

# A CHILD PROTECTION CRISIS IN CANADA

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Canadian institutions are failing to protect children under their care from sexual, physical and emotional abuse at the hands of those they employ. Children are being exploited in churches, schools, sports, recreation, arts and other child serving organizations. Even the most well-meaning organizations are failing to protect children.

### **HOW OFTEN DOES THIS HAPPEN?**

While in 2018 Statistics Canada reported that nearly 1 in 10 children experienced some form of sexual abuse, there is no reliable data on the frequency of institutional child abuse in Canada. There is no national systematic collection of data. There is no national database that lists the names of people fired or disciplined for abusing children in child-serving organizations.

When trying to understand the scope of this issue, researchers must resort to requesting data from individual organizations, (which may or may not collect and/or share data in a systematic fashion), count cases from media reports and court documents, or rely solely on organizations self-reporting with no oversight or accountability.

The result is unreliable and severely understated data. Notwithstanding these limitations, recent efforts show that;

- a Canadian Centre for Child Protection study shows there were at least 750 incidences of children sexually abused in Canadian Schools by educators and staff between 2017 and 2021

- to date, more than 100 athletes have signed onto a class action suit against Gymnastics Canada and several provincial federations, saying they contributed to their abuse by creating a toxic culture and failing to protect them.

- John Jay College of Criminal Justice determined the rates of alleged abuse by Catholic clergy was 4% affecting at least 13,000 American child victims over a course of 50 years.

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This is a hidden problem in Canada and the above examples are just the "tip of the iceberg". In the absence of a credible national integrated system to manage these problems, count and track cases, Canadian parents have no way of knowing if this problem is getting better or worse.

Other countries such as Australia and Great Britain have held National Commissions of Inquiry in response to crisis and public outcry. While the reforms have fallen short, they have made progress in drawing national attention to Institutional abuse as a broad based problem and have taken steps towards holistic reforms such as structured compensation schemes, national research, establishing specialized investigative functions and Institutional reform.

### **IMPACT ON VICTIMS**

Researcher, David Finkelhor, notes that the same sense of betrayal and shame attached to incest is found in sexual abuse by teachers where the "pseudo parental relationship has been sexualized." (Shakeshaft, Educator Sexual Abuse, 2001).

Moreover, it is well-documented that children who experience sexual abuse at the hands of adults in positions of power, experience life-long consequences, including high rates of mental illness, substance abuse, poorer educational and career outcomes, chronic illness, and suicide.

Clinical psychologist and Professor, Dr Peter Jaffe, noted in a paper written on September 23, 2018 for the blog "Dear Pope Francis".

"There is a common harm related to a sense of institutional betrayal. The betrayal comes from the abuse itself, the lack of acknowledgment on a timely basis as well as the cover-up and learning of other victims by the same perpetrator... The common impact may include depression, anxiety, loss of faith, and trauma related to feeling hopeless and helpless. If the church [school or sports club] is not a safe refuge, what is?... "

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Then there is the complex process of therapy. Many survivors may be too distrustful of authority figures or have a chaotic life that makes a therapeutic relationship difficult to establish. Dealing with the past trauma may lead to things getting worse before they get better. Part of the process may be confronting life-long problems related to mental health issues and addictions... There are often painful histories of lost opportunities and a chain of events that lead to poor educational and vocational outcomes. For example, victims' distrust of authority may have led them to drop out of school as teens and then unable to secure employment. This kind of impact may require many years of treatment and remediation. There is also a developmental aspect of treatment. The issues at 15 are different from 25 or 35 or 60 years of age. For example, the survivor who benefited from counseling at 25 may suffer a relapse at 40 when her children are the same age she was when she was abused and may need to return to counseling. The past trauma is triggered again and the parent becomes very protective and afraid to even send their children to school."

## **IMPACT ON SOCIETY AND THE EVOLUTION OF THE LAW**

Over the past five years, there has been a significant shift in how sexual crimes have been viewed and responded to by society.

Attorney Elizabeth Grace noted the following about the Supreme Court *R. v. Friesen*, 2020 decision.

