

CORNWALL INQUIRY RELEASES REPORT WITH RECOMMENDATIONS REGARDING THE PREVENTION OF AND RESPONSES TO CHILD ABUSE

*By Terrance S. Carter and Esther S.J. Oh**

A. INTRODUCTION

The Cornwall Public Inquiry Report (the “Report”) was released on December 15, 2009. The Cornwall Public Inquiry (the “Inquiry”) was established by the Ontario government on April 14, 2005, under the *Ontario Public Inquiries Act* with a mandate to “inquire into and report on the events surrounding allegations of historical abuse of young people in Cornwall by examining the response of the justice system and other public institutions to the allegations, as well as to make recommendations to improve the response in similar circumstances.”¹ The Inquiry was also directed to inquire into and report on processes, services, and programs that would encourage community healing and reconciliation within the Cornwall community. The Report is over 2,000 pages and contains recommendations for a number of public bodies, including the local police services, the government of Ontario, the Roman Catholic Diocese of Alexandria-Cornwall, the local Children’s Aid Societies and school boards. Included among the recommendations is a recommendation that the government of Ontario should implement a province-wide public awareness campaign on the issue of the sexual abuse of children and young people, similar to long-term campaigns against drunk driving and the campaign against domestic violence, which reaches as wide an audience as

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¹ The Honourable G. Norman Glaude, Report of the Cornwall Inquiry (December 15, 2009) Available online at: <http://www.cornwallinquiry.ca/en/report/index.html>, on page 163 in volume 1. [The Report]

possible and engages as many different media formats as possible, including television, radio, newspapers, magazines, the internet and billboards.

This *Church Law Bulletin* does not provide a comprehensive summary of the recommendations outlined in the Report, but instead summarizes some of the key recommendations outlined in the Report that would be of interest to religious, charitable and not-for-profit organizations that work with children and youth and focuses on the recommendations for the Diocese of Alexandria-Cornwall which would be most relevant in that regard. While this *Bulletin* encloses general comments relating to the preparation of child protection policies in Ontario, legal counsel should be consulted with regard to any specific concerns or questions that may arise.

B. BASIC BACKGROUND INFORMATION CONCERNING PUBLIC INQUIRIES

As indicated in the Report, public inquiries have a fact-finding and investigative function, i.e. as opposed to criminal or civil processes where the courts serve an adjudicative function in sanctioning appropriate punishment, whether under criminal or civil law, on the culpable party. In this regard, public inquiries are often established following events that may have caused a loss of confidence in public institutions in order to determine what happened in a given situation and to make appropriate recommendations to policy makers to prevent such events from re-occurring in the future. Public inquiries can also serve to educate the affected community on the subject matter of the inquiry to help the public better understand the issues surrounding the mandate of the inquiry.² The (Cornwall) Inquiry is unique in that it also had a mandate to review programs that would encourage community healing and reconciliation. To this end, the Inquiry commissioned various research studies and provided workshops on sexual abuse, as well as therapy for victims of child sexual abuse.

C. BRIEF OVERVIEW OF HARM CAUSED BY CHILD ABUSE

Chapter 3 of the Report reviews the impact of child sexual abuse and the long-term consequences of the harm suffered by victims of child sexual abuse for years after the abuse has been perpetrated. In this regard, the Report describes the impact of child sexual abuse as recounted by victims, alleged victims, as well as parents, spouses and siblings of the victims. The Report notes that the victims of child sexual abuse continue to suffer from long-term psychological, social and financial effects³ interfering with the victims, "...ability to

² The Report, at page 1564, volume 1.

³ *Supra*, note 1, at page 57 in volume 1.

trust, to sleep, to love, to parent, and to economically sustain themselves and their families.”⁴ Child sexual abuse can also leave the victims feeling alienated from their families, create mistrust in authority figures, lead to abandonment of religious faith, cause confusion regarding sexuality and even lead to a breakdown in marriages in the victim’s adult life. Chapter 3 of the Report concludes by describing the process whereby child victims receive gifts, such as alcohol or money from sexual predators leading up to the committal of the sexual abuse.⁵

D. RECOMMENDATIONS FROM THE REPORT

1. General Recommendations

Commissioner Glaude summarizes some of his general recommendations in chapter 4, volume 3 of the Report. All religious, charitable and not-for-profit organizations which have child abuse prevention policies should review these recommendations, in addition to those recommendations provided in the executive summary in volume 4 of the Report which include the following:

