

**LEGAL REDRESS AND INSTITUTIONAL SEXUAL ABUSE:
A STUDY OF THE EXPERIENCES OF DEAF AND
HARD OF HEARING SURVIVORS**

*Lupin Battersby**
*Lorraine Greaves***
*Rodney Hunt****

Abstract. This article explores the impact of a redress package on victims of sexual abuse in a publicly funded residential school for Deaf and hard of hearing students. This study used in depth interviews to explore the expectations and experiences of sixteen claimants involved in a government redress package, enhanced by interviews with seven key informants, who were administrators of the redress program or service providers in the Deaf community. Developing redress programs to meet the needs of persons who are Deaf and hard of hearing *and* sexually abused requires consideration of the blended effects of disability and sexual abuse, as well as their unique individual and group characteristics in the context of their expectations of justice, recognition, compensation, or closure. Key considerations for future redress programs are suggested, such as extensive community consultation, appropriate compensation principles, assisted therapeutic support, and sufficient information and time for decision making.

I. INTRODUCTION

In this article we explore the issue of seeking compensation and redress for the harms caused by childhood sexual abuse in a residential school for Deaf¹ and hard of hearing students, and the responses of

* Researcher, Simon Fraser University, Vancouver, British Columbia.

** Clinical Professor, Faculty of Medicine, University of British Columbia, Vancouver, British Columbia.

*** Coordinator, Institute for Critical Studies in Gender and Health, Simon Fraser University, Vancouver, British Columbia.

¹ The use of an upper case "D" has been widely adopted as a social and political term for those people who define themselves as culturally Deaf. In this paper, we recognize that Deaf people comprise a unique and distinct cultural group. Where a lower case "d" is used, it signifies the medically defined condition of loss of hearing or being hard of hearing. See Timothy Reagan, *Toward an "Archeology of Deafness"*: *Etic*

claimants to a negotiated redress package. It focuses on the question, what are the experiences of legal redress for Deaf and hard of hearing survivors of institutional sexual abuse? During the last decade, the issue of sexual abuse in residential schools for Deaf and hard of hearing students has slowly come into the public eye in North America through press exposure² and studies by advocacy groups.³ The estimated sexual abuse rate of children who are Deaf and hard of hearing is two to three times that of hearing children,⁴ and as high as 42.4% for boys and 45.8% for girls.⁵ In the United States, up to 28% of Deaf and hard of hearing students attend separate or residential educational facilities⁶ and are at higher risk for sexual abuse in those settings.⁷

As adults, survivors of sexual abuse increasingly seek compensation and redress for abuse experienced at various institutional settings

and *Emic Contructions of Identity Conflict*, 1 J. LANGUAGE, IDENTITY, & EDUC. 41, 60 n.1 (2002) [hereinafter *Archeology of Deafness*]; see also Brenda Jo Brueggemann, *The Coming out of Deaf Culture and American Sign Language: An Exploration into Visual Rhetoric and Literacy*, 13 RHETORIC REV. 409, 409-18 (1995) (discussing the unique and distinct culture of the Deaf community).

² See, e.g., Ruth Teichroeb, *Decades of Sex Abuse Plague Deaf School: For Generations, State's Students Kept Secrets*, SEATTLE POST-INTELLIGENCER, Apr. 25, 2001, at A1 (discussing the sexual abuse of students at the Washington School for the Deaf); Barbara McLintock, *Jericho School's Dark Past: New Probe Into Alleged Abuse of Deaf Children*, PROVINCE (Vancouver), Mar. 5, 1992, at A1 [hereinafter *Jericho School's Dark Past*].

³ See LINDA HILL, ENOUGH IS ENOUGH: REPORT ON A FACILITATED DISCUSSION GROUP INVOLVING THE DEAF COMMUNITY 1 (1999) (reporting on a discussion group, which included members of the Deaf community, formed to "respond to the Discussion Paper on the Minister's Reference on Institutional Child Abuse").

⁴ Marit Hoem Kvam, *Sexual Abuse of Deaf Children: A Retrospective Analysis of the Prevalence and Characteristics of Childhood Sexual Abuse Among Deaf Adults in Norway*, 28 CHILD ABUSE & NEGLECT 241, 248 (2004).

⁵ See *id.*; see also Patricia M. Sullivan et al., *Patterns of Physical and Sexual Abuse of Communicatively Handicapped Children*, 100 ANNALS OTOTOLOGY RHINOLOGY & LARYNGOLOGY 188, 190 (1991) [hereinafter *Patterns*].

⁶ Patrick E. Brookhouser, *Ensuring the Safety of Deaf Children in Residential Schools*, 97 OTOLARYNGOLOGY—HEAD & NECK SURGERY 361, 361 (1987) (discussing the reasons for an increased likelihood of sexual abuse of deaf children in residential schools).

⁷ See *Patterns*, *supra* note 5, at 191 (noting that schools, including residential schools, were the second most frequent site for abuse to occur); Brookhouser, *supra* note 6, at 361-68.

in Canada.⁸ The proliferation of claims raised awareness about the systemic nature of sexual abuse and the long-term psychological effects on survivors of such institutional abuses, as well as the efforts of institutions to address the wrongdoings when claims have been made.⁹ Institutional responses include special protocols,¹⁰ guidelines,¹¹ codes of ethics, counselling sessions,¹² and support groups.¹³ On occasion, unique procedures such as group redress programs have been developed to process legal claims directed against governments and church organizations responsible for running institutions where children and youth were sexually abused.¹⁴

However, institutional responses, including many group redress programs have been, and continue to be developed without a comprehensive framework and understanding of the therapeutic needs of affected individuals and communities.¹⁵ Scant empirical and qualitative data exist about the therapeutic expectations and outcomes of redress programs.¹⁶ There have been relatively few assessments of the full scope of what survivors require to heal from their experiences and how

⁸ See generally GOLDIE SHEA, LAW COMM'N OF CAN., REDRESS PROGRAMS RELATING TO INSTITUTIONAL CHILD ABUSE IN CANADA (1999) (surveying the programs in Canada that provide redress to individuals who suffered institutional child abuse).

⁹ See generally *id.* (describing the measures taken by different institutions to remedy the harm, including psychological harm, that abuse caused).

¹⁰ *Id.* at 44.

¹¹ *Id.*

¹² *Id.* at 36 (“468 persons received counselling valued at \$1,570,561.”).

¹³ *Id.* at 28 (discussing the support group formed for the abuse survivors at the Grandview Training School for Girls).

¹⁴ See Bruce Feldthusen et al., *Therapeutic Consequences of Civil Actions for Damages and Compensation Claims by Victims of Sexual Abuse*, 12 CAN. J. WOMEN & L. 66 (2000) [hereinafter *Therapeutic Consequences*]; GOVERNMENT OF CANADA, DISPUTE RESOLUTION MODEL FOR INDIAN RESIDENTIAL SCHOOL ABUSE CLAIMS INDIAN RESIDENTIAL SCHOOLS RESOLUTION CANADA, http://www.irsr-rqpi.gc.ca/english/dispute_resolution_adr_policy_paper.html.

¹⁵ See LAW COMM'N OF CAN., RESTORING DIGNITY: RESPONDING TO CHILD ABUSE IN CANADIAN INSTITUTIONS 12-14 (2000) (detailing the recommendations of the Law Commission of Canada regarding responses to child abuse in Canadian institutions).

¹⁶ See *Therapeutic Consequences*, *supra* note 14, at 67 (“Unique procedures have . . . been developed to process claims directly against provincial governments. However, there have been relatively few assessments of the impact these actions have had on the lives of those who have brought them forward.”).

effective redress programs have been in meeting those needs.¹⁷ Further, little is known about any gender and diversity issues as they may relate to the therapeutic or nontherapeutic experiences associated with seeking remedies.¹⁸

Attempts to redress harm, or *restore* injured parties, have often highlighted monetary compensation based on valuations of injury.¹⁹ While monetary awards can be seen as an important recognition of the effects of the physiological and psychological injuries caused by abuse, there is some evidence that personal, nonpecuniary goals are just as important as monetary compensation.²⁰ More research is necessary to help us understand the balance of the therapeutic and nontherapeutic needs of the compensation process.²¹

There is a need to better understand which remedies are deemed adequate and effective responses by survivors of institutional sexual abuse because individual and group based demands for compensation and redress are on the rise in Canada.²² Affected groups of claimants include past students of residential schools for First Nations children,²³

¹⁷ See *id.*

¹⁸ See, e.g., *id.* (discussing only the experiences of claimants generally, without separating the results based on gender or ethnicity).

¹⁹ Nathalie Des Rosiers et al., *Legal Compensation for Sexual Violence: Therapeutic Consequences and Consequences for the Judicial System*, 4 PSYCHOL. PUB. POL'Y & L. 433, 449 (1998).

²⁰ See René L. Binder et al., *Is Money a Cure?: Follow-up of Litigants in England*, 19 BULL. AM. ACAD PSYCHIATRY & L., 151, 151-54 (1991) (discussing the positive effects that monetary damages sometimes have on the psyche of a claimant); Bruce Feldthusen, *The Civil Action for Sexual Battery: Therapeutic Jurisprudence?*, 25 OTTAWA L. REV. 203, 203 (1993) ("It appears that personal, non-pecuniary goals account for as much or more sexual battery litigation than does the prospect of monetary damages."); *Therapeutic Consequences*, *supra* note 14, at 75 (noting that a majority of claimants in cases of sexual abuse in an institutional setting "identified therapeutic, rather than monetary, motivations").

²¹ Des Rosiers et al., *supra* note 19, at 450.

²² See, e.g., SHEA, *supra* note 8, at 28-34 (discussing the claims of abuse by the Grandview Survivors' Support Group against the Grandview Training School for Girls).

²³ R. Murray Thomas, *Can Money Undo the Past?: A Canadian Example*, 39 COMP. EDUC. 331, 331-32 (2003). In Canada, from 1840 to 1980, residential schools were operated by churches (Roman Catholic, Anglican, United, and Presbyterian), and funded by the Canadian government, with the intent to assimilate First Nations people

residential schools for Deaf and hard of hearing children,²⁴ and training schools for both female and male youth.²⁵ Members from these communities may have different therapeutic needs due to cultural, social, and environmental differences.

In this article we describe a research project that addresses the gaps in knowledge about therapeutic needs of persons who have sought redress as a result of institutional sexual abuse, and how individuals who had been compensated via group redress had experienced the process. We carried out an in-depth exploration of the experiences and challenges faced by sixteen members of the Deaf community in British Columbia who were sexually abused as children at a provincially run residential school, and subsequently participated in a redress program. We also interviewed seven key informants—who were either part of the administration of the redress program, or who participated in other aspects of the recovery process with the claimants—for their views on the process.

II. BACKGROUND

A. *Deaf Culture*

Many Deaf people, their friends and families, as well as increasing numbers of scholars, understand that deafness is central to Deaf peoples' identity.²⁶ They also recognize that Deaf people constitute a

through language, culture and religion. *Id.* Multiple claims of abuse and related harms have been made against residential schools in recent decades. *See id.* at 32. Operators of schools have been charged with various offences against students, including sexual and physical abuse. *See id.* at 32; Treasury Board of Canada, Indian Residential Schools Resolution Canada Performance Report For the Period Ending March 31, 2003, http://www.tbs-sct.gc.ca/rma/dpr/02-03/IRSRC-RQPIC/IRSRC-RQPIC03D_e.asp (last visited Aug. 31, 2008).

²⁴ *See* SHEA, *supra* note 8, at 8-14 (discussing abuse at Jericho Hill School, a residential school for Deaf children).

²⁵ *See id.* at 15-34 (discussing abuse and compensation packages at the Kingsclear Training School, the Shelburne Youth Training Centre, and the Grandview Training School for Girls).