The Supreme Court opened its landmark 9-0 decision by stating the obvious, "Children are the future of our country and our communities." It went on to say it is "send[ing] a strong message" that:

"Sexual offenses against children are violent crimes that wrongfully exploit children's vulnerability and cause profound harm to children, families, and communities. Sentences for these crimes must increase. Courts must impose sentences that are proportional to the gravity of sexual offences against children and the degree of responsibility of the

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offender, as informed by Parliament's sentencing initiatives and by society's deepened understanding of the wrongfulness and harmfulness of sexual violence against children."

These words highlight the profound harms experienced by sexually exploited children and speak to the need to not only appropriately punish offenders, but also to fundamentally transform how we prevent abuse in the first place.

Recently, many institutions in Canada and internationally have been called out for their failure to protect those to whom they owe a duty of protection from sexual misconduct or abuse. Sports, the military, churches and universities are notable examples. Additionally, victims of sexual abuse themselves are increasingly finding their voice within a context of greater societal acceptance and increasing awareness of the harms of sexual assault.

## **FINANCIAL IMPLICATIONS FOR SOCIETY**

The financial costs for institutional misconduct and abuse are incalculable and mounting because:

- Increasingly, the courts are confirming that institutions are vicariously liable for the actions of those they employ.
- The statute of limitations has been lifted for sexual crimes, therefore there is no limit to how far back institutions can be held financially accountable for instances of child sexual abuse.
- The Supreme Court of Canada has emphasized that sexual assault against children is never free from harm.
- Historical awards are subject to compounding interest.
- According to the Canadian Government's Ministry of Justice, the medical cost and loss of productivity linked to victim harm is significant.

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-The cost of related infrastructure, such as sexual abuse centres, community organizations, law enforcement, the courts, incarceration and health care costs are mounting.

-Child sexual abuse at religious organizations in the United States account for 30% of all industry insurance losses, second only to elementary and secondary schools at 39%.

It is unquestionably within the interest of governments and individual child-serving organizations to take strong measures to prevent, detect and correct cases of abuse in a timely manner to prevent greater costs down the road.

## **WHY IS THIS OCCURRING**

The root of the problem is that we rely upon and trust these same institutions to police themselves. We expect them to prevent, detect, investigate and correct cases of child abuse and exploitation. Examination of known cases indicates that this is not only not working, but it is the cases managed by institutions themselves, or in some cases their self governing bodies, where the majority of them, as described below, are mismanaged. There are so many recent examples of this. The cases at the Calgary Stampede or the clusters of cases in Perth Ontario Schools are notable ones. Below are the main reasons that this occurs.

### **1. Conflict of Interest**

Individuals who hold positions of authority in organizations are the ones who must oversee the management and take responsibility for the outcome of any complaints related to child protection. These same individuals hold organizational stewardship responsibilities, and therefore inherently face a conflict of interest. Not only because they ultimately could be found liable for damages suffered by victims, but because they will be held accountable and responsible for reputational damage to the institutions and actions taken against their own employees.

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This situation is made worse when decision makers within the institution know and have pre existing relationships with the accused perpetrators because research shows that administrators and colleagues of the perpetrators can be groomed themselves by offenders to believe that they could never harm a child.

In some cases, the institutional interests are valued over the interest of the child. Results are often denial, downplaying the consequences and/or covering up the problem by the use of compensation settlement for victims and/or the transfer of offenders. All too often these "agreements" are subject to nondisclosure provisions that hide the problem, allowing embolden predators the freedom to re-victimize children. Sadly, few think of the long-term impacts of these decisions.

The recent resignation of the Archbishop of Canterbury is a stark example that highlights the above noted problems.

## **2. Lack of Capacity & Procedure**

Those who head these institutions, such as bishops, school principals, sports administrators and the like, are simply not qualified to manage these cases. An allegation or credible complaint about child abuse requires expertise in investigations, collection of evidence, liaison with police and child protection services, and most importantly, the ability to interview and speak to child victims in a protective manner. This activity is highly specialized and requires specific expertise and experience. It is in fact odd that we rely on these child serving organizations to perform this function. Perhaps the unspoken truth is that organizations often "fight" to retain this role in order to "manage" the problem and keep it from becoming public.