- ◆ “30. There should be training for teachers, guidance counsellors, hospital workers, and anyone who has a job where there is interaction with children and youth to identify the signs of abuse so intervention can occur sooner, and to ensure there is a follow-up if necessary or if there are any signs of injury.
- ◆ 31. There should be education for professionals on the different responses of boys and girls to abuse.
- ◆ 37. Any procedures and protocols that an institution has related to disclosures or suspicions of abuse of children and youth should be publicly communicated so the public will know if the procedures are being followed.
- ◆ 48. There should be better screening for those who have access to children (note: this was repeated by multiple witnesses before the committee).
- ◆ 51. Institutions need to respond more quickly to reports of suspected abuse.
- ◆ 52. Institutions and those working in institutions should acknowledge having made mistakes and should take organizational and personal accountability.
- ◆ 53. Institutions should demonstrate a change in attitude toward victims of abuse and should state publicly what will change in future.”⁶

⁴ Ibid, at page 63 in volume 1.

⁵ Ibid, at page 59 in volume 1.

⁶ Ibid, at pages 124 to 126 in volume 3.

2. Recommendations Specific to the Public Institutions Investigated by the Inquiry

While the recommendations contained in volume 4 of the Report may be specific to the Diocese of Alexandria-Cornwall, as well as other public institutions in the community, some of the recommendations will also have general application to child protection measures being reviewed by other religious, charitable or not-for-profit organizations. For example, the Report recommends that a provision be added to existing child protection policies indicating that when a senior member of the clergy is informed of an allegation of abuse involving a clergy member, the allegation must be reported to civil authorities immediately prior to undertaking an internal inquiry.

The Report recommends that settlement documents prepared in the context of civil litigation should be reviewed to ensure that the documents do not contain any confidentiality clauses that could interfere with any potential criminal proceedings relating to the same subject matter. The Report also encourages greater information sharing, and the amendment of protocols relating to exit procedures that apply to outgoing religious leaders, to ensure that the new incoming religious leaders in a given religious organization are made aware of any past allegations of sexual misconduct regarding clergy, employees or volunteers within the community.⁷

The Report recommends that procedures be implemented to continually evaluate the suitability of priests for ministry⁸ and further recommends that clergy members, employees and volunteers should receive ongoing training with regard to statutorily mandated reporting duties under the *Child and Family Services Act (Ontario)*.⁹ The Report suggests that accurate records of allegations of child abuse should be maintained by the religious organization and that senior officials should be more familiar with the personnel files of each member of the clergy, particularly where allegations of sexual misconduct have been made. In addition, all members of the clergy, employees and volunteers should be given ongoing training with respect to measures to be taken to prevent child abuse with designated individuals being given on-going specialized training with respect to the prevention of child sexual abuse, as well as training with respect to the particular effects of sexual victimization on males.

⁷ Ibid, at pages 359 in volume 4.

⁸ Supra, note 1 at page 360 of volume 4.

⁹ *Child and Family Services Act*, R.S.O. 1990, chapter C.11. For summary information on legislated reporting requirements, see Esther S.J. Oh "Thoughts on Child Protection Policies: How to Make them Work for your Church or Charity" in *Church Law Bulletin* No. 23 (November 27, 2008) online: <http://www.carters.ca/pub/bulletin/church/2008/chchl23.pdf>.

The Report made a number of recommendations concerning how a religious organization should respond to allegations of sexual misconduct against a clergy member, employee or volunteer, a synopsis of which is provided in the bullet points below. While the recommendations below were made within the context of the operations of a religious organization, they would also have application to other non-religious charities and not-for-profit organizations.

