LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

THE "CHILDREN OF DUPLESSIS": A TIME FOR SOLIDARITY

Discussion and Consultation Paper
For Decision-Making Purposes

Québec Ombudsman

Sainte-Foy

JANUARY 22, 1997

TABLE OF CONTENTS

1. INT

The *Comi*
individual
harm they
patients. S
The event:

The exten
Assembly
which was

"We
expre
it!! W

"We
lost c

"The
adult
sligh
befor
gener

The Québe
and met w
reviewing
resolving th
was convi
proposed p
blame on a

2. THE

2.1

There are
Micheline

Hereafte

1. INTRODUCTION

The *Comité des Orphelins et Orphelines institutionnalisés de Duplessis*[1] as well as over thirty individuals have turned to the Québec Ombudsman to ask for help in obtaining compensation for harm they suffered during childhood when they were unjustly classified and treated as psychiatric patients. Some of them have also complained that they were victims of physical and sexual abuse. The events go back over thirty years.

The extent of the alleged harm left the Québec Ombudsman—who is named by the National Assembly to fight injustice—no choice but to pay careful attention to the plight of the complainants, which was expressed as follows:

> *"We want a public apology for our broken lives. Mental retards and other similar expressions were used to describe us. Mr. Jacoby, we aren't mentally retarded, far from it!! We were labeled so that they could get rid of we orphans.*
>
> *"We want justice to be done for all of us who have suffered our entire LIVES. We have lost our lives. Inside, our wounds have never healed.*
>
> *"The first injury I suffered was not being taught, not getting an education to cope with adult life. Another was being treated as if I didn't exist, and not receiving even the slightest amount of human affection. Another was being mistreated, being powerless before my torturers. But the greatest injury was being called mentally retarded and of generally mediocre appearance. That is unforgivable."*

The Québec Ombudsman listened to the victims, read the existing documentation, analyzed reports, and met with a number of people involved in the issue. After identifying the group concerned, reviewing the social context, gaining an understanding of the problem, noting the obstacles to resolving the conflict and examining solutions to similar problems arrived at in other provinces, he was convinced that harm had been done and that reparation was necessary. He has therefore proposed possible solutions that are based on moral responsibility—i.e., responsibility that lays no blame on any particular individual or institution.

2. THE "CHILDREN OF DUPLESSIS"

2.1 Who they are and what they are complaining about

There are a number of definitions of the group called "the Children of Duplessis." Historian Micheline Dumont defines them as "abandoned children who lost their parents at birth, were not

---

[1] Hereafter called "the Committee".

adopted, and thereby began a long period of institutionalization set against a backdrop of exclusion, and marked by lack of affection and learning difficulties"[2].

The Committee has proposed a more technical definition:

> "Anyone who, before age 12, was abandoned by his or her biological parents for social, political or religious reasons and who, due to the death of one or both parents, was placed in a foundling home, orphanage, psychiatric hospital or other institution for orphans, between 1930 and 1965."

The second definition situates the problem in time and emphasizes the children's living conditions. However, both definitions are too broad to determine who would be eligible for compensation, whatever form it takes. Having lived in an institution is not sufficient justification in and of itself for compensation; individuals must have suffered some form of harm, the historic context duly considered. Certain institutions carried out their vested duties admirably, without harming or abusing the children in their care. It is therefore important to be more precise. Certain groups can be included because they are part of class action suits. Although the courts have not ruled on the substantive issue, citizens acting on their own behalf and that of others have launched seven court cases to seek compensation for individuals who were interned or who suffered sexual and/or physical abuse.

One plaintiff sued the Communauté des Soeurs de la Charité de la Providence and the Government of Québec. The suit was brought on behalf of all men who had been placed in the Mont-Providence institution between 1950 and 1964 while they were minors or orphans or considered as such, and who had been falsely declared "insane." Another suit involved women who had been through the same institution, while five other suits targeted other religious orders and institutions: Baie-Saint-Paul, Huberdeau, Saint-Jean-de-Dieu (Louis-H.-Lafontaine Hospital), Saint-Michel-Archange (Robert-Giffard Hospital) and Saint-Julien de Saint-Ferdinand d'Halifax.

An examination of the suits shows that some of the plaintiffs claimed to have been interned in asylums and falsely declared insane, mentally retarded or mentally ill, while others claimed to have suffered corporal punishment on a regular basis and to have been sexually abused at institutions such as orphanages, asylums, etc.

2.2 How many victims?

Since no scientific study has been conducted, it is difficult to determine the exact number of victims. Estimates vary from 2,100 to 6,000. The Ministère de la Justice estimates the number at approximately 5,000. According to the Committee, it would be reasonable to assume that approximately 3,500 are still alive.

---

[2] DUMONT, Micheline. *Des religieuses, des murs et des enfants*, L'Action nationale, Volume LXXXIV, Number 4, April 1994, p. 495.

2.3 The "Children of Duplessis" break the silence

In the early 1960s, no one talked about the "Children of Duplessis." Two years after the release of the Bédard Report[3] in 1962, it was Jean-Guy Labrosse who revealed the scope of the problem in his 1964 book Ma Chienne de vie[4].