²⁶ *See* Amy Frasu, *Which is correct . . . Deaf, deaf, hard of hearing or hearing impaired?*, DEAF LINX, June 22, 2007, <http://www.deaflinx.com/DeafCommunity/identity.html> (“They are proud to be Deaf and feel that Deafness is a vital part of their identity . . .”).

distinct cultural group with its own language, history, and social norms.²⁷ As with any culture, language is a fundamental tool by which Deaf people express their identities and cultural affiliation.²⁸ As the linguist Edward Sapir has written, language is much more than everyday communication; it is also an important expression of social identity.²⁹ For many members of the Deaf community in North America, American Sign Language (ASL) is their language of choice.³⁰ ASL is as distinct from English as English is from any other language, comprising its own grammatical structures and vocabulary, as well as metaphors, puns, poetic forms, and rules for use.³¹

The importance of ASL may be viewed as a primary means of preserving Deaf cultural identity and historical linkages.³² Such a linguistic heritage is often ignored or not seen as advantageous by hearing people.³³ The alternative to ALS, oralism, is teaching deaf children to lip read and vocalize a spoken language.³⁴ Many parents of Deaf children struggle with whether it is in the best interest of their children to teach them oralism or ALS³⁵. These concerns are further complicated

²⁷ See *id.*; Timothy Reagan, *A Sociocultural Understanding of Deafness: American Sign Language and the Culture of Deaf People*, 19 INT'L J. INTERCULTURAL REL. 239, 239-51(1995) [hereinafter *A Sociocultural Understanding*] (recognizing the cultural components of Deafness and the importance of American Sign Language in the Deaf culture); *Archeology of Deafness*, *supra* note 1, at 41-66 (discussing the identity of the Deaf culture).

²⁸ See *Archeology of Deafness*, *supra* note 1, at 42. (noting that people in one subgroup of the Deaf population "use American Sign Language as their primary language and identify with the Deaf cultural community").

²⁹ EDWARD SAPIR, *SELECTED WRITINGS OF EDWARD SAPIR IN LANGUAGE, CULTURE AND PERSONALITY* 7-22 (David Mandelbaum ed., University of California Press 1949).

³⁰ See Edward Dolnick, *Deafness as Culture*, ATLANTIC MONTHLY, Sept. 1993, at 37, 40.

³¹ *Id.*

³² *A Sociocultural Understanding*, *supra* note 27, at 247.

³³ *Id.* at 248 (discussing that the hearing community cannot understand the Deaf community's perspective that an acceptance of cochlear implants would only make sense "if one rejects ASL as a legitimate language").

³⁴ See Dolnick, *supra* note 30, at 39 (1993) (discussing the difficulties of learning to speak and lip read).

³⁵ Judith Gilliam & Susan Easterbrooks, *Educating Children Who are Deaf or Hard of Hearing: Residential Life, ASL, and Deaf Culture*, 558 ERIC DIGEST 2, 3 (1997), available at <http://www.ericdigests.org/1998-2/life.htm> (noting that Deaf parents often opt to send their children to residential schools because it presents an opportunity to

in the school setting where Deaf educators debated the advantages and disadvantages of sign language versus oralism for many years.³⁶ For some of these educators, oralism is seen as a way to better integrate people who are deaf with the majority, while others firmly believe deaf children need the important linkages to Deaf culture that ASL can provide.³⁷ Despite the ongoing and emotional debate among educators about what may be best for Deaf children, North American literacy levels of Deaf children continue to be significantly lower than that of their hearing peers.³⁸ For years, residential schools were seen to be the most viable option for educating Deaf children.³⁹ The residential schools were seen to provide an environment for specialized education as well as opportunities for connection and socialization with other members of the Deaf community.⁴⁰ Mainstreaming Deaf children into the regular school system can be isolating due to the low numbers of Deaf children in small communities and neighbourhoods.⁴¹ The residential system, however, is potentially isolating due to the increased risk of being abused⁴² and the inevitable separation from family.⁴³ Nonetheless, schools for deaf and hard of hearing people are considered “cradles of the Deaf culture,”⁴⁴ and the closing or limiting of the use of such schools may be seen by some to threaten the transmission and

become fully immersed in the Deaf culture, including the use of ASL, whereas many hearing parents are reluctant to send their children to a residential school where they will be separated from them).

³⁶ See, e.g., Dolnick, *supra* note 30, at 248-49 (arguing that the sociocultural model would require students to learn the language and culture of both ASL and English).

³⁷ See generally *id.* (discussing the difference of opinion regarding whether deaf children should learn the Deaf culture or the hearing culture).

³⁸ *Id.* at 40.

³⁹ See, e.g., Gilliam, *supra* note 35, at 2 (“[M]any view residential life as the ideal opportunity for students who are deaf to become familiar with and enculturated into the Deaf community.”).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See *Patterns*, *supra* note 5, at 188-94 (noting that children at residential schools are more likely to be abused than children who attend mainstream schools).

⁴³ See *id.* (arguing that putting children in these residential schools during their formative years removes many of the safeguards inherent in the supervision of a caring family).

⁴⁴ Help for Adult Victims of Child Abuse, Deaf Survivors of Sexual Abuse: A Look at the Issues, <http://www.havoca.org/Articles/art%20deaf%20survivors%20of%20sexual%20abuse.htm> (last visited Oct. 29, 2008) [hereinafter HAVOCA].

survival of Deaf language, history, and social norms.⁴⁵ Residential schools for Deaf children have historically sought to ensure the teaching of sign language and Deaf traditions, particularly for those children with hearing parents.⁴⁶ As a result of the enculturalization of language and traditions in residential schools, the Deaf community in residential schools often becomes a part of a Deaf child's *family*, similar to their biological family.⁴⁷ Given the strong familial-like cultural affiliations developed in residential schools, there is a significant potential for sexual abuse to have a complex and deep impact on Deaf and hard of hearing children attending these schools.⁴⁸

B. Child Abuse

It is difficult to know the full extent of childhood abuse in Canada, due in part to inconsistent definitions of abuse used in studies,⁴⁹ different sources of that information, and unreported cases of child abuse.⁵⁰ In the *Canadian Incidence Study of Reported Child Abuse and Neglect—2003*, the Public Health Agency of Canada reported that sexual abuse accounted for 3% of all substantiated reports of maltreatment (based on a finding of 21.71 cases of substantiated maltreatment per

⁴⁵ *Id.*

⁴⁶ Gilliam, *supra* note 35, at 2.

⁴⁷ HAVOCA, *supra* note 44.

⁴⁸ *See id.* (noting that some students may not report abuse because they do not want to hurt their Deaf culture *family*).

⁴⁹ Compare NICO TROCMÉ ET AL., CTR. OF EXCELLENCE FOR CHILD WELFARE, 1998 ONTARIO INCIDENCE STUDY OF REPORTED CHILD ABUSE AND NEGLECT 36 (1998), available at <http://www.cccw-cepb.ca/files/file/en/OIS1998Report.pdf> (defining sexual abuse as oral, vaginal or anal activities, as well as touching, fondling and exposure of the genitals), with M.J. Chartier et al., *Childhood Abuse, Adult Health, and Health Care Utilization: Results from a Representative Community Sample*, 165 AM. J. OF EPIDEMIOLOGY 1031, 1032 (2007), available at <http://aje.oxfordjournals.org/cgi/reprint/165/9/1031> (defining sexual abuse as an adult exposing himself more than once, "being threatened by an adult to have sex, being touched in a private area by an adult, or having an adult attempt to have sex with the respondent or being sexually attacked").

⁵⁰ *See e.g.*, NICO TROCMÉ ET AL., PUB. HEALTH AGENCY OF CAN., CANADIAN INCIDENCE STUDY OF REPORTED CHILD ABUSE AND NEGLECT—2003 1 (2005) [hereinafter CANADIAN INCIDENCE STUDY], available at http://www.phac-aspc.gc.ca/cm-vee/csa-cecve/pdf/childabuse_final_e.pdf.

1,000 children)⁵¹ of children between newborn and fifteen years of age.⁵² Where sexual abuse was the primary category of substantiated maltreatment, 63% involved female children and 37% involved male children.⁵³ According to Harriet L. MacMillan,⁵⁴ who reviewed the prevalence of child physical and sexual abuse in the Ontario context, a history sexual abuse during childhood was more commonly reported by females (12.8%) than males (4.3%), whereas child physical abuse was reported more often by males (31.2%) than females (21.1%).⁵⁵ Results from the same survey found that a greater percentage of females reported a history of severe sexual abuse (11.1%) than males (3.9%).⁵⁶

As noted, many researchers report that children with disabilities are at a greater risk of being sexually abused.⁵⁷ Among these children, those with speech and language disabilities are at an even higher risk for sexual and/or physical abuse.⁵⁸ Most often, abuse is perpetrated by someone the child knows, such as an older peer or someone working closely with them.⁵⁹ Indeed, some researchers report that over 50% of deaf sexual abuse victims report that they were abused “in connection

⁵¹ *Id.* at 2-3.

⁵² *Id.* at 6.

⁵³ *Id.* at 65. According to the authors of the Canadian Incidence Study, the proportion of female to male sexual victimization varies considerably by age group. *Id.* Among those sampled, female and male children under 8 years of age experienced approximately the same incidence of sexual abuse. *Id.* The number of young male victims aged 4 to 7 was slightly higher than for females in the same age category. *Id.* However, this was reversed among children up to 3 years of age, where the number of young female victims was slightly higher than for males, and females “constituted 62% of the victims aged 8 to 11 years and 79% of the adolescent victims.” *Id.*

⁵⁴ Harriet L. MacMillan et al., *Prevalence of Child Physical and Sexual Abuse in the Community: Results from the Ontario Health Supplement*, 278 JAMA 131, 131-35 (1997).

⁵⁵ *Id.* at 131.

⁵⁶ *Id.*

⁵⁷ Patricia M. Sullivan & John F. Knutson, *The Association Between Child Maltreatment and Disabilities in a Hospital-Based Epidemiological Study*, 22 CHILD ABUSE & NEGLECT, 271, 272 (1998); Helen L. Westcott & David P.H. Jones, *Annotation: The Abuse of Disabled Children*, 40 J. CHILD PSYCHOL. & PSYCHIATRY, 497, 499 (1999).

⁵⁸ Sullivan & Knutson, *supra* note 57, at 272.

⁵⁹ *Id.* at 280 (“Some 92.4% of the sexual abuse perpetrators were known to the child victim prior to the abuse, and 82% of the sexual abuse perpetrators were male.”).

with a boarding school for the deaf . . . even if some of them lived with their family.”⁶⁰

The difference in rates of childhood sexual abuse between girls and boys is smaller in residential schools than in the larger society and in cases of individual occurrences of abuse (e.g., incest and intra-familial abuse).⁶¹ That is, victimization rates in residential school settings are generally more evenly distributed across gender.⁶² The risk for residential school residents may be compounded by the fact they are living with older children who may become sexually abusive because of their own histories of abuse.⁶³ Research suggests that children that have been sexually abused are more likely to exhibit inappropriate sexual behaviour towards other children.⁶⁴

Despite the inherent difficulties in accurately estimating and assessing the prevalence of sexual abuse, there has been progress in understanding the impact of sexual victimization on children in general.⁶⁵ In the short term, sexually abused children experience increased rates of aggression, delinquency, and interpersonal problems.⁶⁶ For example, children who are sexually abused typically encounter more social problems, such as social withdrawal and isolation, and aggressive interpersonal behaviour.⁶⁷ Some research also suggests that sexually abused children may experience difficulty with cognitive development, and

⁶⁰ See Kvam, *supra* note 4, at 246. In addition, some researchers report that only 3% of abuse suffered by handicapped children was perpetrated by someone unknown to the victim. *Patterns*, *supra* note 5, at 191.

