

A guide for
childhood sexual
abuse survivors



Knowledge. Compassion.
Dedication. Experience.



**JELLINEK ELLIS
GLUCKSTEIN**
LAWYERS

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 OFFICE FOR VICTIMS OF CRIME

The Office for Victims of Crimes (OVC) provides advice to the Attorney General on victims' issues, including:

- » making sure the principles in Ontario's Victims' Bill of Rights are respected
- » developing, implementing and maintaining provincial standards for services for victims
- » using the Victims' Justice Fund to support and improve services for victims
- » research and education on laws and policies on the treatment of victims and ways to prevent further victimization

The OVC's advice is informed by its board members' expertise and through consultation with a range of people, including:

- » those who have experienced victimization and/or provided support to victims
- » criminal justice personnel
- » academics
- » others with expertise in victimization

FOR INFORMATION

www.ontario.ca/page/office-victims-crime

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.

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*

what do I need to prove?

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.

LIABILITY

Liability means that one or more people (or institutions) are legally responsible for the harm that was caused to you.

If the perpetrator of the abuse is alive, we can sue for assault, and possibly also breach of fiduciary duty, if the perpetrator was in a trust-like relationship with you.

Even if the perpetrator is dead, we may still be able to sue others who may be responsible in law. In many cases we can sue the institution or company that placed you in contact with the perpetrator and failed you in some way, allowing the abuse to happen in the first place.



DAMAGES

In Canada there are essentially two main types of damages. The first is called general damages, often referred to as pain and suffering. The second is called special damages and includes loss of income and therapy costs.

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 \$400,000.

Courts are recognizing the profound effect that sexual abuse has on survivors, and general damage awards reflect this awareness. Although no two cases are alike many awards for general damages can be hundreds of thousands of dollars.

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.

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 more than \$500,000 for loss of income. Each case is different and evaluated on its own unique facts.

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.*

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.

STEPS IN A LAW SUIT

Although 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 1 – INFORMATION GATHERING

Gathering the necessary information and documents in a historical sexual abuse case can be very time consuming. The first part involves an in-depth interview with your lawyer.

Once we have the information about what happened, and your life circumstances, we then try to obtain documents and information from other people and institutions, such as employers, school records, medical and psychological records.

For some survivors, the initial meeting with us can be difficult, because of all the information we need. For some, it is the first time they share their experience in depth with anyone. We try our best to make it as painless as possible and to provide whatever support is needed.

Sometimes this step takes a very long time, because of the amount of records that need to be obtained.

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.

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.



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.

Mediations and you

You are the most important person at a mediation – you have the ultimate decisionmaking power and control over whether to make offers, accept offers, or decide to go to trial.

Your lawyers will advise you as to whether any offers presented are worth accepting, but, ultimately the decision is yours.

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 crossexamined. 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.



LIMITATION PERIODS FOR SEXUAL ASSAULT AND ABUSE

In Ontario, the standard 2-year limitation does not apply in most cases of sexual assault and abuse. In 2016, Ontario changed the Limitations Act to remove the limitation period for civil lawsuits relating to sexual assault and abuse.

Why wait to bring a claim years later? Times have changed. With the RCMP sexual harassment and Harvey Weinstein lawsuits making international news, more and more survivors are now breaking their silence.

Oftentimes, victims:

- » Do not realize the effects of sexual abuse until years later;
- » Struggled to define their experience as “assault”;
- » Were afraid their story would not be believed; and
- » Did not have the emotional and financial means to pursue a lawsuit.

A lawyer can assist you in deciding whether or not to pursue a civil sexual assault claim.

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.

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. sue the perpetrator and others responsible
3. choose not to pursue any of these actions

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





JELLINEK ELLIS GLUCKSTEIN LAWYERS

WHAT WE DO

At Jellinek Ellis Gluckstein Lawyers, 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 Ellis Gluckstein 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.

Who we represent

At Jellinek Ellis Gluckstein Lawyers 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

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Simona Jellinek has advocated for sexual abuse survivors since 1998. She is one of Canada's most experienced and successful lawyers in the complex and unique area of sexual abuse and assault litigation. She has dedicated her life to helping survivors of sexual trauma in their journey towards healing and achieved some of the highest settlements for sexual abuse cases in Canada.

Simona has also been instrumental in changing important pieces of legislation including the removal of the limitation period in sexual abuse and assault cases.