## **3. The Employment Law Trap and Role of Unions**

The general instinct, and in some cases formal structures in institutions, result in these cases being managed predominantly as employee discipline cases. Once seen in that light,

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concern over the accused employee's rights can trump the interests of child protection. This results in a distorted outcome when fears of being sued by employees can lead to protection of the predators over the interests of child protection. This needs to be reversed.

In schools, union protocols can result in these cases being subject to mediation. Most disturbingly, many provinces and territories have clauses in teachers' collective agreements allowing for the removal of disciplinary records from personnel files if a similar occurrence has not taken place within a 2 to 4 year time period. These practices are wholly inappropriate when it comes to disciplinary problems that put children at risk. Mediation in this context suggests compromise regarding child protection is acceptable. This combined with record destruction keeps the problem hidden and child predators free to teach elsewhere. Other than providing representation and support to their members, Unions should have no role in investigations or management of serious misconduct complaints related to the abuse of children by their members. Because they owe a duty of care to their fee paying members, they have an obvious conflict of interest.

Canada urgently needs to reexamine this phenomenon, and establish new laws that in certain circumstances, allow child protection interests to trump employee rights. Child serving organizations need these protections to help them remove high-risk individuals from their employ with speed and confidence.

#### **4. Culture**

Institutions, especially those such as the church and in some cases sports, function under a set of unwritten rules designed to protect those in power and/or those perceived to be most valuable to the organizations success (such as coaches or star players). This blind obedience is dangerous and is a main force that keeps child abuse hidden. In other organizations, such as schools, union rules and protocols prevent those bystanders, who may know that a child is at risk, from speaking out. Denial, fear-mongering, and fear of reprisal are dominant dynamics in many organizations- especially smaller ones which lack

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capacity and diversity of membership. In the Catholic church, the Code of Canon Law - specifically Can. 983 §1 and §2 - and its tradition of confidentiality in the confessional, can protect predators. New child protection laws are needed and must clearly trump these types of organizational policies and practices.

## **5. Grooming**

Sexual, emotional and sometimes physical abuse of children is almost always preceded by a period of grooming. As part of the grooming process, child victims are slowly and meticulously isolated, deliberately confused and drawn into a relationship of dependence, where the abuser gains the trust of the child victim. Ironically, because child victims are groomed to feel responsible, shameful and guilty for their own behavior, their ability to report is minimal and often happens years after the abuse has occurred, if ever. Because of this dynamic, it is critical that institutions and bystanders act in a timely manner as early as possible in the grooming process to prevent abuse from escalating and affecting multiple victims. This includes the need to identify and sanction predators at the early stages when grooming of a child begins. NSPCC, the UK Children's Charity, explicitly recognizes grooming as a problem that requires urgent intervention, and encourages citizens to contact police if they observe a child being groomed. Canada is falling behind, there are too few activities in place to assist the public in understanding grooming behavior and in guiding them on how to take action when it is observed.

## **6. The Role of Bystanders**

A particular emphasis regarding the role of bystanders is important to note. Bystanders are often the first to see signs of child grooming and abuse but fear reporting due to:

- fear of reprisal
- fear of making errors in judgment and incorrectly putting a colleague's career at risk
- having been groomed by an offending colleague to believe they are harmless

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- fear of harming the institution they work for
  - fear of being sanctioned by the institution or being shunned by their colleagues
  - lack of understanding of the lifelong harm children suffer as a result of the abuse.

Further, in many, if not most organizations that serve children, the processes and procedures for bystanders to report suspicious or problematic behavior are either absent, unclear and/or lack commitment to protect them.

Child-serving organizations should create the means, culture and processes necessary to encourage employees to report problematic behavior. This too will improve detection and removal of predators from child serving organizations. However, this is not failsafe because in the absence of a fully functioning independent body (described below), it is only as good as the child-serving organizations willingness and ability to take action.