⁶¹ See Kvam, *supra* note 4 at 249 (“Males reported childhood sexual abuse far more often in the deaf study than might be expected from the results of the comparison study. . . . [and] the prevalence of sexual abuse among deaf boys was similar to that among deaf girls.”).

⁶² See *id.* at 248; B.C. MINISTRY OF HEALTH, MULTIPLE VICTIM CHILD SEXUAL ABUSE: THE IMPACT ON COMMUNITIES AND IMPLICATIONS FOR INTERVENTION PLANNING 6 (1994) (noting that multiple victim of sexual abuse occurrences create a higher risk for boys than girls).

⁶³ Kvam, *supra* note 4, at 249.

⁶⁴ See CANADIAN INCIDENCE STUDY, *supra* note 50, at 67, 69.

⁶⁵ See Penelope K. Trickett & Catherine McBride-Chang, *The Developmental Impact of Different Forms of Child Abuse and Neglect*, 15 DEVELOPMENTAL REV. 311, 318-21 (1995).

⁶⁶ *Id.* at 324-25.

⁶⁷ *Id.* at 324.

therefore, may perform poorly in school, which could result in lower occupational attainment later in life.⁶⁸

As adults, male survivors of childhood sexual abuse are more likely to be violent, whereas female survivors are more likely to suffer from depression, low self-esteem, and suicidal thoughts.⁶⁹ Victims of childhood sexual abuse “may struggle with depression; low self esteem; self blame; . . . anxiety; dissociation . . . ; difficulties in relationships” and other psychosocial problems.⁷⁰ Male survivors of childhood sexual abuse are more likely to minimize the impact of the abuse they suffered, and men are more likely to abuse drugs, whereas women are more likely to abuse alcohol.⁷¹ The long-term impact of child abuse can be persistent and may permeate all aspects of life.⁷² Coping with the experience of abuse is even more difficult for children than adults, and potentially more difficult for Deaf children, due to limited opportunities and resources available to them for reporting and accessing care and/or support.

In Judith Herman’s work, *Trauma and Recovery*, she outlines three stages of recovery from trauma: establishment of safety, remembrance and mourning, and reconnection with ordinary life.⁷³ These stages have been applied to understanding the process of redress and compensation claiming.⁷⁴ Establishing a sense of safety is “increasingly complicated in proportion to the severity, duration, and early onset of abuse.”⁷⁵ Confronting the past and remembering traumatic experiences

⁶⁸ *Id.* at 325. Childhood physical abuse and neglect are consistently linked to poorer cognitive development and school performance. *Id.* However, in many studies, the cognitive effects of childhood sexual abuse are mixed. *Id.* This may be the result of differences in sampling across studies. *Id.* For example, it may be that in many instances, sexual abuse overlaps with physical abuse or neglect. *Id.*

⁶⁹ Thomas R. Wilken, *Adult Survivors of Child Sexual Abuse—Overview Paper*, NAT’L CLEARINGHOUSE ON FAM. VIOLENCE (Pub. Health Agency of Can.), Dec. 2002, at 2-3, available at http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/html/nfntsxagrssex_adult_e.html.

⁷⁰ *Id.*

⁷¹ *Id.* at 3.

⁷² *Id.* at 2.

⁷³ JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* 155 (paperback, rev. 1997).

⁷⁴ *Therapeutic Consequences*, *supra* note 14, at 69 (discussing the relation of Herman’s three phases of recovery from trauma to abuse victim’s civil claims).

⁷⁵ HERMAN, *supra* note 73, at 160.

is a delicate balance of constriction and intrusion.⁷⁶ Seeking compensation can be an impediment to mourning or an integral part of recovery.⁷⁷ Reconnection is achieved when survivors are more interested in the present and future than they are in the past.⁷⁸ All three of these stages have unique aspects that may be more difficult for the Deaf community.

C. *Redress*

Although there is limited empirical research on the therapeutic consequences of redress or compensation to survivors of sexual abuse, there are some studies that found the *expectations* of redress are predominantly therapeutic in nature.⁷⁹ Feldthusen, Hankivsky, and Greaves, for example, in assessing the effects of seeking redress on eighty-seven claimants after sexual abuse, found “the majority of claimants identified therapeutic, rather than monetary, motivations” for proceeding with legal action.⁸⁰ These included: “the desire to be heard, to have their abuse acknowledged and their experience validated, [] to receive an apology,” and to secure therapeutic healing.⁸¹ Forty-one percent of the interviewed participants indicated that money was an important reason for commencing their action,⁸² but many also found the monetary award insufficient to redress the extent of their suffering.⁸³

Placing monetary value on the experience and impact of childhood sexual abuse is a sensitive and challenging proposition. Agencies and governments responding to allegations of abuse, especially ongoing institutional abuse, must address this and other factors when developing a redress program administered outside of the judicial system. Having a full understanding of the history, nature, and impact of the abuse for which compensation is being sought should be a component of the de-

⁷⁶ *Id.* at 176.

⁷⁷ See *Therapeutic Consequences*, *supra* note 14, at 78 (noting that civil claims of abuse motivated by revenge may impede recovery, but some survivors believe that is the only way to get back what was lost).

⁷⁸ *Id.* at 69.

⁷⁹ *Id.* at 75.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 79.

⁸³ *Id.* at 97 (noting that one survivor who received a substantial damage award still did not feel satisfied because of the difficulty in translating her losses into money).

velopment and implementation of redress programs. In the case of Deaf and hard of hearing abuse survivors, there are additional and unique aspects and issues to address.

III. HISTORICAL BACKGROUND

The first educational program designed specifically for deaf children in British Columbia Canada was established by the Vancouver School Board in 1915 at Mount Pleasant School.⁸⁴ As the number of deaf children enrolled in special education classes in the Province of British Columbia began to increase, new classes were established in other locations and subsumed under the auspices of the Provincial Government Department of Education.⁸⁵ Although they operated in many locations, these classes were collectively known as the Provincial Oral School.⁸⁶ In 1922, the Provincial Oral School, together with classes organized for the province's blind children, was moved to a permanent location near Jericho Beach in Vancouver.⁸⁷ At this location, the school was known as the British Columbia School for the Deaf and Blind before being renamed the Jericho Hill School in 1955.⁸⁸

For many years, parents of deaf children from across British Columbia were encouraged to send their children to this provincially run school, where, due to the often great geographic distances from their homes, and the effects of communication barriers, many children had minimal contact with their families.⁸⁹ As is typical of residential school settings, while attending Jericho Hill School, many deaf children would spend several months, and sometimes years, apart from their parents

⁸⁴ C.E. MACDONALD, MOMENTS . . . IN THE HISTORY OF JERICHO HILL SCHOOL: 1915-1967, at 10 (1969).

⁸⁵ *Id.*

⁸⁶ *Id.* at 11.

⁸⁷ The Homeroom, Special Education School for the Deaf and the Blind, <http://records.viu.ca/homeroom/content/topics/programs/special.htm> (last visited Oct. 30, 2008).

⁸⁸ *Id.*

⁸⁹ OMBUDSMAN OF B.C., PUBLIC REPORT NO. 32: ABUSE OF DEAF STUDENTS AT JERICHO HILL SCHOOL 5 & 15 (1993) [hereinafter OMBUDSMAN] ("Children who resided at Jericho Hill School were isolated from their homes and their communities.").

and siblings.⁹⁰ The Provincial Government Department of Education developed a solid national reputation for the programs at Jericho Hill School, which were regarded with pride until the early 1970s when the first concerns about safety were raised.⁹¹ In 1987, a probe into sexual abuse at the school was conducted and wide-ranging recommendations were made for improvement, few of which were implemented.⁹²

Allegations of abuse at Jericho Hill School first came to light in 1982 when a male student disclosed to a school-contracted psychologist that he had been sexually abused, and that the same abuse had happened to other male students at the Jericho Hill School.⁹³ The student revealed that some of the abused boys were in turn abusing young women at the school.⁹⁴ These allegations prompted police investigations in 1982 and again in 1987, both of which produced insufficient evidence to garner convictions.⁹⁵ In 1987, *The Vancouver Sun* first reported on these investigations,⁹⁶ followed in 1992 by a series of articles in *The Province* with stories of abuse from former students, survivors, and other informants.⁹⁷ As a consequence of these stories and because of changes in the province's judicial system that increased the probability of convictions in child sexual abuse cases, the Vancouver Police Department reopened its investigation into allegations of abuse at the school.⁹⁸ Three charges were filed and *The Province's* coverage generated many calls to the British Columbia ombudsman from victims implicating additional staff and other students in extensive occurrences of abuse.⁹⁹

As the Jericho Hill School was provincially run, the government of British Columbia had to address the claims. The office of the provin-

⁹⁰ *See id.*

⁹¹ *Jericho School's Dark Past*, *supra* note 2, at 4-5A.

⁹² *Id.*

⁹³ Barbara McLintock, *Reading the Signs of Sexual Abuse*, TYEE (B.C.), Apr. 13, 2004, at 2 [hereinafter *Reading the Signs*].

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Keith Baldrey, *Alleged Sex Abuse Faces Fresh Probe*, VANCOUVER SUN, Mar. 3, 1987, at 10A.

⁹⁷ OMBUDSMAN, *supra* note 89, at 11 (noting that the Province "published a series of articles about past abuse at Jericho Hill School").

⁹⁸ *See Reading the Signs*, *supra* note 93, at 3.

⁹⁹ OMBUDSMAN, *supra* note 89, at 11.

cial ombudsman undertook an investigation, which was published in November 1993.¹⁰⁰ The ombudsman's investigation concluded that abuse indeed occurred at the school, and eleven recommendations were made to the provincial government, including the suggestion "that a non-confrontational process be established to determine compensation for victims of abuse."¹⁰¹ In June of 1993, the Government of British Columbia appointed Thomas Berger, Q.C., as special counsel to further investigate and address how the allegations of abuse at Jericho Hill School could be resolved.¹⁰²

Berger presented his report to the government in the spring of 1995, setting out a number of recommendations for how the province should resolve these claims on which the *Terms of Reference* for a compensation plan were based, including the parameters for the financial limit of the compensation.¹⁰³ By 1996, the Jericho Individual Compensation Program (JICP) was implemented and began investigating and compensating claimants.¹⁰⁴ In addition to the JICP, a provincially funded program, known as the Well-Being Program, was established under the auspices of the Vancouver Coastal Health Authority to provide counselling and support services for Deaf, hard of hearing, and Deaf-blind people in British Columbia.¹⁰⁵

The overall goal of the JICP process was to make accurate assessments of the claims of sexual abuse at Jericho Hill School, while ensuring fairness and respect for claimants and their needs.¹⁰⁶ According to Jane Morley, Q.C., who was chair of the Compensation Panel (Panel), the JICP was "a unique response to institutional sexual

¹⁰⁰ SHEA, *supra* note 8, at 8.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ JANE MORLEY, THE JERICO INDIVIDUAL COMPENSATION PROGRAM (JICP): A UNIQUE RESPONSE TO INSTITUTIONAL SEXUAL ABUSE 3-4 (2001). See B.C. MINISTRY OF ATTORNEY GEN., JERICO INDIVIDUAL COMPENSATION PROGRAM: TERMS OF REFERENCE 2, 5-9 (1996) [hereinafter TERMS OF REFERENCE] (detailing the financial parameters for compensation).

¹⁰⁴ MORLEY, *supra* note 103, at 1.

¹⁰⁵ VANCOUVER COASTAL HEALTH AUTH., DEAF, HARD OF HEARING & DEAF-BLIND WELL-BEING PROGRAM, available at <http://www.vch.ca/wbp/Docs/LARGEPRINT WBPBROCHURE.pdf>.