One year later, Noël Flavien founded the *Association des Orphelins du Québec d'avant 1964* with help from the *Chambre de commerce des jeunes de Montréal*. The goal was to fund study programs for orphans wishing to upgrade their educational skills. However, despite efforts to improve the employability of Association members, few succeeded in becoming fully integrated members of society. During this period a number of other attempts to form associations also ended in failure.

Then, in 1989, television host Jeannette Bertrand devoted one of her shows to the subject. Two years later, Pauline Gill[5] published the story of Alice Quinton who had been interned in an asylum at the age of 7. The same year, the Association officialized its legal status.

In 1992, another association was founded—the *Comité des Orphelins et Orphelines institutionnalisés de Duplessis*—with the goal of bringing orphans together, promoting and defending their interests, and raising awareness among the general public. In 1994, a third book, authored by Bruno Roy, corroborated previous testimony and provided historical, legal and scientific background to help frame the debate[6].

Subsequently, more and more accounts of events were made public as media coverage increased. Little by little, the "Children of Duplessis" got organized[7]. They appealed to political, administrative and religious authorities before turning finally to the courts, all without success.

3. THE SOCIAL, ECONOMIC AND INSTITUTIONAL CONTEXT

The period under consideration runs from 1930 to 1965, and it is worthwhile pointing to some of its main characteristics. The 1930s were the Depression years, and were marked by unprecedented levels of unemployment causing widespread hardship and poverty. The "social safety net" as we

---

3 BÉDARD, Dominique et al. *Rapport de la Commission d'étude sur les hôpitqux psychiatriques*, Department of Health, Quebec, 1962, known as the "Bédard Report," 157 pp.

4 LABROSSE, Jean-Guy. *Ma chienne de vie*, les Éditions du jour, Montréal, 1964, 141 pp.

5 GILL, Pauline. *L'histoire vraie d'Alice Quinton, orpheline enfermée dans un asile à l'âge de 7 ans*, Ed. Libre Expression, Montréal, 1991, 269 pp.

6 ROY, Bruno. *Mémoire d'asile, La tragédie des «Enfants de Duplessis»*, Les Éditions du Boréal, 1994, 252 pp

7 Other associations were set up: the "Mouvement de libération des orphelins, orphelines du Québec," founded by Noël Flavien; the "Association des filles de St-Julien" represented by Marion Kelly, etc.

know it today did not exist: unemployment insurance was only introduced in the early 1940s, there was no universal social welfare program, and public charity went to the institutions that cared for the needy.

Over the years, financial aid programs were established for people such as the blind and "needy mothers," although it should be noted that the latter program did not cover unwed mothers. In addition, a number of so-called "direct relief" programs were hastily set up for the unemployed and their families. These programs were modest, given the limited resources then available to governments. There was no provincial income tax (it was introduced in 1954), and the federal tax rate was much lower than it is today. State intervention was much less common. During the 1930s, numerous Quebecers lived in poverty, even destitution, and could not count on any significant assistance from the government. The same went for institutions and facilities providing healthcare services and lodging for the needy.

Unemployment dropped considerably when Canada entered the Second World War, but most resources were earmarked for the war effort. In the post-war years, conventional wisdom remained opposed to increased state intervention for both political and economic reasons. It was not until the early 1960s that attitudes began to change with the advent of the Quiet Revolution.

We cannot overlook this historical context when analyzing the conditions that prevailed in the institutions charged with assisting and caring for the needy.

Social structures of the day were based on the family and the Church; in this respect, Québec was little different from most Western countries. Marriage was the social norm, and sexuality acceptable only within the confines of wedlock. Unwed mothers were considered social deviants; their children were branded as illegitimate and marginalized from birth. Family and social intolerance was such that single mothers were under both moral and economic pressure to give up their children. Placement in an institution was considered the socially acceptable norm[8].

Foundling homes and orphanages also took in children whose parents were unable to care for them for economic or health reasons. Such institutions also cared for numerous physically and mentally handicapped children; society at the time was little inclined to invest in their development, and their presence at home was often considered harmful to their siblings.

Children were generally placed in foundling homes until the age of 6, then transferred to orphanages, trade schools or even asylums until the age of 16. There were also reform schools for delinquents.

---

[8] Placement of children in institutions has been a subject of controversy since the 1940s. In 1944, the Québec Health Insurance Commission's report on problems with childcare and child protection (Garneau Report) urged that children be placed in foster care. In 1948, another study (the Sylvestre Report) recommended that the Department of Health restructure foundling homes and orphanages to allow children to develop normally. Also see MALOUIN, op. cit., supra note 11, p. 398 and ss.

