

Legal redress options available to abuse victims

By Elizabeth Grace

Sally is a working mother who was sexually abused as a child by her teacher. When her daughter was about to begin school, Sally started experiencing flashbacks of her childhood abuse. She became anxious and depressed, could not concentrate at work or sleep. She began drinking excessively, had trouble managing her anger and problems arose in her marriage. She sought therapy through her EAP program at work. The therapy seemed to be helping until her male therapist sexually propositioned her. Sally experienced this as very confusing and as a betrayal of her trust. She felt overwhelmed, helpless and attempted suicide by overdose. She was brought by ambulance to the emergency department and, after her physical condition stabilized, was admitted to the hospital's psychiatry ward for treatment.

Sexual abuse of children, male and female, and of adult women is all too prevalent in our society. Many persons who are abused in their youth have serious mental health problems, although sometimes these problems do not manifest themselves until years later. Others suffer debilitating sexual assaults or harassment in adulthood. Health-care professionals, including physicians, nurses, psychologists and social workers, are often critical points of contact for abuse victims experiencing mental health problems. Being on the front line means healthcare professionals can play an important role in empowering this vulnerable patient group with knowledge of their legal options. To do this, however, they need to have a basic understanding of the legal redress options available.

Take Sally's situation, for example. The historical abuse she suffered by her teacher was illegal and, as such, Sally may have recourse through our criminal and civil courts. There are, however, important distinctions one should be aware of when considering these two court systems.

In a criminal proceeding, the parties are the Crown (or the state) and the accused person. The victim is a mere witness, albeit an important one, with little ability to control the process. The focus is on whether a wrong (an offence under the *Criminal Code*) was committed. The standard of proof is a high one – proof “beyond a reasonable doubt” – and the



Elizabeth Grace is an advocate for persons who have serious mental health problems and other vulnerable patient groups.

accused benefits from a presumption of innocence and the right to remain silent. If the accused's wrongdoing is proven, the court decides what punishment is appropriate. Although not awarded by criminal courts, modest compensation may be available for victims of crime who make a separate application to Ontario's publicly-funded Criminal Injuries Compensation Board.

A civil court process focuses on compensation, not punishment. The parties to the proceeding are typically the plaintiff (the victim) and the defendants (the person who is alleged to have committed the abuse and, where applicable, his/her employer). The victim's status as a party gives him or her an important say in the process, but also entails legal costs that do not arise in a criminal proceeding. The focus is also broader – not only must the abuse be proven, but so too must the harms caused by the abuse. This broader scope of relevancy makes the civil process a more invasive one for the victim who will have to speak in detail about personal issues and produce private medical, therapy and other records. However, the standard on which the wrong and the harms must be proven is a lower one – on “the balance of probabilities”, which means 51 per cent or more likely to have occurred. There is also no presumption of innocence and the

abuser has no right to silence. If the matter does not settle and the victim is successful at trial, the civil court awards monetary compensation.

For someone who has experienced recent sexual abuse, additional avenues of redress exist. For instance, in Sally's case, her therapist may be governed by a professional body (such as the College of Psychologists of Ontario). A complaint can be made to this body which could result in the therapist losing his ability to practice, either temporarily or permanently. There are other internal disciplinary bodies that exist as well, such as for teachers, clergy and lawyers. Sexual harassment in various social areas, such as employment, housing and the provision of services, can also give rise to an application for relief, including monetary compensation, to the Human Rights Tribunal of Ontario.

The bottom line is that sexual abuse is recognized as unlawful in various legal

contexts. There are thus many potential avenues of redress for its victims. These need to be appreciated so victims can make informed decisions about their options and whether some or all of these may, if pursued, assist in their healing. While, ultimately, a lawyer needs to be involved in advising a victim about these options, health-care providers should have a basic understanding of what options exist so they can, as appropriate, assist this vulnerable patient group.

Elizabeth Grace is a partner at Lerners LLP in Toronto, where she practices civil litigation with a focus on claims arising out of sexual and physical abuse and harassment, professional negligence and health-related matters, aboriginal rights and commercial and employment-related disputes. She can be reached at 416-601-2378 or egrace@lernalers.ca.



Wound care education for all healthcare professionals
Winnipeg - 18-21 November
Toronto 2-5 December

Our Goal:

Improve outcomes of people suffering from acute or chronic wounds by providing evidence-based education with Canada's leading wound care experts.

Level 1 Prevention and management of chronic wounds – one day knowledge learning.

Level 2 Local wound care (debridement, infection control & dressing selection); pressure, friction and shear management; foot wear and foot care; lower limb assessment and compression therapy – two day hands-on skills learning.

Level 3 Implementing best practice with a focus on prevention – one day attitude learning.

To register, visit www.cawc.net.