¹⁰⁶ MORLEY, *supra* note 103, at a.

abuse”¹⁰⁷ as efforts were made to acknowledge and address the needs of the Deaf community.¹⁰⁸

Some of the features of the program included ensuring individuals could tell their stories of sexual abuse in their own language and creating a special track system to provide former students with multiple handicaps an opportunity to engage in the process.¹⁰⁹ The compensation consultants were all fluent in ASL¹¹⁰ and the Panel was composed of one Deaf-blind therapist with an expertise in sexual abuse.¹¹¹ All of the personnel were provided training regarding Deaf culture and sexual abuse.¹¹² The JICP engaged a three-person panel, which would validate the detailed statements of the claimants collected by compensation consultants and determine the specific amount of compensation.¹¹³ Awards ranged from \$3,000 to \$60,000 per person.¹¹⁴ Claimants dissatisfied with the compensation ruling of the Panel could choose to have an in-person reconsideration meeting with the Panel, and one-third of the claimants did so.¹¹⁵ Compensation consultants spent from four to thirty hours listening to each claimant’s story.¹¹⁶ Some claimants were asked to meet with the Panel in person to deal with differences of opinion regarding compensation between the members.¹¹⁷

The JICP differed from the experience claimants would have faced in litigation by requiring a lower standard of proof, no cross-ex-

¹⁰⁷ *Id.* at 2.

¹⁰⁸ In the JICP Terms of Reference, the provincial government defined the goal as “assisting the individual to come to terms with the sexual abuse and its consequences.” TERMS OF REFERENCE, *supra* note 103, at 3. Morley states that, through its development and implementation, the JICP “pursued this goal of responding to the individual needs of Claimants.” MORLEY, *supra* note 103, at 2.

¹⁰⁹ MORLEY, *supra* note 103, at 2.

¹¹⁰ *Id.* at 20.

¹¹¹ *Id.* at 10.

¹¹² *Id.* at 16.

¹¹³ *Id.* at b.

¹¹⁴ *Id.* See TERMS OF REFERENCE, *supra* note 103, at 2 (noting that the compensation framework was three-tiered, ranging from \$3,000 to \$60,000).

¹¹⁵ MORLEY, *supra* note 103, at 26.

¹¹⁶ *Id.* at 21.

¹¹⁷ *Id.* at 24.

amination, and no presentation of an alternative version of the story (i.e., no offenders were present to contest the victim's story).¹¹⁸

In 1999, the JICP process was complicated, and temporarily halted, by a class action lawsuit launched on behalf of some of the claimants.¹¹⁹ On November 26, 1999, the British Columbia Court of Appeal directed the certification of a class action that included most of the JICP claimants, stalling the JICP process while the implications of the class action were studied.¹²⁰ Three months later, the JICP was given approval to proceed.¹²¹ For many, the interruptions, delays, and additional complications caused by the start-up of the class action lawsuit resulted in confusion, anger, and distress.¹²² Nonetheless, at the end of the JICP in 2001, over 350 claims had been processed.¹²³

IV. METHODS

The goals of this study were to retrospectively identify the needs and expectations of Deaf survivors of residential school sexual abuse both prior to involving themselves in a redress program and after experiencing redress and its outcomes. In this project, the participants were interviewed about their experiences with JICP and asked to give an assessment of whether their needs were met in the process. The overall goal of the study was to learn from the experiences of JICP claimants so that recommendations could be drafted that might improve future redress programs.

We began our recruitment efforts early in the research process by developing a Project Advisory Committee (Committee). Besides being comprised of academics and lawyers with interest and/or experience in the redress of institutional sexual abuse, the Committee also included

¹¹⁸ See *id.* at 31-32 (requiring that the panel decide only that there was a "reasonable likelihood that the Claimant was sexually abused at Jericho Hill School").

¹¹⁹ *Id.* at 17; see *Rumley v. British Columbia*, [2001] 3 S.C.R. 184, ¶ 1, 2001 SCC 69 (Can.) (holding the respondents, representing the survivors of sexual abuse at Jericho Hill School, met the certification requirements for a class action).

¹²⁰ MORLEY, *supra* note 103, at 17.

¹²¹ *Id.* ("On February 8, 2000, . . . the judge appointed to be the case manager of the class action, held that JICP could proceed . . .").

¹²² *Id.*

¹²³ *Id.* at a.

a community leader and activist who provided both recruitment advice and practical assistance with access to members of the Deaf community. We recruited participants using a variety of methods, including advertising in local newspapers and community magazines, posters in community support offices, through word-of-mouth, and via meetings with community members at town hall meetings. In the end, however, the most effective recruitment method was the town hall meetings, which took place in two different communities in British Columbia.

Over an eight-month period, twenty interviews ranging in length from forty-five minutes to three hours were conducted with former students of Jericho Hill School who had received compensation for sexual abuse through the JICP. Of these interviews, sixteen were analyzed for the current study.¹²⁴ Before beginning each interview, participants received information about the study and reviewed an informed consent form. An ASL translator was available for those participants unable to read the information and form. Participants were then encouraged to seek answers to any questions they might have before permission was asked to begin the interview, and each respondent received a \$25 honorarium for participating in the study. The same team member conducted all of the interviews in person, using an interview guide. Additionally, an ASL interpreter, chosen in consultation with community leaders, attended all of the interviews. Interviews were audiotaped and transcribed verbatim.

In addition to interviews with JICP claimants, seven key informants were recruited by direct contact or word-of-mouth. Direct contact consisted of a letter of invitation to participate in the study, which was sent to approximately twenty individuals involved in the JICP as project administrators, compensation consultants, project educators, psychologists, and/or community activists. Informed consent was sought from key informants prior to beginning the interviews. Interviews were conducted using an interview guide and ranged in duration

¹²⁴ Three interviews were conducted that did not meet the sample requirements because participants did not complete the JICP. In these instances participants were informed that data from their interview would not be analyzed for the present study. A fourth interview was inaudible due to problems with audio tape recording equipment.

from 1.5 hours to four hours. These interviews were also audiotaped and transcribed verbatim.

A semi-structured interview schedule was developed for the claimant and key informant interviews. In addition to containing open-ended questions, the schedule included questions using a ranking scale (one to seven) regarding the respondents' basic demographics and their experiences with the JICP. To protect the emotional health of participants and maintain professional ethics, the interviewer followed sensitive interviewing guidelines designed by the research team. Claimants were asked several questions about their expectations of the JICP, how their expectations were met, and how the experience of participating in a compensation process impacted their life. Key informants were asked about the administration of the JICP, their role in the program, and their evaluation of the overall outcomes and utility of the JICP. Key informant interviews provided information regarding the context and process of the JICP from an administrative and/or therapeutic perspective. Additionally, the key informant interviews added further depth and a comprehensive framework within which to analyse the claimant interviews.

Data analysis was based on extensive and intensive qualitative analysis of the audiotapes, transcriptions, notes, and interviewing; as well as some quantitative analysis of the demographic characteristics of the claimants. Coding was done by the research team within a grounded theory framework; themes emerged from the interviews and were iteratively coded and categorized as a team. The quantitative data was recorded and analysed with SPSS. All analyses were discussed within the research team for the purposes of triangulation, clarification, and reaching analytic consensus on themes and subthemes. The qualitative analysis was based on a grounded theory framework. Most of the analysis procedures were developed and used in previous work¹²⁵ and then tailored for this project.

V. FINDINGS

The findings from this study reflect the unique individual and collective experiences of being both Deaf and sexually abused as a child in a residential setting. The findings are divided into two sections.

¹²⁵ *Therapeutic Consequences*, *supra* note 14, at 69.

First, the experiences of being *both* Deaf and sexually abused in relation to the JICP are described. Then, the second section recounts the experiences of going through the JICP redress process. The views and experiences of the claimants are relied on heavily to illustrate and define the themes and interpretations of these themes. The experiences of being *both* Deaf and sexually abused include feelings of isolation, marginalization, and betrayal. These themes result from individual experiences and often compound each other.

A. *Isolation*

Victims of childhood sexual abuse commonly experience feelings of isolation.¹²⁶ Such feelings often result from an inability or lack of opportunity to disclose the events of the abuse; or because of shame, fear, and/or confusion.¹²⁷ In our interviews, we found that these elements of isolation often exacerbated the separation already experienced by some Deaf individuals, which is not typically understood in the hearing world.¹²⁸ In addition, the small and insular nature of the Deaf community often intensified the isolation, making it difficult to count on anonymity and confidentiality. When asked about who provided emotional support and encouragement during the JICP process, two participants expressed these feelings:

I really didn't ask for a lot of support, and I think the reason being is that I needed somebody that I could trust and confide in. As for family members, I mentioned

¹²⁶ John N. Briere & Diana M. Elliott, *Immediate and Long-Term Impacts of Child Sexual Abuse*, FUTURE OF CHILDREN, Summer—Fall 1994, at 56, 64.

¹²⁷ Medicine Australia, *Adult Sequelae of Child Sexual Abuse*, <http://www.medicine.au.net.au/clinical/psychiatry/SexualAbuse.html> (last visited Aug. 31, 2008); South Eastern Centre Against Sexual Assault (SECASA) Australia, *The Effects of Childhood Sexual Abuse*, <http://www.secasa.com.au/index.php/workers/21/54> (last visited Aug. 31, 2008) (linking the secrecy required of childhood incest victims with isolation from other non-abusive family members).

¹²⁸ Debra S. Guthmann, *Is There a Substance Abuse Problem Among Deaf and Hard of Hearing Individuals?*, MINN. CHEMICAL DEPENDENCY PROGRAM FOR DEAF & HARD OF HEARING INDIVIDUALS, http://www.mncddeaf.org/articles/problem_ad.htm (last visited Aug. 31, 2008) (“Many deaf and hard of hearing individuals are excluded from normal conversations because others do not realize that they cannot hear even with a hearing aid. [Further,] [d]eaf and hard of hearing drug addicts may be *isolated from society* because of their chemical use *and* their deafness.”) (emphasis added).

before, I don't feel very close with my family. We don't communicate in the same language. As for community members, such as friends, it's a hard thing to find somebody you can confide in, so—and reason being, is the community is very small, which makes it very difficult to be able to confide, because gossip always happens in small circles . . . because I didn't share that information with my family, I wasn't comfortable in telling my family about what happened to me. I of course kept it very confidential. I didn't even tell my daughter. You know, she was very young at the time and I didn't think it was appropriate. So—and again, I didn't talk to my friends, due to the fact that it could end up being gossip, and I didn't want them to have a different opinion of me. I guess. That's the difficulty. I mean, you know, I guess I valued the relationship I had with my family and friends, and I wanted to keep it. And it's already difficult as it is, you know, lack of communication with your family members (F).¹²⁹

Well, supported me? My brother. Not to the degree that I wish somebody could have been there. I sort of—exclude myself from being around. My daughters were there for me but they didn't know what really happened to me. For an example, you know, if I get irritated about something, my daughters would say, "What's wrong, Mom?" And I'd tell them, "Nothing. I'm just trying really hard to deal with the issues." And you know, there would be many times that I felt burdened, you know, with the issues, and I wanted to see a counsellor at the time and wasn't able to. And I didn't want to disclose a lot of that information to my family members. I so—you know, I felt like, if I did tell them anything, I didn't want my privacy to be invaded, so I thought that it would be best if I kept it to myself (F).

¹²⁹ (F) indicates female interviewee and (M) indicates male, no other identifiers are provided. These quotes are from original transcripts of interviews with claimants and key informants. In accordance with ethical guidelines and to preserve confidentiality and anonymity they are housed in a secure location at the research site.