It is important to recall that, starting in the 19th century, the Québec government transferred full management responsibility and control of educational, social and hospital services to the province's religious orders. This remained the case until the 1960s, when the government gradually took back responsibility. Up until then, the institutions providing these services were exclusively managed by the religious orders that owned them. Several hundred nuns cared for the children that nobody else wanted, and it should be noted that the first foundling homes were set up to reduce the number of infanticides. In the 1940s, according to Health Department statistics, there were 16 foundling homes, 53 orphanages, 11 specialized orphanages, 10 psychiatric hospitals, and 6 trade schools. The 53 orphanages had 8,811 children in their care[9].

3.1 Financing of institutions

Children with no one to provide for them were considered indigents under the terms of the Quebec Public Charities Act[10]. Under the act, responsibility for funding public assistance was equally divided between the provincial government, municipal governments, and the institutions caring for indigents (religious orders).

This funding system proved relatively inefficient for a combination of reasons. On one hand, the municipalities, which were overwhelmed by requests for assistance or too small to provide organized charity, made only small or sporadic contributions to the Public Charities Fund. On the other, the Depression sparked by the crash of 1929 led to a major drop in private donations, the main source of funding for the religious orders. As a result, the provincial government ended up assuming over three quarters of Fund spending.

With time, the state invested more and more in public assistance[11]. Three quarters of these often substantial amounts from the three levels of government—municipal, provincial and especially federal—went to building and renovation work. During the boom years of 1945 to 1969, healthcare facilities mushroomed. The various governments also spent over $50 million on psychiatric hospitals

---

9 CÔTÉ, Sylvie. "L'oeuvre des orphelins à l'hospice du Sacré-Coeur de Sherbrooke (1875–1965)." M.A. thesis, Université de Sherbrooke, 1987, p. 26 and ss.
"In the 1930s, Arthur Saint-Pierre, in his *L'oeuvre des congrégations religieuses de charité*, estimated the dollar value of assistance by religious communities to the needy of the province at $9 million. At the time, there were 39 communities and 173 charitable establishments in operation. The value of 128 Church-run properties was estimated at $43,340,183 (foundling homes, orphanages, hospitals, homes for the elderly, etc.). In the province as a whole, charitable institutions paid $112,807 in taxes in 1930, which represented 1.5% of their gross income/earnings and not quite 4% of the official subsidies they received from various sources. Revenues included charitable donations, contributions from secular and religious philanthropists, bequests, interest on investments, etc. The Fédération des oeuvres de charité canadiennes et françaises, founded in 1933, redistributed the fruit of its annual fundraising campaign. After the war, its fund grew to exceed $1 million, and in 1960, the Federation distributed over $2 million." (Our translation) ROY, op. cit., supra note 6, p. 192 and 193.

10 *Act respecting the Quebec Bureau of Public Charities*, Statutes of Québec, II Geo. V, 1921.

11 For example, Public Charities Fund expenditures rose from $6 to $84 million between 1941 and 1957. Figures from the *Comptes publics du Québec* and the *Annuaire statistique du Québec* cited in MALOUIN, Marie-Paule et al., *L'univers des enfants en difficulté au Québec entre 1940 et 1960*, Montréal, Bellarmin, 1996, p. 31 and ss.

between 1952 and 1962. But none of these building investments went toward enhancing the quality of service and care—unless we consider the improvements to lodging[12].

As for institutional operating costs, the main source of public funding was the daily allowance—or "per diem"—accorded to foundling homes, orphanages, reform schools and asylums on the basis of occupancy.

The per diem—which sometimes varied from one establishment to another—was divided by category, with different amounts for orphans, sick children, delinquents, the mentally retarded and the "insane." The smallest allowance was for orphans, followed by sick children, the mentally retarded and, lastly, the insane. This meant that religious orders could obtain nearly twice the amount per child, and sometimes more, depending on how children were classified and where they were placed.

The per diem allowance fell well short of covering operating costs[13]. The lack of resources, along with a rate structure that disadvantaged children without any resources or family, sometimes encouraged religious communities to favor those from categories generating greater revenues. Spaces and services normally reserved for orphans were sometimes taken up by children whose poor, sick or widowed parents were unable to care for them, but were still capable of paying boarding fees that exceeded the government allowance. This meant that the orphanage was "in fact a home for children from poor or divided families[14]." In the 1940s, only 13.4% of orphanage residents were in fact true orphans; 21.8% still had both parents living, and the remainder had only one. Boarding fees for these

---

12 "Those who have expressed concern in recent years over the fate of the mentally ill in our province have been told that the problems are all due to lack of funds. The study just completed by this Commission shows that this is not true. In fact, over the past ten years, the province has spent more than $50 million on construction, but in such an ill-advised fashion that quality of treatment for the mentally ill has scarcely improved. Yet during this same period, government authorities refused to accord much smaller amounts to existing hospitals, amounts that could have been used to hire staff and, especially, to train new personnel for the hospitals under construction." (Our translation) BÉDARD, loc. cit., supra note 3, p. 129.