Noted legal professor Amos Guiora argues in his books *An Army of Enablers* and *The Complicity of Silence* argues that bystander inaction and complicity should be criminalized. Guiora notes that speaking up should be both a moral and a legal duty. In some cases, bystanders can become the enablers of child abuse as they, unwittingly or not, protect the abuser. Some American states have now done so, including Utah. Canada is behind and lacks an organized and coherent approach to this problem. Current laws regarding duty to report are rarely enforced and impose weak fines and penalties. They do not act as effective deterrents for those who ignore or enable abuse.

## **7. Police and Child Protection**

Many think that referral of cases to police or child protection services is the entire solution. While these are very important and essential components of a child protection system they are not enough and can result in many cases falling through the cracks. Most victims do not go to the police. According to the Department of Justice website, only 5 percent of all sexual assault cases are ever reported to the police.

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Moreover, police can only act when circumstances meet a particular threshold and sadly, they sometimes can't act due to a multiplicity of factors, such as the lack of evidence or when a child victim understandably cannot testify for a variety of reasons.

Child protection services are primarily designed to protect children in their homes and while they can and do take immediate action to protect an individual child in a specific set of circumstances, they do not have the authority to remove the predator (priest, teacher or coach) from the institution in question. This later step is fundamental to ending the cycle of abuse. Currently, too often, predators remain in place or move to other child serving institutions to continue their abuse.

Grooming a child for sexual exploitation or abuse, is a gradual process, akin to taking control of the victim and creating a dependency relationship between the predator and victim. This is the stage at which the abusive employee needs to be identified and removed from the organization. Sadly, most child abusers are only detected and removed after serious harm to multiple victims' has already occurred. Police or child protection services are not designed to intervene in these early stages.

Together these "cracks" in the system regularly allow predators to continue to abuse children.

## **8. Self-Regulating Professional Bodies**

In the case of teachers, self-regulating professional bodies such as the Ontario College of Teachers or the British Columbia Teachers Regulation Branch, have had some limited success in removing high risk teachers from their school systems. These bodies are only partially successful because their adjudicative functions are made up of 1. union representatives, 2. school board or interested government officials and 3. members of the public; the first two being in a conflict of interest and all lacking sufficient specialized expertise. Second, the procedures in place for having cases referred to these bodies are cumbersome, often delayed and can be blocked by individual school officials. Lastly, they

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are administrative arms of government and lack the independence to act fearlessly without the risk of interference from the government of the day. Lastly, they may have conflicted loyalties towards the fee paying members who fund their existence.

These types of bodies make sense when it comes to the need to self-regulate problems or activities related to professional practice, such as the application of medical procedures or school curriculum. However, the sexual, physical or emotional abuse of a child is a very different and complex matter that requires very specific expertise that would lie outside the purview of individual regulatory authorities. It is not reasonable to assume that this type of expertise could exist in each of these self-regulated bodies. Complaints of child abuse in child serving organizations such as churches, scouts, schools or sports all deserve to be managed and adjudicated in a uniform and expert manner under one common approach.

## **9. Child Serving Organizations**

It is unreasonable to expect a diverse group of 1000's of different child serving organizations to take on the management and follow-up of complaints related to the physical, sexual and psychological harm to a child. Child serving organizations themselves should not be investigating and/or adjudicating complaints due to their inherent conflict of interest, bias and lack of capacity as well as their inability to interview and treat child victims in a protective victim centered manner. A more organized and robust system of law and institutional structure is urgently needed.

Moreover, most of these organizations are extremely small and lack the financial resources necessary to properly conduct these tasks. When an allegation of child abuse is received by these organizations, it is necessary and prudent for them to seek legal advice and independent support in investigating complaints. The vast majority of these organizations do not have the financial resources necessary to do so and therefore, even the most well-meaning among them, can significantly mismanage these cases. These organizations need more support and will no doubt welcome the opportunity to hand over these cases to an

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outside independent body who can properly assess the risks and take necessary actions such as removing the predator from their organization. These actions, when taken appropriately, should hold harmless small organizations from repercussions such as employment lawsuits from those found to have harmed children in their organizations.