1. Family

Even for those who trusted their family, difficulties with communication frequently prevented them from having a strong, consistent, or open relationship with family members. Many claimants left home at young ages and moved great distances across the province to attend school. Because school authorities often inflicted the abuse, many participants felt an additional strain on relationships with their parents and other close family members, who may have felt guilty or responsible for not protecting their children from the abuse. Some participants communicated about their families:

I wish my family would have listened to me a little bit more intently; they mostly don't. I wish they would have heard what happened to me. They were in shock actually when they finally did hear about what happened. And they didn't know what to do for me I think that's just why I was so angry, because my mother wasn't there for me, when I was actually raped It's hard for me, you know, to think what-if, what-if I think that my father would have done something if he would have known. I think that, you know—if he would have understood me and been able to communicate I mean, my parents can't understand me because I'm deaf It was hard because my father didn't know what happened to me until years later. I don't know if my father would have understood me at the time that it happened, maybe things would have been different but it didn't happen that way (F).

“I had some problems with my mother because she didn't accept what she did in terms of putting me at Jericho Hill School. So we were kind of separated, had disagreements and arguments over the years, because my mum felt very badly about what had happened” (M).

2. Community

The Deaf community in British Columbia is relatively small and close knit.¹³⁰ This could make it difficult to avoid situations and people that are potential reminders of the abuse suffered, especially because many community members attended the residential school together where the abuse occurred.¹³¹ To avoid retraumatization through association with fellow students many withdrew from the Deaf community.¹³² For some, this was further complicated because some of the perpetrators of abuse were also past students.¹³³ This resulted in limits on social connections and friendships, adding to feelings of isolation.

“I didn’t want to be around any deaf people . . . because it brought back all the memories of what had happened in the school. New friends that I hadn’t known at the school, it was somewhat easier to interact with them” (M).

Others were not as able to disassociate from their community and avoid their abusers (who moved in Deaf circles). The closed nature of the community often reinforced traumatic memories.

Things pop up all the time still. Things will pop up when I see one of my abusers . . . that’ll bring things back a lot. And there’s a lot of people around that bring that back for me. And that’ll never go away. I don’t know how you resolve that (M).

1997 was the first time I went to a Forum party, which is the Deaf huge event, where everybody gets together and

¹³⁰ LINDA D. HILL & PATRICIA NELSON, COMMUNICATION IS THE KEY: REVIEW OF DEAF MENTAL HEALTH SERVICES IN BRITISH COLUMBIA 5-6 (2000), available at http://www.mcf.gov.bc.ca/mental_health/mh_publications/deaf_mental_health.pdf (last visited Aug. 31, 2008) (noting that the deaf community in British Columbia numbers about 8,000 out of 4,029,253, and pointing out that this minority population “form[s] a closely-knit . . . group of people”).

¹³¹ See *supra* note 129.

¹³² See *supra* note 129.

¹³³ Sexually abused children are more likely to exhibit inappropriate sexual behaviour with other children and the closed nature of residential schools can create a culture of abuse. See *supra* text accompanying note 50.

I could see one of the older Deaf people that hurt me a long time ago . . . who had raped me, basically. And when I saw him I ran away. Like, I was out of there. I went back home. I was not going to stay at the event with that (F).

3. Society

The experience of isolation is also felt at the societal level. The ability to communicate orally is taken for granted by hearing society, which means that there is typically little societal support or recognition of a nonverbal language, such as ASL.

The things that the Deaf community had to cope with all along is because they can't gather information from society due to the fact that they can't hear on the radio. They—you know, they don't get a lot of information from newspapers and magazines because English is their second language. We tend to gather in circles and attend clubs, associations, parties, and that's where we seem to educate ourselves in terms of what's important to our needs, and it's unfortunate that those kinds of things are not being provided by society themselves (F).

4. In the JICP Process

Various elements of the JICP process depended upon the individual being able to communicate facts and feelings about the sexual abuse and its impact on his or her life. One participant reflected on the isolating aspect of that process:

Yeah, why do they have to go through it over and over again alone—why is that? Because they were alone when they were children. They were always alone and there was never a support system in place when they were alone. And then you go through this process again and you're alone again. You need people to be there to support you. I mean, even to be told that I could have somebody there, rather than just expecting you to be there alone, not allowing you any support and everything hav-

ing to be a secret. I mean, we went though that enough growing up (F).

Key informants also had concerns regarding the applicability of a narrative-based validation process for a group that has a range of communication limitations or challenges, especially in regards to those claimants that had “multiple disabilities”:

“If narrative is so important here, then automatically persons who don’t have the tools for narration are disadvantaged ” (KI).

B. Marginalization

In addition to experiencing feelings of isolation, many participants experienced a sense of marginalization because of societal responses to their deafness. Many participants identified the roots of their marginalization as situated in socialization, their segregation, or having limited opportunities.

And I’ve tried to get employment but I haven’t had much luck. It often feels like I’m discriminated against because of being Deaf. I mean, a Deaf person can do the job. It’s just trying to convince a boss who might feel discrimination against a Deaf person being able to. [I have h]ad a lot of years of frustration with that (M).

I never did think about something like that. You know, I never really initiated any action until of course JICP was established. And I guess that in itself motivated me. And I didn’t realize a lot of things, I guess. I was still quite naïve, and so, I guess there was nothing there to really motivate me. And of course the [members of the] Deaf community very much are passive, you know, just due to our upbringing and how we were treated as children. And many of us who have been very scared . . . were unable to speak up. So there was a lot of things that prevented us from going ahead, [and] following through on the legal [action] . . . (F).

The effects of feeling marginalized varied among participants, but these effects were nonetheless concrete, such as reaching adulthood without basic skills or opportunities. Such serious deprivations also had emotional consequences.

1. Alienation

“I was never taught how to write a resume. I don’t know anything. I don’t know how to even fill out an application form” (F).

Yes. Always being at school. And it was the same for all the kids my age. We saw those same supervisors and those same teachers, all the time that we were growing up. And the supervisors often physically abused us. And if we told our parents about it, they seemed to think it was okay. My parents said, you know, “It’s okay.” I didn’t understand why they would think that. I mean, they had perfect communication with the supervisors and whatever the supervisors were telling them, somehow my parents thought it was fine, it was perfect, okay. But I couldn’t tell them different. That caused a lot of suffering (M).

Some participants recalled many examples of limited or lost opportunities, which they identified as having roots in the attitudes and practices of the hearing society. Feelings of pity for them or their children, mixed with assumptions about their limitations, combined to create persistent stereotyping, stigma, and limited opportunity.

2. Stereotyping

My children, for instance, are told, “Oh, you have Deaf parents. Oh, that’s so sad, oh, I feel so sorry for you.” You know? And then all of a sudden they’ve planted seeds in my children’s minds and they haven’t got a clue what type of families we are. There’s nothing wrong with us and they should keep it in a positive light (F).

We’re people, and the reason why we can’t be employed is because of the government system and the attitude that

is out there within our country. You know, there's so many excuses that are brought up because they don't want to hire a [deaf] person on staff . . . I mean, there's the dividing line that's always in place (F).

C. *Betrayal*

Many participants felt betrayed.¹³⁴ This is often a strong theme for anyone who has experienced sexual abuse.¹³⁵ The range of possible betrayers depends on the specific situational factors, but for the JICP claimants, betrayal was complicated because of feelings associated with the authority figures at the school, their families for being sent to the school, and their fellow Deaf students.¹³⁶ Many of these individual perpetrators were still members of their victim's adult Deaf circles, further complicating the JICP process and enhancing the impact of the original abuse.¹³⁷

1. By Their Authority Figures at School

When expressing feelings of betrayal associated with the authority figures at the school, one participant explained:

In trying to communicate with the vice-principal or any of the other administrators there, they seemed to misunderstand and I don't know if there was like errors in the interpretation or their own understanding of the sign language, but I would often be taken off and then punished myself, when I was trying to complain about something. I'd be whacked on the back of the head when I wasn't going fast enough for the teachers' requirements. I was trying to think of something that I needed to put down on those papers to answer, I'd be smacked. But all the su-

¹³⁴ See *supra* note 129.

¹³⁵ See, e.g., Wilken, *supra* note 69, at 3 (noting that for survivors of sexual abuse, who were betrayed by the people who cared for them, learning to trust again "can be next to impossible").

¹³⁶ See *supra* note 129.

¹³⁷ See *supra* note 129.

pervisors and teachers were the same. And it never stopped (M).

2. By Their Family

“There was no support in any other way. And I kept telling my parents what I was going through, but I don’t know that they ever understood because they always seemed to come back with, ‘Oh, that’s okay, that’s okay’” (M).

But it was an ongoing issue with my father because when I tried to tell him earlier, he had never believed me. And so then when all those truths started coming out, it felt like I had, you know, the competition that we’d [been] having all these years, I’d finally won, finally you have to believe me. Yeah, I beat you, because I was right all along. And every time I was in trouble at school my father would punish me and I [would] think, “I haven’t done anything! It’s the school’s fault!” But I was the one that would get punished. That happened a couple of times. And that made me angry. So after a while, of course, I stopped telling my family anything when I was at school (F).

3. By Other Members of the School Community

And then the deaf students ended up oppressing the weaker deaf students, so obviously they were being taught this. So if a hearing person abuses the deaf, then the deaf end up abusing their own children because it’s something you’ve been brought up with, and of course you think that that’s the only way that you live. So for example, because my husband—my ex-husband—was abused in the residential schools, he physically abused me, and I had to realize . . . the importance of this, [that it] be nipped at the bud. So, I, of course, never did abuse my children but this is how it’s been, like being a domino effect (F).

D. *Experience of the JICP Process*

The dual experiences of being deaf and sexually abused set the stage for, and contributed to, the experiences of redress via the JICP process. Isolation, marginalization, and betrayal formed the backdrop for the stages of engagement with the JICP process. The data covered the issues of decision making about the choice to engage with the JICP process, the process of the JICP itself, and the impact of compensation on the claimants. The unique aspects of the Deaf community, both during the school years and afterward, contributed to the impact and redress of the JICP process. The participants' inimitable perspective further complicated their decision to proceed with the JICP program, the JICP process itself, and the impact of the compensation.

1. Decision Making About Proceeding with the JICP

Efforts were made in the development of the JICP to address the need to fully explain the limitations of the program, the structure, and format it followed. Various strategies were employed to access the community and to explain the JICP including: hiring a Deaf community member to act as a community liaison worker; making and distributing an informative video; producing and distributing a JICP brochure; and regular *InfoSheets* with up-to-date information.¹³⁸ Not only was a JICP website utilized to provide information, but community members and service providers also held information sessions.¹³⁹ However, the transmission of information to the community may have been complicated by the cultural and language divide. For many claimants, the communication barrier created a sense of embarrassment in asking questions and getting further clarification. One claimant raised the issue of anonymity when she discussed her experience of going to a lawyer to receive legal advice prior to making a decision to go through the JICP process.

He briefly explained it. But there was no interpreter. I was trying to talk and lip-read him and so on. I'm not sure that I understood everything really clearly. So, I was afraid, you know, of an interpreter hearing my awful

¹³⁸ MORLEY, *supra* note 103, at 7-8.

¹³⁹ *Id.* at 8.

story. I didn't want anyone to, you know, to hear that, because, you know, some of the interpreters are my friends and I know that they're confidential but still, you know, it was hard to trust. And I'm starting to get there now. Like discuss it with some of the interpreters, but it was really difficult for me. But that meant without an interpreter I wasn't understanding everything clearly—really clearly (F).

Many claimants found the process to be confusing, which increased a sense of isolation and disempowerment. Some claimants felt that there was a lack of consultation regarding the purpose and limitations of the JICP, such as the mandate to address experiences of sexual abuse only; not physical, emotional, or educational abuse. Others described a sense of mistrust regarding the motives of the government in developing the JICP process.

They should have explained and clarified what the purpose of JIC[P] is, and what our rights are and what we could do, and presented options. It's kind of like an iceberg, you know. You're given just the top end of the iceberg, and the bottom end is what you're [] really needing. I would have preferred it to be reversed, where you're given all the information so that you can make a decision (F).