13 - For foundling homes: the daily allowance for living expenses was as follows:
In 1943 : $0.60 for babies under 1 year
$0.54 for children 1 to 5
$1.05 for children who were ill
These amounts covered only two thirds of the real cost (in 1946, the average daily cost was estimated at $1.10).
- For orphans: In 1956, the Immaculée Orphanage in Chicoutimi received
$0.90 for children under 5
$0.70 for other children
whereas the real cost was $0.93 per day per child.
- For asylums: St-Jean-de-Dieu hospital received
$0.89 per sick child between 1945 and 1949
$2.25 per sick child between 1956 and 1959
$2.75 per sick child in 1961
This compares with hospitalization costs of $25 a day per patient in certain clinics. Average hospitalization costs were $3.90 per bed in Québec, $6.41 in Ontario and $5.67 for Canada as a whole. These examples are drawn from MALOUIN, op. cit., supra note 11, p. 134, 164 et 281.

14 PELLETIER, Gérard. "Histoire des enfants tristes". A report on children without support in the province of Québec, *l'Action nationale*, p. 11.

children were a major revenue source. By way of example, they represented 70% of total revenues at the Montréal Catholic Orphanage, 12% at Sherbrooke's Sacré-Coeur Hospital[15], and 25.3% of the provincial average. As a result, priority sometimes went to children placed by their parents, and classification of children by category could vary depending on financial circumstances.

Furthermore, in psychiatric hospitals where the per diem was based on the number of beds occupied, it was necessary to increase admissions and keep patients hospitalized as long as possible to cover costs[16]. Some large institutions even managed to post surpluses[17]. This situation goes a long way to explaining the ease with which certain patients were admitted.

3.2 A double form of "exclusion": abandonment and loss of rights

Being born into a life of anonymity was a major stigma, particularly for children of "parents unknown," a label written right on their birth certificates. Because civil registers were the very foundation of social and legal identity, such labeling led to social exclusion for children born out of wedlock.

Boys in this situation were barred from the priesthood unless they obtained a special exemption. Until 1970, individuals in this category could not seek damages in the event of the accidental death of their parents. And succession law maintained the distinction between "legitimate" and "illegitimate" children until 1980; "illegitimate" children could not be considered lawful heirs unless wills expressly indicated otherwise.

In addition, for many of these children, long institutional stays hindered the development of their sense of responsibility, initiative, observation, judgment and imagination. After reaching adulthood, they often lacked the tools to live normal lives in a complex society like our own.

According to Sister St-Michel-Archange, the "theft of their childhood," the separation anxiety they experienced as a result of being transferred to other institutions at key periods in their emotional

---

15 MALOUIN, op. cit., supra note 11, p. 164 and 170.

16 "Since psychiatric hospital revenues increase proportionately to the number of beds occupied, it has become necessary to maintain very high occupancy rates to maximize revenues and reduce potential deficits. In this situation, overpopulation becomes inevitable, and undoubtedly leads to a worsening in psychiatric care." (Our translation) Quoted in MALOUIN, op. cit., supra note 11, p. 281.

17 St-Jean-de-Dieu hospital declared an operational surplus of $1,077,694.33 in 1959, and $160,366.00 in 1961 (not counting interest charges and capital outlay).
Sainte-Lucie Home declared a profit of $18,286.49 for the period of May to December 1961, including interest payments and depreciation; revenues at the Roy-Rousseau Clinic exceeded expenses by $3,904.18, excluding depreciation; and Saint-Julien hospital reported a surplus of $187,520.82 including part of depreciation. Findings from the *Rapport Bédard*, BÉDARD, op. cit., supra note 3, p. 6, 58, 78 and 119.

lives, and the fact that they were punished as "children of evil" marked their personalities forever[18].This led to numerous psychological problems.

Lastly, inadequate education, lack of preparation for the job market and total ignorance of the value of money were obstacles many of them never overcame after leaving the institutional setting. All these problems manifest themselves in a variety of ways: poverty[19], delinquency, mental illness[20].

3.3 Overpopulation and inconsistencies in child placement

Administrative and financial considerations seem to have caused severe and chronic institutional overpopulation, a problem identified by institutional authorities as early as 1929[21]. According to Health Department statistics for 1945, 7,730 children were living in the foundling homes that had a total capacity of only 3,723 beds[22]. Since there was no room in the orphanages, thousands of illegitimate children between 6 and 12 were placed in foundling homes whose programs were designed for 0 to 6 year olds[23]. Others were put into psychiatric hospitals or reform schools for the same reason, just as mentally handicapped children were placed in foundling homes due to overpopulation in the asylums. In short, despite the legislative[24] and medical framework in existence at the time, institutional practices were not always rational.

Education and protection of orphans was very much on an "ad hoc" basis[25]. Generally, no legal guardianship arrangements were made, and institutions acted on a *de facto* basis. Although certain

---

18 SISTER SAINT-MICHEL-ARCHANGE, SM A study of services rendered by the Crèche St-Paul foundling home to a group of children aged 6 to 12 with regard to their social development. Master's Thesis, "Institutionnalisation et développement social de l'enfant."

19 According to the Committee, unscientific estimates indicate that 90% if these people receive income security benefits or employment insurance on an ongoing basis. At death, most of them don't leave enough money to cover funeral costs.