That does not however mean that they do not have a strong role to play and a legal/moral obligation to vigilantly protect children from adult predators they employ who hold positions of authority over children.

At a minimum, they should be doing the following:

- ensure employees and volunteers hired are vigorously screened for criminal records and employment/volunteer histories that put children at risk; this step is critical but by no means "fail-safe" as child predators often go undetected or worse, via the use of employment regimes, negotiate release from contracts with clean records via non disclosure agreements and/or negotiated settlements
- ensure all employees are trained to detect and prevent their employees and volunteers from harming children
- ensure they never sign negotiated, mediated or otherwise constructed arrangements to keep silent about or hide employee behaviors that put children at risk
- ensure they maintain records
- ensure all employees are regularly informed and reminded of their duty to report; and
- ensure they create the means, culture and processes necessary to encourage employees to report problematic behavior.

Beyond the above noted prevention, detection and administrative activities, all next steps such as investigating, adjudicating and imposing sanctions should ideally be done by an independent body such as the one described below.

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## **THE SOLUTION: AN INDEPENDENT BODY WITH THE FOLLOWING CHARACTERISTICS IS URGENTLY NEEDED**

The ideal solution is an independent child protection body in Canada with the following characteristics.

### **INDEPENDENCE**

The body(s) should report to provincial/federal legislatures, or, be housed in an entity that does, such as the Auditor General, to ensure its independence, multi-party scrutiny and rigorous review of its mandated activities. Alternatively, the body could be set up as a tribunal, similar to the structure used for the Canadian/Provincial Human Rights Tribunals.

The head of the body should be appointed and dismissed by federal/provincial legislatures. This will ensure that the entity can act and report in a wholly independent and fearless manner.

The head of the body, via competitive and merit-based appointment processes, should appoint staff. The body should be staffed by a diverse group of professional experts. Moreover, all employees should be fulltime and free from membership in any unions affiliated with child serving organizations. Staff should be appointed pursuant to public service legislation providing them stability of tenure and institutional independence.

It is also necessary to have an independent funding source, such as government appropriation, rather than by "taxing" child serving organizations in the way teacher colleges do. Being solely funded by those they investigate can result in conflicted loyalties and can hamper independence.

### **FAIR AND TRANSPARENT PROCESS**

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Child serving organizations should be required to report to the independent body, immediately upon becoming aware that, an individual employee or volunteer, has been the subject of a concern, complaint or investigation or has been terminated, suspended or restrictions have been placed on their duties for reasons of professional misconduct related to the abuse or exploitation of a child.

Child serving organizations should also be required to report to the independent body, immediately upon becoming aware that a person in a child serving role, who is a current or former employee /volunteer, who has been the subject of a charge, or is/has been charged or convicted of an offense involving sexual conduct and minors or any other offense that, if true, could indicate that a child or children may have been or may be in future at risk of harm or injury.

The first paragraph meets the requirement to report someone who has been the subject of a complaint, immediately, to the tribunal, to ensure the independent body and not the child serving organization investigates the matter.

In addition, the above extends the responsibility of child serving organizations to report, not just their existing employees/volunteers, but also those they have become aware of who have ever worked for them and have subsequently become the subject of a complaint. Among other things, this could mitigate the risk of ex-employers providing positive references for employees who they know to be the subject of concern.

This approach builds in a requirement that mandatory reporters MUST employ an assessment of risk from a default standard of "if this is/were true, would it be possible that children now or in future could be at risk" placing children's safety in the CENTRE of the analysis.

In addition, the independent body should accept direct complaints from the public, bystanders including victims, staff and parents. Failure of administrators and employee

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bystanders to report, should result in fines and/or in some cases criminal charges should be considered.

Procedures need to be put in place to protect students, parents and teachers from reprisal.

All participants should be entitled to due process of law based on the principles of natural justice. The principles of natural justice require that a claimant be given a fair and impartial hearing before a body whose collective mind is free from bias. It is also essential that justice not only be done but that it is seen to be done.

The standard of proof should be proven by a lower standard than criminal law such as the preponderance of evidence or balance of probability. This is consistent with thresholds set by other similar regulatory bodies such as the Ontario College of Teachers.