I was confused. And I sort of wondered whether or not they were really going to support me or they were just giving me the money to shut me up, you know, so I had a lot of mixed feelings. I think the thing that stands out the most is that they were just paying me off, so that I wouldn't bother the government any more (F).

As described above, partway through the JICP process in 1999, a class action suit was certified by the British Columbia Court of Appeal, eventually resulting in two processes being able to proceed.¹⁴⁰ This created even more complexity and confusion for the members of the Deaf community, as they struggled with their decision making about

¹⁴⁰ See *supra* text accompanying notes 119-121.

whether to join the JICP, the class action, or to continue with the JICP if they were already involved.

I think that they should have introduced the JICP as well as the class action, so you could have made some educated decisions, versus not being told that there was going to be a class action, and that if you were to go ahead with the JIC[P], that you may not be receiving your class action or things like that. Whereas, you know, the class action has been very good (F).

2. The JICP Experience

The JICP process for the claimants proceeded as follows: claimants first completed an intake process with a compensation consultant who was fluent in sign language and familiar with the community.¹⁴¹ The process involved basic information gathering, an explanation of the process, and signing release of information and consent forms.¹⁴² After the initial intake, claimants were interviewed by a compensation consultant regarding the experiences of abuse.¹⁴³ The interviews lasted anywhere from four to thirty hours and some spanned over several weeks.¹⁴⁴ The compensation consultants wrote reports for the Panel to review and determine compensation.¹⁴⁵ The special track process was structured differently to address the needs of individuals with multiple barriers.¹⁴⁶ The compensation consultants presented the Panel's decision to the claimants and reviewed the appeal options.¹⁴⁷ If a claimant appealed the amount awarded, the claimant could meet with the Panel and state his or her case.¹⁴⁸

Some of the claimants were telling their story and experience of abuse for the first time when discussing it with the compensation con-

¹⁴¹ See MORLEY, *supra* note 103, at 20-21.

¹⁴² *Id.*

¹⁴³ *Id.* at 21.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 20.

¹⁴⁶ See *id.* at 48-62.

¹⁴⁷ *Id.* at 26.

¹⁴⁸ *Id.*

sultants.¹⁴⁹ While the compensation consultants were all trained counsellors, the relationships they had with the claimants were not ongoing therapeutic relationships.¹⁵⁰ The key informants reported that the consultants had dual roles, as they were expected to be a support reference for the claimant, but they also maintained a significant influence on the compensation awarded.

Some claimants expressed concerns with the build up to the JICP, more specifically, their feelings of ignorance about what would transpire during the process and how decisions of compensation would be made. In retrospect, there was a desire for a more complete disclosure of their rights and options. For example, one claimant said:

“I remember the stress and the confusion being very severe, like five months’ worth of confusion and stress. So if I’m putting it on a scale, I’d say like 3, being confused, stressed out. Especially the confusion part” (F).

The claimants reported a variety of concerns with the process itself, particularly the appeal process, ranging from the approach of the personnel involved to the time allotted for processing the emotional aspects of recounting the details of their sexual abuse. One claimant said:

Well, like I said, I don’t know anything about the characters of the individuals because I don’t know anything about them. One was in Washington State and the other ones lived on the island in Victoria. So it was awkward. It was very awkward because they didn’t know about us, they didn’t know about the effects, how it affected us. So that was sort of awkward (F).

Another claimant explained:

To be more warm. More talkative. You know, to have coffee so that I would know the other people involved in this—to get to know each other and have some understanding, and then starting to talk openly. But, you

¹⁴⁹ *Id.* at 15.

¹⁵⁰ *Id.* at 9, 15.

know, it was being rushed into this room, and like, who are these people, and then rushing into the process, and no—yeah, I didn't know who the panel were. You know, they should have introduced themselves. I should have been able to get to know them a little bit—like who they were first—to get more comfortable before I had to start divulging all this stuff, and I had to go to the hotel room alone. It was just awful. You know it would have been nice if someone had taken me out for dinner at least, and we would have been able to sit for a few minutes and chat. But it was like, “Oh, we're all done. I've filled out the paperwork. Bye. See you tomorrow. Head off on your own now, we've got to get” and I'd head off by myself. It wasn't good. I wish I had brought my husband that time. But I told him, “Oh, you stay home and watch the kids.” My son was younger at that point (F).

The individual claimants had specific reflections on their dual status of being deaf and sexually abused, and what impact it may have had on the process. Some spoke of the general lack of understanding of the social/cultural experience of Deaf people in the construction of the compensation package and how it affected the process. As one claimant stated:

They should understand Deaf culture more. Specifically the panel. They should understand more about the Deaf, and Deaf culture. I mean, it's not the same as bringing in someone perhaps even for Native community and discussing with them, where at least they're both hearing and they can communicate directly. Bring in people that don't understand anything about Deaf people I think is wrong. I think they should have much better understanding about Deafness, Deaf culture and who we are as people (F).

Another claimant explained:

I think that even the lawyers should have done their homework about the community. Maybe, you know, got involved, do as the Romans do for a while, so they'd get

a better idea of the situation. They needed to do some research. You know? I don't believe they did. I mean, they indicated that they had no time, but that's not an excuse. If you're going to take on a job such as this, they needed to be prepared, more skills and more knowledge. I think they should have been more aware about the history of Deaf education. They should have been more aware that many of the deaf folks don't even have our own technology because we can't afford it, such as TTYs and computers. They should have been more aware about the fact that many of us can't even get a job because of the attitudes out there, such as the one that even the lawyers may have about Deaf people (F).

Another claimant opined:

The other part that surprised me too, that I was disturbed by, was the whole panel was hearing, except for one deaf-blind person that they brought in from the States. And when I wanted to bring in witnesses, things like teachers or supervisors or whatever, that would be able to be a witness and attest to it, they wouldn't allow that. They said that they couldn't do that to that supervisor or teacher because it would be too embarrassing for them. And I'm thinking, well, it was really embarrassing and upsetting for me at the time to be whacked on the head and picked on and harassed. I didn't get any choice in that either. And the only deaf representation on the entire board was this woman from the States. She, you know, just—I don't know, she didn't seem to be very good at it. There was a couple of lawyers, it seemed, that were involved with it. And somehow, you know, whatever they said, everybody else agreed with (M).

The claimants commented about the lack of support at the meetings and afterward, and the vacuum effect it had when seeking comfort or therapy for emotional management after disclosure to the Panel.

You know, for an experience I had, five or six years of waiting and wondering and going through this process, I

couldn't believe the lack of support and that there was no therapy. It was unbelievable. I was angry. I couldn't believe it. I thought, "Shame on you." I was left in tears every time I went there. It just turned me right off (F).

One claimant expressed her experience, "[t]hat's right. They said, 'That's it.' They somewhat pushed me over the edge after that. They didn't, you know, prepare me for what was going to happen after, and that's how I felt, like I was pushed over the edge" (F).

Another female claimant said:

That was why I was so disappointed with the whole program because they should have had something established so that, after the individuals went through the appeal process or even through the adjudication process, that they should have had a person in the room to support—to support you before going home because we weren't—we weren't getting any support. I mean, once I got home, I didn't know what to do. I didn't have anyone to support me. You know, I mean, family and friends didn't really know what to do about it because it was—you know, it was something that happened outside the home environment so I didn't feel that the support was there at all. I think that's probably why I sort of switched my life around and ended up getting into drugs more because I just didn't have that support (F).

Clearly, against the backdrop of being deaf and feeling isolated and marginalized as a result of being sexually abused, the JICP process was not deemed sufficiently welcoming and accommodating.

[I]t was pretty hard. I mean, especially the whole thing about not being able to control how the decision is made, on the compensation. It was very difficult. And watching those people talking back and forth and not knowing who they were addressing that was making the decision. It was very difficult. I even felt during the process that the communication was very difficult. I'd have a thought and then couldn't get it out before I'd forgotten

it. Trying to understand some of the things was very difficult (M).

3. The Impact of the Compensation

Claimants began the JICP process at different stages of healing and recovery.¹⁵¹ As noted in the key informants' interviews, the widespread discussion and recognition of the sexual abuse that occurred in the Deaf community had not previously existed. A number of claimants were telling their story for the first time and therefore, as one key informant noted, "were outed, so to speak, and they just weren't able to deal with that" (KI). In her 2001 report, Morley states that there "was an unexpectedly large number of first time disclosures,"¹⁵² whereas others had previously told their story and worked through the trauma.¹⁵³ Claimants also differed in their expectations and goals for embarking on the process of the JICP. Some were looking for an apology, some for compensation, others wanted justice, and others sought revenge.¹⁵⁴ Hence, the impact of the compensation could be a reflection of where the claimant was in the healing process and the expectations that the individual claimant held. One claimant shared:

When I started in the process I wanted to get money, and I'd heard that sixty thousand was the maximum, so I wanted at least that. But I wanted compensation for all the physical abuse and so on as well. And I didn't get compensation for that, and even from the panel, in appealing their decision, I couldn't get anything above thirty-five thousand. A few people I knew had been there only a couple of years, had gotten the maximum. And they seemed to be in a younger age group from me, but they were still for such a short period of time, I'm not sure what made their abuse worse. And when I talked with others, it always seemed to be those few that had gotten it, within a very short time. Even in the class action suit process, they asked me, "Why didn't you get

¹⁵¹ *Id.* at 43 (noting that some claimants had been through counseling).

¹⁵² *Id.* at b.

¹⁵³ *Id.* at 15.

¹⁵⁴ *Therapeutic Consequences*, *supra* note 14, at 75.

more compensation?" But I had no idea. I told them, I mean, that was the decision of the panel. They had me signing all these papers and that's all the money I got. I was concerned about contacting a lawyer because I'm thinking, "Great, I make an appointment with a lawyer and then they need payment. How do I even pay for them?" I mean, JICP was about done by that point, I didn't have the money to pay for a lawyer. So I had some contact with the class action suit (M).

Another claimant said:

I was upset. I was very upset. Angry. Mostly I was just angry, mad, upset. And I'm not sure if it was because—it was very confusing for me. I had the two things—I'm not sure—and it probably was both, I think. I had very low compensation, I didn't feel like it was sufficient for what I'd gone through. But also, there'd been no justice. And that I felt very upset and angry about, there was no justice. I think if there had been some sense of justice, I would have felt like something had been accomplished. I would have been less upset (F).

A male claimant expressed:

It was not as much as I expected to cover the suffering that I went through, but money doesn't solve everything either. It just compensates your pain . . . for justice. When you go through that you feel . . . and you know how much you feel . . . you're worth. And when the span is from \$3,000 to \$60,000, as it was at that time . . . I thought that \$40,000 wasn't enough. Perhaps \$60,000 was too much for me, but \$40,000 was not enough (M).

Another male explained:

Thirty-five thousand dollars was all they were going to allow. And I was not satisfied. I mean, even hearing—for all of us, how many years we all suffered. You know, make it \$60,000 for all of us. We all suffered for

it. You know, if you're going to give compensation then make it fair for everybody, 'cause that is the agreement within the hearing community. Within the Deaf community too, you know, some of the people were only given – you know, I mean, my wife was only give[n] \$30,000 and she'd grown up her whole life there as well. That doesn't seem fair. And then other people are getting \$60,000 and they've only been there two years? I mean, it didn't seem to help—matter how much abuse you'd experienced and how much suffering you'd gone through, the sexual abuse was all. They made this decision. I mean, it was \$35,000 (M).

What impact did the compensation have? The claimants commented on this from the context of their own healing and recovery, as well as the context of their initial goals for the redress process. For example:

I never really thought about the money aspect of it. I think if anything I wanted them to understand how Deaf individuals feel. I wanted them to understand it's not about money, it's about me as a human being and being a proud Deaf individual. I mean, I was forced to go to that school because they recommended it and, when I think about the results of that, I mean, no amount of money can ever fix the hurt that they've caused (F).

