCOVERY
The examination for discovery is one of the most important steps in any lawsuit.

It is an official step, that takes place at the office of the Official Examiner, in the front of a court reporter. You are sworn to tell the truth (or you can take an oath) and the lawyer for the defendant has the opportunity to ask you questions about what happened and how it has affected your life.

Prior to the examination, we'll prepare you for the day. We’ll go over your documents and your history, and help you understand what will happen on the day of the examination. We’ll attend the examination with you, and make sure all the rules are followed.

Most survivors find the examination to be stressful. However, it is also an opportunity to tell the defendants just what happened, and how much your life has been changed because of the sexual abuse. Many survivors feel a sense of accomplishment and relief after the examination.

The examination is your opportunity to tell your side of the story.

STEP 5 – PSYCHOLOGICAL ASSESSMENTS
Often, as part of the case, we will arrange a psychological assessment by an expert to determine how the sexual abuse has affected your life. Sometimes, the defendants will ask for their own expert to assess you and provide an opinion.

These experts can testify at trial and help the court determine how your life has been affected by the sexual abuse.
**PROCESS**

**STEP 6 – MEDIATION**

Statistically, most civil cases do not end in a trial – they will settle at some point during the litigation. One of the best times to settle your case will be at the mediation.

A mediation is a meeting between both sides in front of a mediator who helps us negotiate a settlement. The mediator will speak to both sides privately and try to help us settle.

Sometimes we have more than one mediation in a case. If both sides are willing to keep working on a settlement, we may ask for a second or even a third mediation.

**STEP 7 – PRE-TRIAL**

If the case has not settled after a mediation, you must attend a pre-trial in front of a judge.

The judge will listen to both sides and try to act as a mediator and resolve the case. The judge will also give an opinion on how strong your case is on liability and damages.

**STEP 8 – THE TRIAL**

If your case does not settle, then ultimately the court will decide the case at a trial.

A trial is a very stressful experience for most people. You will be required to give evidence and be cross-examined. Our experts and other witnesses will also give evidence. Finally, the lawyer will argue their cases, and then a judge or a jury will make a decision on liability and damages.

For some survivors, a trial is an important step. It gives them a platform to tell their story and have a judge decide.

For most survivors though, a trial takes away their control. If the case goes to a judge or a jury, then control is given to the court.

Also, it is important to understand and accept that a trial is always risky. Because the range of damages in childhood sexual assault cases can be very big, many survivors prefer to make their own decisions regarding settlement, rather than giving a court control over the compensation they receive.

Sometimes, though, going to trial is the only way to receive reasonable compensation and to be heard.
HOW LONG DO I HAVE TO SUE?

Most survivors are able to sue even if the abuse happened decades ago.

In Ontario, we have legislation and case law that can be helpful to survivors of childhood sexual abuse. There is an understanding that the majority of childhood sexual abuse survivors do not make the connection between the sexual abuse they suffered as children and the difficulties that they may have as adults.

Sometimes a survivor is so psychologically and emotionally harmed by the abuse that they are not capable of pursuing litigation for many years.

However, it is important to understand that once a survivor is capable of pursuing litigation, a lawsuit must be started within two years.

In general, the earlier a lawsuit is started, the easier it will be to fall within the limitation period, find old documents, and speak to witnesses or other people that may have information about what happened.

IS IT TOO LATE TO SUE?

That question is difficult to answer without knowing all the relevant information. It is only with all the facts that a lawyer is able to properly advise you as to whether the limitation period is a problem in your case.
WHAT WE DO

At Jellinek Law Office, our focus is on you and helping you become empowered through suing.

If you choose to sue, we will guide you through the process and help you obtain a successful outcome.

We also understand that success does not mean the same thing to everyone. For some survivors, knowing they can sue is enough. For others, obtaining as much compensation as possible is what they need to feel successful. Either way, the lawyers and staff at Jellinek Law Office will help you with your options and journey.

Childhood sexual abuse cases are unique and complex. There are few lawyers in Canada that have our level of knowledge and experience.

KNOWLEDGE IS POWER

The more information you get about your options, and their pros and cons, the better able you’ll be to make a healthy choice.

Most people have the option to:

1. go to the police
2. apply to the Criminal Injuries Compensation Board
3. sue the perpetrator and others responsible
4. choose not to pursue any of these actions

Speaking with a lawyer can help you understand which option or options are best for you.

WHAT DO I DO?

By reading this booklet, you’ve taken a huge step towards taking back control of your life, and making positive changes.

What you do next depends on what you want. For some, holding the perpetrator accountable is what’s important. For others, receiving acknowledgement that it was not their fault is essential.

There is no right thing to do. There is only the right thing for you to do.

NEXT STEPS

At Jellinek Law Office we only represent survivors of abuse and injury.

We do not represent perpetrators, employers or institutions.

We work hard to earn your trust and help you achieve the results you need.
SIMONA T. JELLINEK

SIMONA T. JELLINEK believes that fighting to help those who’ve been hurt is the right thing to do.

Shortly after becoming a lawyer, in 1996, she started representing survivors of sexual abuse, and has now helped a wide variety of individuals through litigation.

Simona was part of a small team that drafted the Law Society of Upper Canada’s guidelines for all lawyers in Ontario handling sexual abuse cases. She is also a member of the Toronto Police Services Sexual Assault Advisory Committee.

Simona has twice chaired the Canadian Institute’s Conference on Institutional Liability for Sexual Abuse, and has also chaired conferences for the Ontario Trial Lawyer’s Association. She is dedicated to raising awareness about childhood sexual abuse, and believes that through awareness, survivors find courage, hope and power.

Simona’s been successful in cases against individuals, churches, Children’s Aid Societies, Big Brothers, and the Boy Scouts.
ERIN E. ELLIS

ERIN E. ELLIS started her law career in 2007 working for insurance companies. But she soon realized it wasn’t a good fit for her. Erin wanted to help people, not companies.

Since joining Jellinek Law Office, Erin has found her calling in helping survivors of sexual abuse.

Erin is dedicated to guiding survivors through the legal process, and helping them achieve their desired goals through litigation.

She is a member of the Ontario Trial Lawyer Association, the Advocate’s Society, and the Ontario Bar Association.

Erin, Simona and everyone at Jellinek Law Office want to help you through the litigation process and help you achieve success.