The body should take reasonable steps to follow up on anonymous complaints.

The body should have powers such as those under the Inquiries Act, to conduct investigations and hearings. These should include the ability to compel witnesses and subpoena information.

The body should have an intake function where complaints can be reviewed and triaged for next steps. Existing Child Advocacy Centres can play an important role at this stage in supporting and guiding victims through the process. A broad range of interventions should be available for offenses such as:

- suspected grooming and/or boundary violations versus
- suspected sexual misconduct or sexual assault.

The body should be able to order the following types of corrective action:

- at the individual level - training, suspension, dismissal;
- at the organizational level - entity wide training, policy, or process improvements.

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The above examples are meant to be illustrative and more work is needed to find the right balance. However, it is important that any system that is put in place is designed for the earliest possible intervention to assure that child predators are disruptive before serious harm is caused. The end result needs to be a correction of behaviors when determined possible or, the permanent removal of the abuser from working with children currently and in the future.

The body should be required to refer cases, it believes are of a criminal nature, to the police. Likewise, the body should be required to inform child protective services as required by law. This step is critical to further deter child abusers from reoffending in any other child-serving organizations. The bodies' decisions should be subject to judicial review.

### **RECORDS, REPORTING, ACCOUNTABILITY AND NATIONAL DATABASE**

The body should report annually to Parliament/ Legislature by tabling an annual report and should be summoned to provincial/federal legislative/parliamentary committees to answer questions in public about its activities and findings.

The annual report should outline the number and types of cases being investigated and include a year-to-year comparative analysis, so that parents and members of the public can monitor to see if the situation is improving (or not).

The names of offenders who have been found to have sexually or physically assaulted or groomed children should be submitted to a national database available to parents, caregivers, and all child-based employers anywhere. A description of the misconduct, such as those currently used by the Ontario College of Teachers, should also be included. This system can be used to screen individuals seeking employment or volunteer opportunities working with children.

### **VICTIM EXPERIENCE OF PROPOSED SYSTEM**

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One of the most important reasons for this proposal was to create a system where victims could come forward with greater confidence and safety and be treated with respect and care. Under the current disorganized system, when victims report within child serving organizations, they are very often re-traumatized and their complaints are too often misunderstood or dismissed due to the lack of capacity and bias within these organizations. This is a natural result because these organizations are most often led by persons unqualified in the area of child abuse and child protection and, hold multiple conflicting stewardship obligations.

If victims felt that they had a safe place to report, then it is likely that rates of reporting would go up increasing the likelihood that predators will be removed from child-serving organizations sooner. Most importantly, harm to the child victim will be dramatically reduced.

Victim support also needs to be put in place. These should include provisions for:

- Victim counseling and psychological support.
- Legal support to help victims navigate criminal, civil or other options for restitution.
- A reconciliation process based on principles of restorative engagement where the child serving organizations would proactively support victims and acknowledge harms. This should include, support and follow up to assist victims in completing their education and transitioning to the next phase of their life. Apology and explicit recognition of harm is essential to help relieve the child of a lifetime of guilt, confusion and self-blame.
- Victims should not be required to sign nondisclosure agreements in relation to settlements.
- An optional financial compensation scheme, as an alternative to civil litigation, would also be helpful, to those who elect to use it, as civil litigation can often result in additional harm to victims.

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As noted above, the current network of existing Child Advocacy Centres could be vital partners in this initiative as they already play an important role in helping child victims navigate their options and provide support.

### **ACCUSED PERSON'S EXPERIENCE OF PROPOSED SYSTEM**

The ethical and legal question regarding the rights of those accused of and then consequently subject to adjudication by the tribunal merits rigorous thought and analysis. In essence, this proposal is a quasi judicial administrative solution meant to fill well documented gaps where current authorities including the police, child protection services, courts and child serving organizations are unable to detect and permanently remove those who harm children from their organization in a timely manner. In fact, this model is based on a framework that already exists and is in widespread use with regulated professionals.