20 Approximately one fifth (800/4,000) of the orphans are still considered incapable of managing their lives and assets, and are under the protection of the Public Curator (Note that the PUBLIC CURATOR cannot confirm these figures).

21 ROY, op. cit., supra note 6, p. 42.

22 ROY, op. cit., supra note 6, p. 31.

23 SISTER SAINT-MICHEL-ARCHANGE, op. cit., supra note 18, p. 29.

24 The *Act respecting lunatic asylums* 1941, R.S.Q., c-88 provided for the internship of two categories of individuals: "1° insane persons, 2° idiots or imbecile persons, when they are dangerous, a source of scandal, subject to epileptic fits or afflicted with any monstrous deformity (...)" Illegitimate children were not included in these categories; the *Act to institute Public Curatorship*, 1945, S.R.Q., defined an insane person as someone incompetent with respect to the law, and placed his individual rights and assets under the control of the Public Curator; the *Act respecting hospitals for the treatment of mental diseases*, 1950, virtually gives up on the second category; the *Mental Patients Institutions Act*, 1950, S.R.Q., c-31. MALOUIN, op. cit., supra note 11, p.268.

25 MALOUIN, op. cit., supra note 11, p. 65.

legal formalities were required to transfer responsibility for a child, or for adoption[26], they were generally overlooked[27].

3.4 Institutional living conditions

According to some[28], foundling homes were run like factories due to overpopulation, inadequate resources, and insufficient and poorly trained staff[29]. Everybody suffered from this situation, including the personnel. Montréal's Crèche de la Réparation and Crèche de la Miséricorde foundling homes accommodated 600 children, and the d'Youville and St-Vincent-de-Paul homes, 710[30]. It was truly group living, or life "in bulk"[31] as journalist Gérard Pelletier put it.

At an age where individual care was key to their development, these children received little intellectual stimulation or affection, no physical tenderness and no individual contact, according to Roy and Bédard[32]. For the sake of efficiency, life was systematized, standardized, and scheduled down to the minute. Everything happened at the same time. The children got up together, had their diapers changed together, had baths together, ate in silence together in the room[33] that generally served as their living space, play area, classroom, etc. The absence of affection and individual attention, the strict discipline and the impossibility of developing any sense of independence were among the factors retarding their intellectual and social development[34].

---

26 MALOUIN, op. cit., supra note 11, p. 409.

27 See the article by Gérard Pelletier, "Un marché noir des enfants", in PELLETIER, loc. cit., supra note 14, p. 1355, dealing with a black market for children in the United States.

28 MALOUIN, op. cit., supra note 11, p. 132.

29 ROY, op. cit., supra note 6, p. 16.

30 SISTER SAINT-MICHEL-ARCHANGE, op. cit., supra note 18, p. 17.

31 "Because they were so numerous, babies were identified with a number by the time they were a week old." (Our translation) PELLETIER, loc. cit., supra note 14, p. 32.

32 ROY, op. cit., supra note 6, p. 72; MALOUIN, op. cit., supra note 11, p. 132 and ss.

33 Numbers varied from 30 to 60 or 70 in the same room.

34 MALOUIN, op. cit., supra note 11, p. 133, "Emploi du temps d'une journée dans la vie d'un enfant de crèche":

"Keeping in mind, as the Garneau Commission pointed out, that each foundling home is different, here is an example of an "average day" in the life of a foundling home baby or child. First of all, the infants all "take their baths" at 7:30 AM. Each young attendant has just 90 minutes to fully wash seven babies, i.e., approximately 13 minutes per baby. The babies are then returned to their beds while the older children are put in the "playpen." The attendants then tackle the laundry and clean the rooms. A half hour later, each attendant changes the diapers of the seven babies in her care. The children then eat their meal, which takes just one hour. Not long after, the babies are changed again before being put back to bed until 2 p.m. While the babies sleep and the older children are in the "playpen," the attendants continue their chores. Before and after supper, the babies are changed once more before the children are put to bed for the night. Every day at the foundling home is the same." (Our translation)

The majority of the children spoke only in sounds until the ages of 4 to 6, and were incapable of telling time, eating with utensils, getting around, washing themselves, etc., until much later. In one trade school, up to 25% of the children between 9 and 16 were found to be bedwetters. Such conditions could only hinder normal development.

By 1946, the religious and scientific communities had acknowledged that foundling home operation was causing significant lags in childhood intellectual and social development[35]. They had become "factories of the mentally ill[36]." In 1950, journalist Gérard Pelletier found that 80% of illegitimate children became mentally retarded, their capacity for normal development decreasing the longer they remained institutionalized. The situation was little better in the specialized orphanages. Although a number of them doubled as trade schools, the rarity of teaching and training programs, problems with overpopulation and the mobility of their clientele meant that their educational efforts were too often illusive[37].

3.5 Lack of education

Most children could neither read nor write when they left the institutions at age 16. However, it is important to remember that in 1941, a mere 24% of Québec children between 5 and 19 attended school, a rate that only climbed to 56% by 1954[38].