Simona's has been recognized by her peers with several awards and is sought after by media outlets to provide insight and commentary on sexual abuse and assaults in Canada and abroad.





ERIN E. ELLIS

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Erin has over a decade of experience advocating for survivors of both recent and historical sexual and physical abuse and has a deep understanding of civil abuse litigation. Her extensive experience allows her to work effectively with her clients to determine the best approach for each individual case. Erin is passionate about representing survivors and uses compassion, dedication, and strong advocacy skills to assist her clients.



LINDA O'BRIEN

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Linda has been a civil litigation lawyer for almost three decades. Her practice focuses exclusively on seeking justice for survivors of sexual abuse. Linda feels absolutely privileged to be trusted with the intimate and personal stories of each of her clients and seeks to ensure they are heard while aiming to protect them from further trauma during the litigation process. Each day Linda feels inspired by the courage and bravery of survivors and hopes her advocacy on their behalf will lessen the burden of the pain they bear.



IVANNA IWASYKIW

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Ivanna Iwasykiw's personal injury practice is focused on representing survivors of sexual assault, childhood sexual abuse, sexual harassment, revenge porn, invasions of privacy, and institutional abuse. Ivanna is a compassionate, practical, relentless lawyer, and a fierce advocate. She hopes that in assisting survivors in seeking justice and closure, she can help them find their power again.



VANSHIKA DHAWAN

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Vanshika Dhawan's practice focuses on representing survivors of sexual assault and childhood sexual abuse. She has years of experience in sexual and gender-based violence prevention and response advocacy, and is passionate about helping survivors better understand and navigate the legal system.



ELAINE BRIGHT

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Elaine Bright received her law degree from Osgoode Hall Law School, and an MSW from the University of Toronto and she is passionate about providing access to justice to people who have barriers to knowing and asserting their rights. Since 2012, she has represented Indigenous clients in Northern Ontario in seeking compensation for abuse that they experienced in residential schools, day schools, foster homes, and other settings.

At Jellinek Ellis Gluckstein we understand the unique challenges faced by our Indigenous clients. We recognize that the needs and concerns of Indigenous individuals and communities differ from those of other groups.

Our team is committed to providing culturally sensitive and respectful services to our indigenous clients. We have extensive experience working with indigenous communities and are well-versed in the legal issues that impact them.

We are dedicated to advocating for the rights of Indigenous individuals and communities. We believe in building strong relationships with our clients and working together to achieve a successful outcome. In addition to providing legal representation, we also strive to educate our clients and the community on their legal rights and options. We understand that many Indigenous individuals may face systemic barriers that impair them from accessing the legal system. We believe that every individual has the right to access fair and just legal representation, regardless of their background. That is why we are committed to advocating for the rights of Indigenous individuals who have been sexually abused or sexually assaulted. Our goal is to ensure that our indigenous clients receive the compensation they deserve and are able to move forward with their lives.

In addition to providing legal services, we are committed to giving back to the Indigenous community. We support local organizations and initiatives that work towards promoting justice and equality for Indigenous individuals. It is important for us to not only be advocates in the courtroom, but also within the larger communities we serve.

client testimonials

"In the summer of 1979, I was a victim of assault.

Decades later, I met a lawyer who was representing one of the other plaintiffs in a civil lawsuit against the organizations which employed the perpetrator.

In what was a very pleasant experience given the unfortunate circumstances, Erin Ellis proved herself to be an incredible lawyer.

What was most amazing though, besides her legal acumen, was her calm and comforting personality, which proved very reassuring throughout the entire process. Although these issues are very sensitive and raw, Erin and her staff never made me feel uncomfortable in the least bit.

Further to the financial settlement, other safeguards were created so as to obviate any further circumstances such as mine.

It was amazing to see how one extremely competent lawyer can take on numerous institutions and law firms with such grace and prevail overwhelmingly.

Thank you, Erin, for representing me as professionally as you did!"

"The best legal care I could imagine. Finding the right lawyers for seeking legal recourse for sexual harm is challenging at best.

JEGL has struck an unusually fine balance of providing trauma informed care and legal rigor and competence that is practically impossible to find in the world of civil law.

I can't say enough about the integrity, kindness, competence and dedication they demonstrate in the process of serving their clients."



You are not alone.
It was not your fault.
You have courage.
You have choices.
You have power.

WE'RE HERE TO HELP.



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