And, another claimant communicated her feelings as:

I was feeling hurt, I guess, when I—when I finally saw what I received. I realized that just by receiving a cheque, I was totally not healed for the rest of my life. I looked at it and thought, “That's all I get for—all I get for but I don't feel satisfied,” and realized (indiscernible)” (F).

Another claimant expressed her grief:

“I felt sad when I got it. I didn't cry. But I just felt sad. I felt it wasn't enough. I thought about myself as an old-age pensioner, at

sixty-five trying to live on a pension and thinking that it should be more to help me with that” (F).

And yet another claimant explained his disappointment:

It felt like a tremendous lot of time and effort and fighting to get only \$35,000. They were decided and limited ‘cause they really didn’t know what they were going to give me. I signed up all these forms and then a month or two later they sent a cheque and I wasn’t sure if I should sign off some other papers or if I should appeal it again, because it still didn’t feel satisfactory but they told me that they weren’t going to give me anything more so I finally signed the paper off. There also wasn’t any information provided for me about how to manage the money. I mean, it was a very small amount anyway, but there was no information about investing it or how to manage it (M).

Key informants’ perceptions of survivors’ satisfaction with the monetary aspect of JICP were typically more positive than the levels of satisfaction indicated by many of the claimants interviewed in this study. One key informant noted that although he believed the base scale of compensation was too low, given the range that was available to reward, the compensation received by the claimants was generally considered appropriate. Most claimants responded in a positive and grateful manner on receipt of the cheque, and those that were not satisfied usually found satisfaction through the appeal process. He believed the class action initiative tainted the general feelings of satisfaction of the claimants who completed the JICP process.

VI. KEY INFORMANT INTERVIEWS

Key informant interviews were conducted with seven individuals who played key roles in the JICP as administrators, compensation consultants, and/or community activists. Most of the key informants perceived the JICP to have been a successful redress process, although all did have some critiques and suggestions for improving future redress programs based on their experience.

Many of the key informants found that the priorities of the JICP regarding not retraumatizing and ensuring safety (through, for example, ensuring confidentiality and a lower burden of proof) were crucial to the success of the program. Key informants considered effective the efforts to ensure safety. All believed it was vital that the participants were able to tell their whole story, and felt that this provided an opportunity for claimants to finally speak openly about their experiences in the community. Some of the key informants also saw therapeutic benefits to the process.

“[T]he therapeutic value of JICP would be like introducing them to the idea of letting this out, . . . we had the Well-Being Program . . . put the two programs together, and the therapeutic value, I think, was great” (KI).

I think there’s been an amount of healing done in revisiting what it was like and reprocessing it, and I know that there was healing that happened for some people, whether through the consultants or through their sort of you know excising all the guilt, that, understanding that what happened as children was negligent (KI).

In addition, the flexibility of the program to accommodate changes, needs, and unexpected events, was considered to be a positive attribute. This included small details such as allowing a claimant to write down his or her own story rather than communicate it directly to a compensation consultant, or efforts made to adjust government policy when necessary to ensure confidentiality.

[F]or example, with JICP, a claimant didn’t necessarily have to come in for an interview. If they wanted to sort of write their own story, they could, you know of course being deaf and with English literacy being low; a lot of claimants didn’t choose that option. But some did, because they just didn’t like the idea of meeting someone—and, you know, meeting someone face to face. So being flexible, I think the other—the other idea is being flexible and being willing to change with the needs of whatever community is being served (KI).

A program administrator agreed that the flexibility of the program was a strong asset. Despite the fact that the administration of the program was being overseen by more than one government ministry, the ministries cooperated with the JICP administrators to adjust to the needs of the claimants, making that the priority instead of being stalled by competing ministry interests.¹⁵⁵

The key informants' critiques of the JICP revolved predominately around the compensation awards, the allocation of program resources, and concerns around disclosure. All of these concerns were expressed by the claimants in the interviews from a different perspective.

The compensation was considered too low by many of the key informants, and one key informant felt that the compensation did not reflect the loss of income that other redress packages would have considered for hearing individuals.

“But not compensating for loss of income, I think was a key failure. . . . It's a very sensitive area because the deaf community is viewed as being disabled, handicapped—and they're not!” (KI).

Perhaps this could have been addressed had the Deaf community been consulted more thoroughly, ensuring that they understood the *Terms of Reference* for establishing the range of compensation and examples of other compensation packages. An administrator for the JICP indicated that the Deaf community did not have an advocacy group or any organized representatives who could be contacted regarding the establishment of the *Terms of Reference* nor the details of the JICP. As such, it was difficult to access informed and interested community members with whom to discuss the development of the program. The same administrator suggested that more time may have resolved this problem. He suggested that the Deaf community, family and friends of

¹⁵⁵ See MORLEY, *supra* note 103, at 2-4 (noting that an inter-ministry group, consisting of “representatives of the Ministries of Attorney General, Education, Health, and Social Services, was formed to develop *Terms of Reference*,” which ultimately “defined as a goal ‘assisting the individual to come to terms with the sexual abuse and its consequences’”).

survivors, and the general public had been equally surprised by the extent of sexual abuse in the school.

In addition, the class action suit, referred to frequently by all interviewees, may have had an impact on the evaluation of the level of compensation awarded by the JICP. There was a strong argument put forth by the class action lawyers suggesting that the courts would award a far greater amount of compensation than the JICP could or would, and that the JICP compensation was incongruously low given the extent and degree of abuse suffered by the students.¹⁵⁶ It appears the class action suit interfered with the smooth operation of the JICP and the degree of satisfaction experienced in the program, and without it, the JICP itself may have met greater success.¹⁵⁷

At least two key informants expressed concerns regarding the allocation of resources of the JICP and the extensive and cumbersome validation process. Some felt the resources spent on the Panel could have been put towards the provision of compensation and/or other programming. The key informants also felt that the compensation consultants should have been provided with support services such as supervision or official group debriefings, due to the intense and emotional process they were going through with the claimants.

Did we really need such an extensive panel? The validation process . . . could be streamlined a little better. We felt that the work was so incredibly intense that, you know, like vicarious trauma that resulted—as a result of that, we should have received some sort of compensation for that (KI).

Although disclosure was for the most part considered a positive aspect of the JICP, the key informants also indicated that for some claimants it may have been negative. Many claimants acted on the assumption that they needed to make their claim within a given timeframe

¹⁵⁶ See *Rumley v. British Columbia* [2001] 3 S.C.R. 184, ¶ 17, 2001 SCC 69 (Can.) (citing 65 B.C.L.R.3d 382 (1998)) (“[Kirkpatrick J.] conceded, however, that the JICP is not an adequate alternative to judicial resolution of the dispute. [Kirkpatrick J.] noted that the JICP limits awards to \$60,000, does not compensate family members, and does not provide compensation for loss of income, opportunity, or future care.”).

¹⁵⁷ See MORLEY, *supra* note 103, at 76.

(which was later extended), perhaps precluding the opportunity to do therapeutic work prior to disclosing the abuse to the compensation consultants. Many of the claimants had not processed the events and their impact, and some never received the information required to realize the sexual abuse was inappropriate and not their fault. These factors may have influenced claimants' descriptions of their experiences and of the degree of impact of their abuse, which in turn may have influenced the level of compensation they received.

VII. DISCUSSION

The specific experiences of the claimants connected to being both deaf *and* sexually abused in an educational institution during childhood combined to enhance feelings of isolation, marginalization, and betrayal. In general, when engaged in a process of redress, these elements were further enhanced as the process itself fostered feelings of isolation and marginalization. The key informants added depth to this understanding by providing a different perspective of the JICP, including their perceptions of the impact of the JICP on a broader level, as well as outlining the structure and format of the process, and how the process evolved to accommodate the unexpected events and circumstances that arose. In this article we discuss the implications of both the claimant and key informant interviews, in terms of both the individual claimant and their experiences of sexual abuse in a residential setting, and of the redress process as embodied by the JICP.

A. *The Individual*

The redress experiences of institutional sexual abuse survivors have been analysed using Judith Herman's 1977 framework of recovery from trauma.¹⁵⁸ Herman describes three stages of recovery: (1) establishment of safety; (2) remembrance and mourning; and (3) reconnection with ordinary life.¹⁵⁹ These stages can also be utilized to understand the experiences of the Deaf community members in this study. *Safety* requires the retrieval or acquisition of a state of balance

¹⁵⁸ See generally HERMAN, *supra* note 73. See also *Therapeutic Consequences*, *supra* note 14, at 68-70.

¹⁵⁹ HERMAN, *supra* note 73, at 155.

and security,¹⁶⁰ which is often elusive or impossible to acquire for many members of the Deaf community who have been abused in schools, while young children who, given their sense of isolation and marginalization, may not have the sense of safety necessary to recover. Further, any sense of safety may not have been established at the time when the claimants were required to reveal their stories in the JICP. Indeed, it may be extremely difficult to acquire this state as a deaf person in a hearing world, when one's childhood has contained isolating betrayals such as sexual abuse, and where regular channels for disclosure, information, or support were unavailable. While the compensation consultants attempted to provide a safe and empathic environment in which the claimants could disclose their stories, it was beyond their scope to provide claimants with ongoing support. The Well-Being Program was established to address some of these safety related therapeutic needs,¹⁶¹ but it was not considered by all to be safe. Further, for those claimants residing in remote regions or outside the province, it was not accessible.

Herman deems the first stage of recovery, establishing safety, to be hard work.¹⁶² Herman points out that it is particularly complex when the person is still involved in relationships that have been abusive in the past.¹⁶³ For the JICP claimants, the small size and insular nature of their community, coupled with multiple relationships of sexual abuse, including those with fellow students, meant they were unable to fully separate from some of their formerly abusive relationships. While resolution of this stage is important to recovery, Herman states that it is such hard work that it is often skipped by both survivor and their therapeutic supporters.¹⁶⁴

I really didn't ask for a lot of support, and I think the reason being is that I needed somebody that I could trust and confide in As for community members, such as friends, it's a hard thing to find somebody you can con-

¹⁶⁰ See generally *id.* at 159-72 (discussing the survivor's need to establish a safe environment through the help of social support, regain control of her environment, and return to a steady schedule of sleeping, eating, and exercising).

¹⁶¹ VANCOUVER COASTAL HEALTH AUTH., *supra* note 105.

¹⁶² HERMAN, *supra* note 73, at 172.

¹⁶³ *Id.* at 168.

¹⁶⁴ *Id.* at 172.

fide in, so—and reason being, is the community is very small, which makes it very difficult to be able to confide, because gossip always happens in small circles (F).

Movement from the stage of safety to remembrance and mourning requires “the survivor [to] tell[] the story of the trauma.”¹⁶⁵ This is a requirement of redress processes that involve hearings or written narratives. The timing of the JICP process may have appeared, at a point, not necessarily congruent with all claimants’ therapeutic progress. Communicative limitations due to being deaf and the insularity and small size of the Deaf community may also serve to prevent transitions to remembrance and mourning. The isolation, marginalization, and betrayal that form the base of the claimants’ feelings as deaf and hard of hearing sexual abuse survivors may mean that normal opportunities for healing such as talk therapy, disclosure, and seeking social and family support may have been unavailable.

In this stage, the survivor must pull together disassociated past memories and form a narrative,¹⁶⁶ which is exactly what the JICP demanded. However, resistance to mourning can be strong and preempted by fantasies of revenge, forgiveness, or compensation.¹⁶⁷ Strong fantasies of this nature could impede the recovery of those who entered the JICP process. Revenge fantasies can become prisons, forgiveness fantasies can be unrealistic, and compensation fantasies can elongate the healing process through delaying mourning.¹⁶⁸ To deal with revenge fantasies, the survivor must come to terms with the likelihood of not getting even.¹⁶⁹

I have to confess that I wanted revenge on some of those supervisors that had—they abused me. Supervisors, all of them. And it never stopped. When I thought about the idea of stopping the abuse, by stopping them, a lot of

¹⁶⁵ *Id.* at 175.