- ◆ Clergy members should be immediately suspended and not be allowed to be present at any ministry activities until any criminal, civil, or internal proceedings have been completed;
- ◆ Senior religious officials, such as a bishop, should not be present when an alleged perpetrator of sexual misconduct is speaking with his or her lawyer;
- ◆ Even where no criminal charges involving child abuse are laid, if an internal committee for the religious organization still questions the innocence of the alleged perpetrator, the Report recommends that the internal committee fully investigate the allegations and prepare a comprehensive report of its findings;
- ◆ A representative of the religious charity should be appointed to monitor any criminal or civil trials, in order to allow the religious charity to make appropriate decisions regarding how to deal with the accused perpetrator;
- ◆ Where charges are stayed or withdrawn by a court, a review of the incident should be conducted to determine whether the clergy member would constitute a risk to young people;
- ◆ Where a member of the clergy has been found guilty of committing sexual assault of a young person, the religious charity should strongly consider forbidding the clergy from resuming active ministerial duties;
- ◆ If a member of the clergy, employee or volunteer requests funds from the religious charity to appeal a criminal or civil decision, a written request giving reasons must be submitted by the clergy and approved by the appropriate governing body within the religious charity prior to any such payment of funds;
- ◆ Even where a member of the clergy, employee or volunteer resigns from the religious charity, allegations of sexual misconduct should still be reported to the appropriate civil authorities; and
- ◆ The child protection policy for the religious organization should preclude the transfer of a clergy member who has committed an act of sexual assault or abuse from one parish to another.¹⁰

Finally, where a religious charity is reviewing therapeutic options to treat and assist individuals who have committed or are alleged to have committed sexual abuse of young people, the Report recommends that only qualified treatment centers staffed by professionals who specialize in treating sexual disorders should be used to assist in this regard.

¹⁰ Ibid, pages 361-363 of volume 4

3. Recommendation Regarding Use of Apology and Discussion on *Apologies Act*, 2009¹¹

One of the recommendations provided for in the Report involves the application of the Ontario *Apology Act*, 2009,¹² which permits institutions to make apologies without admitting civil liability in the Province of Ontario. The Report suggests that religious organizations can extend an apology to alleged victims who have reported allegations of abuse, whether or not those allegations have been verified through legal channels or internal inquiries and without regard to whether all potential victims who may or may not have come forward regarding their personal situations.¹³ Commissioner Glaude comments in the Report that during meetings with the public, members of the public indicated that they did not understand why it was so difficult to obtain an apology from the alleged perpetrators and their employers where allegations of child sexual abuse were involved.

Commissioner Glaude highlights some of the research findings relating to the use of apologies in civil cases in the Report, which can also be of use for religious organizations as they may have concerns in issuing an apology after an incident of child sexual abuse, a few of which are reproduced below;

- ◆ An apology or expression of regret can be a powerful tool in the healing and reconciliation of relationships, in both cases of minor transgressions and those that are more serious, especially for victims.
- ◆ ... an apology can be of benefit to both victim and transgressor... Apologies can also foster reconciliation between the individuals involved, which is beneficial to the victim, to the transgressor, and to the community at large.
- ◆ Certain core elements should be incorporated – or at least considered – in order for the apology to be meaningful: recognition, remorse, responsibility, repentance, reasons, reparation and reform... However, not all apologies must be the same, and their contexts will vary.
- ◆ Generally, tactical, explanation, and formalistic apologies are seen as inadequate and insincere by victims of harm, and therefore may cause *more* harm, by producing negative psychological effects.¹⁴

Commissioner Glaude noted that the *Apology Act*, 2009 had been passed and given Royal Assent while the Inquiry was progressing. The Report encourages lawyers and other professionals to educate

¹¹ For more on the legal and ethical implications of apologies in civil cases, see research paper called for by the Cornwall Inquiry, by Leslie H. Macleod entitled, "A Time For Apologies" (April 12, 2008) available online: http://www.cornwallinquiry.ca/en/report/research_papers/Phase_2_RP/3_Macleod_Apologies.pdf.

¹² *Apology Act*, 2009, S.O. 2009, c. 3.

¹³ *Ibid*, page 364 of volume 4

¹⁴ *Ibid*, page 78-79 of volume 2

themselves and their clients concerning how apologies may be beneficial to both victims and alleged perpetrators.

E. CONCLUSION

Both allegations and proven incidences of child abuse have devastating consequences for a community, and the damage can be exacerbated where appropriate policies or protocols were not in place to properly address those situations, as evidenced by the findings from the Inquiry. As such, all charitable, religious and not-for-profit organizations that have programs involving children and youth are strongly recommended to review the summary recommendations contained in the Report to review how to improve and strengthen existing child protection policies and to take other measures to assist in preventing child abuse within the operations of the organization.