The most severe sanction proposed is the loss of current and future employment in child-serving organizations via disclosure on a publically available and searchable database. Such as is currently done by the Ontario College of Teachers. Seen another way, it is akin to losing your driver's license and related employment, if you have been found to be a risk to the public by virtue of your proven documented driving behaviors. Much lighter sanctions, such as training and awareness, may be appropriate in those cases where it has been demonstrated that boundary crossing behaviors, such as a coach driving a child home, was well intended but misunderstood. In such a case, the body can play a role in helping organizations manage such activities using a risk prevention approach such as registering these practices in advance and seeking parental and organizational permission.

Due notice should be given to employees and volunteers. Upon their engagement, they should be notified and agree to being subject to adjudication or review by the independent body/tribunal as a condition of employment/volunteering with a child serving organization. This requirement should be codified in law. This is similar to what teachers currently agree to in British Columbia as a condition of employment.

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By ensuring due process, the application of the principles of natural justice and access to judicial review, those accused would arguably have better access to a just outcome than if they are investigated by unqualified members of a child serving organization.

It is understandable that there would be concerns about the risk of false reporting and that having an independent body could somehow increase false reporting. Having said this, it is important to note that research by Mark Everson and Barbara Boat, demonstrates that rates of false reporting are low at 2 to 8 percent. A main advantage of having a body of unbiased experts, who receive, triage and assess complaints, would be their enhanced ability to determine the difference between legitimate and frivolous or vexatious claims. Anyone falsely accused should take comfort in having their allegations/complaint assessed by unbiased, trained experts. These experts would be trained in interviewing complaints, looking for evidence etc. This approach would result in fewer delays and errors than would the same function being performed by untrained or undertrained and biased administrators.

## **COMPARISON TO EXISTING MODELS**

As noted, the solution proposed in this paper, is based on a framework that already exists and is in widespread use with regulated professionals.

The use of regulatory bodies to address issues of professional misconduct (alleged, under investigation, or otherwise) is a standard practice in Canada in all regulated professions. In joining regulatory colleges, members agree to both abide by, and be subject to, their policies and practices including where improper conduct has been alleged. The proposed tribunal model adopts this approach in a modified manner by making this a condition of employment or volunteering in a child serving organization. This broader approach, ensures protection for all children in all child-serving organizations, whether or not those who serve them are subject to a profession specific approach. This also addresses the concern noted above that professional self- regulation is not the correct approach for

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sexual or violent crimes against children. While these bodies are well placed to adjudicate "profession specific misconduct or complaints", they lack the expertise and independence to adjudicate complaints related to misconduct of a sexual or violent nature against children.

Importantly, this approach builds in a requirement that mandatory reporters MUST employ an assessment of risk from a default standard of "if this is/were true", would it be possible that children now or in future could be at risk placing children's safety in the CENTRE of the analysis. Right now it's the other way around - "I'll figure out if I think it's true and if I think it is, then there may be a risk to kids so I'll report." Flipping it, signals that the priority is child- protection. What matters is not what you think may have happened, it's what would be the risks to children under the worst case scenario.

Societally, we are placing the safeguarding of children as the highest priority, and that ensuring current or future harm can't occur. This is not the same as presuming the claim is true. It is simply saying the standard for assessment for reporting has to start from the most protective stance for children. That's exactly what the duty to report in child protection legislation does - it takes the discretion to decide out of the hands of the reporter.

## **A WORD ON JURISDICTION**

All too often in Canada, complex problems where both Federal and Provincial/Territorial governments share responsibility, get pushed to the side because of the lack of clarity or complexity over roles and responsibilities. In other cases, such as the administration of the taxation system or the existence of the Public Health Agency of Canada, where Health is clearly a provincial responsibility, Federal leadership and the creation of co-operative institutional structure can result in functional solutions. After all, predators who harm children, like viruses, do not respect provincial boundaries and therefore a national coordinated solution and Federal leadership is urgently needed.

