

**PURSUING COMPENSATION FOR  
VICTIMS OF CRIME: CIVIL  
LAWSUITS**

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**THE GATEHOUSE  
TRANSFORMING TRAUMA  
INTO TRIUMPH CONFERENCE**

April 23, 2013

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# LIABILITY

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## A) Use of a criminal conviction

- Evidence Act s. 22.1
- Proof of conviction of crime (in absence of evidence to contrary) is proof crime committed
- Practically conclusive on the issue of whether the assault or abuse was committed
- Makes the case against the perpetrator very strong

# LIABILITY

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## B) What if there is no conviction?

- **There may still be civil liability.**
- **O.J. Simpson**
- **Beyond a reasonable doubt vs. balance of probabilities i.e. 51%**
- **Different defences, e.g. Unreasonable delay**

# LIABILITY

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## C) Liability of Institutions

### ■ Two ways Institutions can be liable

#### 1) Negligence

- » Hiring
- » Supervising
- » Responding to complaints

#### 2) Vicarious Liability

- » Residential Schools
- » Training Schools
- » Churches

# DAMAGES

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## A) General Damages – Pain and Suffering

- Cap approximately \$350,000.00
- Factors
  - age of Victim
  - relationship between victim and perpetrator
  - nature and extent of abuse
  - impact on victim
- A few cases at or near the Cap
  - 2 over the cap

# DAMAGES

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## **B) Past and Future Therapy**

## **C) Income Loss**

- **Missed time from work**
- **Failed to achieve potential**
- **Loss of earning capacity**

# DAMAGES

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## D) Punitive Damages

## E) Family Law Act Claims

- **s. 61 – Children, grandchildren, parents, grandparents, brothers and sisters can sue for pecuniary losses**
  
- **JRS v. Glendenning – 4 brothers**
  - **Mom - \$15,000.00**
  - **Dad - \$ 5,000.00**

# LIMITATION PERIODS

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## ■ New Limitations Act 2004

- general rule for all civil cases is 2 years
- for sexual assault by person in relationship of trust/authority/dependency there is no limitation period.
- there is no limitation period during any time when plaintiff is incapable of suing – including psychologically incapable.



# LIMITATION PERIODS

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- **presumptions that plaintiffs are incapable in sexual assault cases and in cases where physical assault in context of trust relationship**
- **presumption is rebutted – going to police may trigger limitation period**
- **Discoverability Rule**

# CONCURRENANT CIVIL AND CRIMINAL PROCEEDINGS

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- **Possible, not advisable**
  - **Best to have conviction first**
  - **Avoid cross-examination on financial motive**
  - **Less stress**

# LEGAL COSTS

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- **Contingency Fees**
- **Recovery of costs from defendant**

# PRIVACY ISSUES

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## ■ Generally

- trials open to public
- documents – public record

## ■ Sexual Assault

- pseudonyms
- injunctions
- sealing court file
- non-publication order

# ***THE APOLOGY ACT***

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- **A sincere apology can make a huge difference and it is the right thing to do.**
- **An apology is NOT a legal admission of guilt and has no impact on insurance coverage.**
- **Exception for criminal trials.**

# ***THE APOLOGY ACT***

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- **Six Provinces have apology legislation.**
  - **British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia**
  - **Yukon and Newfoundland have introduced this legislation and North West Territories is exploring the issue**
- **Hopefully the new legislation will remove barriers to settlement discussions and promote healing and reconciliation.**

# **“GAG ORDERS” or CONFIDENTIALITY AGREEMENTS**

## **■ WHAT IS CONFIDENTIAL**

- Terms of Settlement**
- Fact of Settlement**
- Abuse**
- Exceptions - professional advisors (medical, therapy, lawyer, financial), family and “friends”**
- Exceptions – non-identifying information**
- Consequences of breach**

# WHY SUE?

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- **The Money**
- **Standing up for one's self**
- **Empowerment**
- **Being Heard**
- **Being Acknowledged**
- **Holding People to Account**
- **Healing**
- **Closure**



# **CRIMINAL INJURIES COMPENSATION BOARD**

- **\$25,000.00 maximum lump sum**
- **Do it yourself**
- **Sweet v. A.G. Ontario and Criminal Injuries Compensation Board**