Taking note of this weakness, the Montpetit Commission[39] recommended in 1933 that the Council of Education and the school system assume, in full or in part, the cost of instruction in Québec's orphanages. A series of studies were immediately undertaken and various administrative and legislative measures introduced to deal with the problem. These included granting the Council of Education the power to set curriculum requirements and to monitor programs and teaching staff at institutions run by religious orders.

In 1943, mandatory schooling to age 14 was introduced. But it was not until 1946 that orphanages, reform schools and trade schools were required to comply with the teaching requirements set by the Council of Education. Even then, the Council did not exercise any control over the curriculum taught in institutions housing orphans. In 1957, jurisdiction over these institutions was transferred from the

---

35 MALOUIN, op. cit., supra note 11, p. 133; SISTER COLETTE, "L'Oeuvre des enfants trouvés 1754-1946," a study of the origins and social value of the Crèche d'Youville foundling home. M.A. Thesis (Social Work), Montréal, Université de Montréal, 1948, p. 77; cited in ROY, op. cit., supra note 6, p. 124.

36 ROY, op. cit., supra note 6, p. 73.

37 ROY, op. cit., supra note 6, p. 57.

38 MALOUIN, op. cit., supra note 11, p. 69.

39 *Commission des affaires sociales du Québec, 1e, 2e et 3e rapport*, Québec, 1933, 109 pages.

Department of Health to the Department of Social Welfare and Youth, which was henceforth charged with monitoring the application of Council standards.

Despite these measures, serious problems with the quality of education still remained five years later[40].

3.6 Unpaid labor

At the time, considerable importance was placed on the therapeutic value of work—"occupational therapy[41]." In poorer families, children often began helping their parents on the job as early as age 15. Virtually all children living in institutional settings—whether at reform schools, trade schools, orphanages or asylums—were also expected to work. They helped care for the ill and did routine chores (cooking, gardening, clothing repair, maintenance, cleaning dormitories, etc.). They were also employed in workshops: carpentry and shoemaking for the boys, sewing, knitting, embroidery, rosary and glove making, etc., for the girls. Certain institutions even signed production contracts with private manufacturers[42].

In certain centers, children received an allowance of 10¢ to 30¢ a week, but most institutions paid nothing. Children labored half or full days for years, sometimes at a fast pace, and although they may have acquired certain skills, the work had its limits. In some cases, work also took priority over education.

---

40 MALOUIN, op. cit., supra note 11, p. 178. Despite all the recommendations and legislative measures, the Conseil des Oeuvres de Montréal declared in 1962 that the development of teaching in religious institutions was hindered by limited financial resources, lack of government control and inadequately trained, albeit dedicated, teachers. According to the authors of the brief:

"In many cases, our foundling homes, orphanages and schools receive barely enough funding to cover the cost of food and clothing for the children. Education and teaching are left to the discretion of management, which does what it can." (Our translation)

41 In 1961 and 1962 respectively, Camille Laurin and the Bédard Report disputed the value of "occupational therapy" for psychiatric patients. Cited in MALOUIN, op. cit., supra note 11, p. 277.

42 "Québec legislation concerning child labor in reform and trade schools dates back to 1909. Prorogated in 1925, it stipulated that any contract between institutional authorities and 'any person or corporation' that called for child labor had to be submitted to the provincial secretary for approval. Institutional authorities were also required to register the 'amount produced from each child's work' and report it to the provincial secretary. This money was to be used to pay the child's living expenses, and the balance, if any, kept in trust for the child until his release from the institution. The act applied to all reform and trade schools. However, it appears that individual agreements between institutions and the government were also reached." (Our translation), MALOUIN, op. cit., supra note 6, p. 235.

Unpaid labor reduced operating costs, as the Conseil des oeuvres de Montréal[43] and others noted[44]. No studies seem to exist on how the $6 monthly federal family allowance for each child was managed, nor on production contract revenues. These revenues were presumably used to pay operating costs, since most children didn't have a penny to their names upon leaving the institutions.

Another practice—that of placing children with farming families—primarily affected "illegitimate" children living in specialized orphanages. It was thought that there was no better place for "these children on the margins of society than the new settlement zones[45]."

4. THE "CHILDREN OF DUPLESSIS": A SPECIAL CASE

4.1 Wrongful diagnoses

Because authorities did not fully assume their responsibilities, normal children from foundling homes and orphanages ended up in psychiatric institutions along with the mentally handicapped and the mentally ill. According to the 1948 Sylvestre Report and Department of Health reports issued between 1947 and 1960, only two thirds of beds were occupied by mentally handicapped or mentally ill patients. The percentage of normal individuals in psychiatric institutions rose from 22% in 1941 to 29% in 1956.

No studies appear to have been done to identify the exact percentage of illegitimate children wrongfully labeled as "mentally handicapped" or "mentally ill." But many adults institutionalized as children have denounced the diagnoses made prior to their release[46]. In addition, certain studies tend to confirm that a large percentage of illegitimate children were interned in psychiatric hospitals.

---

43 *Conseil des oeuvres*, Montréal, 1960, p. 107, cited in ROY, op. cit., supra note 6, p. 130.