¹⁶⁶ *See id.* at 176-81 (discussing a survivor’s need to form a factual narrative of her life, including her life prior to the traumatizing event).

¹⁶⁷ *Id.* at 189.

¹⁶⁸ *See id.* at 189-90 (noting that revenge fantasies will increase a survivor’s torment, forgiveness fantasies are impossible and become cruel torture, and compensation fantasies “may represent a defense against facing the full reality of what was lost”).

¹⁶⁹ *Id.* at 189.

them had already left. They'd already retired or gone. They actually contacted legally some of the teachers and supervisors I know, or I heard about, at least, but the others never seemed to be approached by, you know, at least, or anybody else to be questioned about their actions but the government too had the right to take care of those supervisors. We saw what was going on, but we didn't have any control about that (M).

I mostly wanted justice. I wanted justice. And also for the government to apologize. But I'd say the top was justice. A long time ago I wanted revenge, but later on the revenge became something that I realized wasn't good. So I changed my thought and I got more calm about it. Because revenge could also be a big mistake against myself as well. And would get me in trouble eventually. But justice then came to the forefront as something I really wanted (F).

To deal with forgiveness fantasies, survivors may acquire a sense of restorative love for others in her or his life:

"I was starting to wonder if I would ever even go to heaven. You know? And as a Christian, you're supposed to forgive. I didn't think I could ever forgive And so now today I have to work on letting go. It's very difficult" (F).

Compensation fantasies are core to redress processes, and can extend from demanding redress from perpetrators and others, such as society or those who were bystanders.¹⁷⁰ To deal with compensation fantasies, the survivor must achieve some victory over a perpetrator, sometimes in the form of compensation.¹⁷¹

We wanted it in the newspaper. We wanted the government to actually publicize that in the paper so everybody could see what they had done to us and to give a formal apology. We wanted it on the radio, we wanted it on the

¹⁷⁰ See *id.* at 190-91.

¹⁷¹ See *id.*

television, we wanted everybody to know how sorry they were for what they had [done] to the deaf—to the deaf members who attended the residential schools for the deaf. We didn't want these little pieces of paper just given to us in confidence or in privacy to say how sorry they were, so nobody else knew how sorry they were We wanted—we wanted every province across Canada, and we wanted—we wanted them to—we wanted them to be sorry for the fact that we weren't given any decent jobs, we weren't given the right education, we were underemployed and unemployed. We were given minimal wages. We wanted everything. We wanted equality We want equality (F).

Mostly I was just angry, mad, upset. And I'm not sure if it was because—it was very confusing for me. I had the two things—I'm not sure—and it probably was both, I think. I had very low compensation, I didn't feel like it was sufficient for what I'd gone through, but also, there'd been no justice and that I felt very upset and angry about, there was no justice. I think if there had been some sense of justice, I would have felt like something had been accomplished. I would have been less upset (F).

As grieving progresses, the survivor can envision a more social, general, and abstract process of restitution, which permits her to pursue her just claims without ceding any power over her present life to the perpetrator.¹⁷² For these claimants, it could be argued that engaging in any of these fantasies may be a rational response to being victimized in a government school to which they were effectively compelled to go, and which weakened or distorted the development of their links with their families.

However, the emotional components of these fantasies elaborate the prison-like elements of being Deaf in a hearing world. The fantasy

¹⁷² See *id.* at 189 (detailing the process of a survivor who moves from fury and a desire for revenge to a more satisfying form of anger that allows the survivor to join “with others to hold the perpetrator accountable for his crimes”).

of compensation was elongated and amplified for some by the additional legal strategy of the class action suit. When this opportunity arose, some survivors were faced with focusing on their feelings about compensation and struggling to decide which strategy would generate the most compensation.

In this sample, our research found no significant differences between females and males in their experiences and therapeutic needs when seeking redress. This may, in part, be a reflection of previous research that has found that deaf girls and boys in institutional settings experience similar rates of childhood sexual abuse.¹⁷³ It may also reflect the pervasiveness of sexual abuse at Jericho Hill School, which evolved to become part of student culture with widespread sexual interaction between female and male students of every age. Alternatively, indications of gender differences in the experiences and therapeutic needs of participants seeking redress may have been obscured by the broader experiences of being Deaf and hard of hearing in a predominantly hearing world. In this instance, it is possible that being Deaf or hard of hearing in a predominantly hearing-centered process may have had the effect of transcending gender.

Notably, in observations made throughout the interview process, we also felt at times that overall differences between participants may have been obscured by the influence of the class action suit, which seemed to generate and evolve a standardized *victim's discourse*. The development of a consistent and uniform *story*—that may have been shaped in part to meet the needs of a judicial process requiring unanimity among claimants—may have acted to displace some of participants' unique experiences. It is possible that, in this context, differences because of gender status may have been overwritten in the development of a homogeneous story that was prepared as a function of the class action process.

In short, the therapeutic processes of Deaf and hard of hearing claimants undergoing redress after institutional sexual abuse are likely enhanced and exaggerated with respect to isolation, betrayal, and marginalization. Senses of safety are more elusive for Deaf people to begin with, and recovery is impeded by the complex and insular nature

¹⁷³ Kvam, *supra* note 4, at 243; *Patterns*, *supra* note 5, at 188-194.

of the Deaf community, compounded by the lack of access to appropriate information and healing processes.

B. The Process

The most significant complaint regarding the JICP for key informants and claimants concerned the low levels of compensation. For some of the key informants, the compensation did not seem to adequately address the needs of the community—in particular, it did not address the fact that the claimants would have experienced a continued loss of income due to the impact of the sexual abuse. For the claimants it was not sufficient because sexual abuse was the only abuse that was being compensated for, despite the fact that many of the claimants interviewed had experienced other forms of abuse.¹⁷⁴ The compensation dollar amount was established prior to the selection of the JICP administrators and it was done with little community consultation.¹⁷⁵ Given the complexity of being both Deaf and abused, multiple levels of response are probably required. The JICP process set out to address some of the specific community needs by engaging compensation consultants who were knowledgeable of Deaf culture and fluent in ASL.¹⁷⁶ Compensation consultants assisted claimants in the compilation and filing of their claims, and would often be the only member of the program that a claimant would have to see.¹⁷⁷ In many instances, the consultants provided advocacy and therapeutic support throughout the process.¹⁷⁸ The JICP also attended to claimants with special needs through the development of a special track process with dedicated compensation consultants to oversee the filing of claims of individuals with special disabilities.¹⁷⁹ However, the data in this study indicated that there were several omissions or miscalculations that did not fully respond to the Deaf and hard of hearing survivors and their community.¹⁸⁰ For example, many participants explained that they were never given adequate information

¹⁷⁴ See MORLEY, *supra* note 103, at 30.

¹⁷⁵ See *id.* at 3-4 (discussing the recommendations of Special Counsel Thomas Berger, that detailed the financial compensation parameters).

¹⁷⁶ *Id.* at 20.

¹⁷⁷ See *id.* at 22.

¹⁷⁸ See *id.* at 19.

¹⁷⁹ See *id.* at 48.

¹⁸⁰ See *id.* at 75-76 (noting that more resources could have been allocated for the program).

about delays in processing their claims. Some claimants said they waited many months, and sometimes years, for their compensation money to arrive. One of the most troubling deficiencies or mistakes in the JICP, however, was the apparent lack of therapeutic support offered to claimants who had to travel from their home communities to meet with the Panel. In some instances, claimants were simply sent to a hotel room for the evening after disclosing painful memories, where they often sat by themselves until meeting with the Panel again the next day.

“I remember especially in the hotel I was quite affected. I spent a lot of time in the bar. I couldn’t sleep . . . I tried to get things off of my mind and just put them aside in the garbage and I watched TV. All the time, sat in the hotel room” (M).

I remember going to the hotel after finishing talking with the panel every night, just crying and crying. Couldn’t stop. Every night through that process. And then going down to the bar and drinking, going upstairs and sleeping, and waking up with a terrible hangover, headache, and then going to the panel, and then coming home again at night, and crying and crying, every night and I was so alone. There was nobody there (F).

In their own words, the claimants suggest changes in redress processes that may be made. Some suggestions are fundamental, such as providing more direct communication from the Panel and access to therapeutic counsellors. Some suggestions are small but significant details, such as offering special event passes for people traveling from their home communities, or providing boxes of Kleenex during emotional testimony. Nonetheless, the details matter a great deal in such processes. Second, the results of redress must be seen in a therapeutic light. How do the processes and requirements fit with stages of recovery? Finally, the expectations of the claimants and their community are going to be matched to the results of the processes. How do they fit? Do the administrators of redress processes take stock of expectations at the outset? As the class action suit complicated the JICP process,¹⁸¹ this notion of expectations was made further complex for both claimants and administrators, likely resulting in less resolution and satisfaction.

¹⁸¹ See *id.* at 17.

VIII. CONCLUSION

This study gives us a window into the needs of a unique group and their experiences with redress. Their comments and suggestions, as well as those of the key informants who were directly involved with the JICP, offer us the basis for suggested changes for future redress with Deaf and hard of hearing survivors of institutional sexual abuse. Although we found that training school residents or compensation board claimants, providing links to experienced lawyers and therapists, peer volunteers, and counselling prior to entering into any compensation process, providing a fair appeal mechanism, reimbursement for travel expenses, financial support or planning for monetary awards, and developing nonmonetary support benefits by listening directly to what survivors are seeking therapeutically,¹⁸² there are additional recommendations for the Deaf community.

Based on the key informant and claimant interviews, the following recommendations for future redress programs for Deaf and hard of hearing sexual abuse survivors were generated:

- Acknowledge and address issues of systematic marginalization, isolation, and betrayal that accompany being both Deaf and sexually abused in all phases of the process of redress.
- Provide more comprehensive information about the process and the risks and benefits of participating prior to the process to compensate for communicative limitations and lack of information that Deaf individuals and communities face.
- Allow claimants extended time to process and consider the information regarding the process, as well as considering information on the alternatives.
- Provide therapeutic support throughout the process that deals with the specific and enhanced effects of being *both* Deaf and sexually abused. This is important for those who live apart from their communities and

¹⁸² *Therapeutic Consequences*, *supra* note 14, at 105-10.

travel to meet with adjudicators, as well as for those who are enmeshed in a Deaf community and need assistance in other ways after disclosure of traumatic information.

- Consult with community members to develop ongoing programs of assistance preredress and postredress (therapeutic services, interpretation services, access to continuing education, employment counselling, skill training programs, investment, and financial advice) to ameliorate the effects of being Deaf and sexually abused. Community consultation was done after the *Terms of Reference* had been presented in the Berger Report, but most of this consultation revolved around the implementation of the JICP process. Little, if any, consultation was done regarding the *Terms of Reference*, such as the minimum and maximum rates of compensation, and how these amounts were determined.
- Provide compensation amounts that do not assume unemployment as the basis of calculating loss of income, as this further penalizes the Deaf community of claimants.

These specific recommendations for changes in redress processes serve to reflect and compensate for the specific characteristics of being both Deaf and sexually abused. In addition, they bring added recognition to the high rates of sexual abuse and institutional abuse, in general, among Deaf and hard of hearing children. Future redress programs for Deaf and hard of hearing institutional sexual abuse survivors improve by consciously addressing their processes in a therapeutic framework and by engaging with community members preredress and postredress. These measures better ameliorate the difficult and persistent consequences of the tragedy of widespread sexual abuse of Deaf and hard of hearing children.