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## CONCLUSION

This approach supports what we already have as a legislated child protection standard where the checks, balances, and risks of this kind of standard were considered reasonable to accomplish the goals set out by legislators. In argument, then why, when society has signaled that the protection of children is central through legislation, have institutions been empowered to set their own standards and practices that are inconsistent with the laws? The existing standard for child protection, as encoded in legislation, is that reporting is not discretionary and a mandatory reporter isn't empowered to decide when/if they should do it. Why should this be any different for child-serving organizations? That same approach should be the standard adopted for reporting, and the necessary policies and government machinery needs to be put in place to enable its implementation. The current situation that allows individual child-serving organization, who are both unqualified and in a conflict of interest, to investigate and decide on risks to children and subsequently exercise considerable discretion on next steps, is both illogical and a blatant failure on the part of governments to provide a coherent approach to the protection of children in child- serving organizations.

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<https://armiesofenablers.com/>

Statute of Limitations

<https://zamani-law.com/what-is-the-statute-of-limitations-on-sexual-assault-in-canada/>

Canon Law

[https://www.vatican.va/archive/cod-iuris-canonici/cic\\_index\\_en.html](https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html)

ECONOMIC IMPACTS

Child Sexual Abuse Is the Second Most Frequent Loss at Religious Institutions

<https://bitnerhenry.com/child-sexual-abuse-is-the-second-most-frequent-loss-at-religious-institutions/>

Department of Justice

[https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr14\\_01/p10.html](https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr14_01/p10.html)

GROOMING AND PSYCHOLOGICAL IMPACTS

NSPCC

<https://www.nspcc.org.uk/what-is-child-abuse/types-of-abuse/grooming/>

Professor Peter Jaffe

<https://www.edu.uwo.ca/about/faculty-profiles/peter-jaffe/index.html>

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Charol Shakeshaft, Educator Sexual Abuse

[https://www.researchgate.net/publication/242291313\\_Educator\\_Sexual\\_Abuse](https://www.researchgate.net/publication/242291313_Educator_Sexual_Abuse)

RAINN

<https://rainn.org/effects-sexual-violence>

Professor David Finkelhor

<https://www.researchgate.net/profile/David-Finkelhor>

MEDIA ARTICLES AND NOTABLE CASES

Perth Schools

<https://www.cbc.ca/news/canada/ottawa/school-board-sued-sexual-abuse-jeff-peters-perth-ontario-1.6187232>

Calgary Stampede

<https://www.cbc.ca/news/canada/calgary/calgary-stampede-class-action-lawsuit-settlement-1.7250505>

Gymnastics

<https://macleans.ca/society/gymnastics-abuse-scandal-canada/>

Winnipeg Coach

<https://www.cbc.ca/news/canada/manitoba/kelsey-mckay-sentencing-1.7345058>

Archbishop of Canterbury Resignation

<https://www.ncronline.org/opinion/guest-voices/downfall-archbishop-canterbury>

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## MACHINERY OF GOVERNMENT REFERENCES

The Auditor General of Canada Act

<https://laws-lois.justice.gc.ca/eng/acts/a-17/>

## TEACHER UNION CONTRACTS/EXAMPLES OF RECORD DESTRUCTION CLAUSES

Northwest Territories

<https://nwtta.nt.ca/publications/collective-agreements>

21.05 An employee's personnel file will be cleared of all adverse comments, reports or correspondence if the employee has been continuously employed for three (3) calendar years from the date of the last adverse comment, report or correspondence.

Saskatchewan

<https://www.stf.sk.ca/resource/provincial-collective-bargaining-agreement-2019-2023/>

10.5.1 Any document of a disciplinary nature shall be removed from the teacher's personnel file after a period of three (3) years from the point of the alleged infraction, provided there have been no reoccurrences of a similar nature during the three-year period.

Nova Scotia

<https://nstu.ca/nstu-members/member-services/contracts-agreements>

Except for a teacher evaluation or Criminal Record Check or related annual declaration, any unfavourable report entered in the teacher's Official Personnel File shall be removed from

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the active file after the material has been on file for four (4) years, provided that no further disciplinary action has been recorded during this time; or may be removed in a lesser period if, in the opinion of the Regional Executive Director/Superintendent, the teacher's performance warrants same.