44 PAGÉ, Jean-Charles. *Les fous crient au secours*, 4th edition, Montréal, Éditions du Jour, 1961, 156 p. However, in his preface to *Les fous crient au secours*, Camille Laurin denounced the institutional practice of cutting operating costs by making [patients] work in the kitchens, the fields or elsewhere, as need be, without inquiring about their preferences, asking their permission or providing remuneration.

45 MALOUIN, op. cit., supra note11, p. 183. However, it quickly became clear that transforming orphans into farmers was not the solution. Inadequately trained and poorly paid, they were unable to strike out on their own, a situation that sometimes led to abuse. See criticisms of this method in MALOUIN, op. cit., supra note 11, pp. 183 and ss.

An investigation conducted by the Director of Social Services for the St-Jean-sur-Richelieu area between 1951 and 1958 found that these young boys were "treated like slaves... sleeping in barns and stables, working between 15 and 16 hours a day, 7 days a week for... $10 a month" (Our translation) This information was confirmed by subsequent investigations (ROY, op. cit., supra note 6, p. 48).

46 See the works and declarations of Jean-Guy Labrosse, Alice Quinton, Bruno Roy, as well as the many public declarations, etc. A 1996 survey of 90 "Children of Duplessis" conducted by COOID found the following diagnoses in their medical files:
Mentally deficient: 32%
Mentally defective: 39%
Mentally retarded: 23%
Two different diagnoses 17%.
(From Part II of the COOID brief. "Les oubliés d'hier, les démunis d'aujourd'hui" presented at the Montréal Church Synod, 1991.05.15, p. 6).

In 1948, Sister Bernard-Alfred examined placement bureau data from the Emmelie-Tavernier school, an institution for the readaptation and rehabilitation of the mentally handicapped. Out of a sample of 55 former students, 45 were born "out of wedlock"[47]. According to sociologist Micheline Dumont, "the psychiatric hospital therefore became the only destination for children leaving the orphanage... the medical diagnosis was more a transfer form than a true behavioral analysis".[48] (Our translation)

In 1978, another sampling of 200 patients released from psychiatric hospitals confirmed that 80% of them had been admitted at the request of foundling homes or orphanages, the very institutions charged with their care[49].

The law gave the government a central role in asylum operation starting in 1941[50]. Each institution had a superintendent delegated by the province's Medical Superintendent and responsible for authorizing admissions, discharges and all patient transfers. Superintendents were also responsible for monitoring medical decisions and acts, including patient classification and living conditions. In short, they ran hospitals from a medical standpoint. However, few psychiatrists were available to assist them in their work: only 15 psychiatrists were practicing in Quebec in 1950, and 170 in 1962.

In reality, the shortage of both specialized and nonspecialized medical personnel meant that the responsibilities of hospital medical superintendents very often fell to nonmedical staff[51]. In many psychiatric hospitals, especially secondary hospitals where there were even fewer psychiatrists, conditions of admission were not respected, patient classification was deficient, and records were not kept in compliance with the law. Religious staff had to run the facilities in the face of real constraints, and often without adequate knowledge of psychiatry.

The 1962 *Bédard Report*[52], which was published following a major review of the system, revealed that diagnoses were often erroneous or not in keeping with psychiatric practice of the day, treatments were unusual, and half the children who normally could have received an education were deprived of that right. Commenting on the report, Micheline Dumont points out that "The Bédard inquiry found 1,500 children under 16 in eight psychiatric hospitals, a tiny portion of the overall population of the mentally ill. There were undoubtedly true cases of mental illness among them. But in all

---

47 SISTER BERNARD-ALFRED. "La valeur sociale de l'école Emmelie-Tavernier." Master's Thesis (Social Work), Montréal, University of Montréal, 1950, Table 3, p. 43.

48 DUMONT, op. cit., supra note 2, p. 494 et 507; MALOUIN, op. cit., supra note 11 p. 268

49 LANGLOIS, Lyne. "Caractéristiques d'ex-patients psychiatriques", *Santé mentale au Québec, Vers une nouvelle pratique*, Volume III, Number 2, (November 1978), p. 54.

50 DUMONT, op. cit., supra note 2, p. 497.

51 MALOUIN, op. cit., supra note 11, p. 284.

52 BÉDARD, op. cit., supra note 3, p. 105-106.

likelihood, there were also an impossible-to-determine number of former orphanage residents who had been 'placed' in these institutions. The inquiry also revealed the negligence of a care system devoid of any rehabilitative mission and maintained with the complicity of psychiatrists, the Department of Health, the College of Physicians and the parents of the mentally ill"[53].

4.1.1 Mont-Providence

The events surrounding the establishment of Mont-Providence shed light on the political and financial issues that underlay services to abandoned children.

Increasingly aware of the disastrous impact of orphanage institutions on childhood development, the Sisters of Charity of Providence innovated in 1950 by creating a new institution with the specific goal of "correcting" the situation and saving "educable children." The order began to take in children referred by other facilities in the hopes of making up for lags in their development caused by institutionalization.

The order obtained federal and provincial government grants for the construction of the future school—the Institut Médico-Pédagogique—which was also intended to provide much-needed training to management officials willing to adopt this new approach.

However, because construction costs went well over budget, financing had to be renegotiated.

In the meantime, the federal government withdrew from the education field while remaining active in health. Ottawa considered Mont-Providence to be an educational facility, and therefore ineligible for funding. The Québec government considered that the Institute's medico-pedagogical vocation as a reeducation and rehabilitation center meant it should be considered as a healthcare facility. Although Mont-Providence was affiliated with Saint-Jean-de-Dieu hospital, Ottawa held its ground. The Québec government therefore advised the religious community to change the facility's vocation in order to benefit from federal funding. A $3 million dollar agreement was signed that transformed the school into a psychiatric hospital virtually overnight[54], thereby sacrificing the facility's main goal and the accompanying plans to help children[55].

---

53 DUMONT, op. cit., supra note 2, p. 505.

54 See Executive Council Chamber Order-in-Council n° 816, dated 54.08.12. A contract was also signed on 54.12.1 between the Province of Québec and the orders.

55 Five years later in 1959, the Huberdeau reform and trade school almost met the same fate. Half the school population were youths classified as "mentally retarded," a third were "borderline" cases and the rest, orphans with normal or above average intelligence. After making efforts to relocate its mentally handicapped young people, the facility was no longer able to devote itself to its specialty—rehabilitating juvenile delinquents. School authorities successfully used this argument to oppose government plans to turn it into a center for the mentally handicapped.

With the change in vocation, some 370 children found themselves interned in a psychiatric hospital. Between 1954 and 1961, some of them were transferred to other institutions or joined the work force, but "a certain number of children at Mont-Providence at the time of the change in orientation remained"[56] despite the directives the provincial government sent to the medical superintendent at Saint-Jean-de-Dieu hospital in August 1954.

4.1.2 Psychiatric treatment

A number of those who were institutionalized and wrongfully diagnosed as mentally ill underwent treatments designed for the genuinely ill: electroshock therapy, lobotomies, prolonged solitary confinement[57], ice baths, chaining, force feeding, straight jackets. With the advent of neuroleptics, these treatments were replaced by medication, what is known today as "chemical restraint."

4.2 Physical and sexual abuse

A number of people also claim to have suffered physical and sexual abuse. In the first instance, common allegations include years of recurrent beating and slapping, being tied to the bedspring for bed wetting, unjustified confinement to a cell—sometimes for months or even years—ice baths, regular subjection to restraining measures (straight jackets, neuroleptics…), electroshock treatment, etc. Allegations of sexual abuse include sodomy, sexual interference, forced sexual favors, etc.

4.3 The consequences: permanent scars

Various people have described the situation as an endless circle. From orphans, the children went on to become mentally deficient, i.e., "not adoptable." They were subsequently classified—and in some cases became—mentally ill, a label of legal and social inferiority that has remained with them long into adulthood. Everything was set in place to maintain a long period of institutional dependence. Today, many of them have yet to find their place in the society that rejected them years ago.

For some who still bear the scars, the physical harm and developmental lags led to a variety of medical problems that have since become chronic or irreversible. For others, mistreatment and sexual abuse have caused sexual dysfunction and relational difficulties. And for the hundreds who were misdiagnosed as "mentally ill," there were the "psychiatric treatments," the overmedication and the medico-disciplinary measures.

---

[56] MALOUIN, op. cit., supra note 11, p. 366-367.

[57] In an account corroborated by several other witnesses, one orphan described to the Québec Ombudsman's representative how she had been confined to a cell and deprived of any contact with other people for 16 years.

As a result of all this, many of these children, who are now adults, consider their "illness" as a fault. Guilt, distress, intense anguish, feelings of inferiority and shame have indelibly marked their daily lives. Their enormous difficulties in expressing themselves and their fear of reprisal should they reveal their pasts has made their social reintegration very difficult.

Some of the harm is irreversible: two decades of lost freedom, misdiagnosis for mental retardation or illness—a label many still have in their medical files today—loss of identity, a lack of education difficult to make up for in later life.[58]

---

[58] In 1989, the Duplessis Orphans Committee conducted a questionnaire survey of 90 "Children of Duplessis". Here is a summary of the survey results, conclusions and comments:

"In **April and May of this year**, we conducted a study of our members' past and present circumstances in the aims of establishing a profile of our members. We sincerely believe that the results are an accurate reflection of what our members and nonmembers have experienced. **Ninety people** agreed to respond to the questionnaire. Here are the results:

Type of Institution

Psychiatric Institutions ..... 71 people, or 79%
Trade Schools ..... 13 people, or 14%
Orphanages ..... 6 people, or 7%

Education

The majority of orphans living in psychiatric institutions had little more than a **fourth grade education** upon their release between the ages of 15 and 21. Here are the results concerning level of education:

- 0 years of schooling : ..... 14, or 16%
- 1 year : ..... 8, or 9%
- 2 years : ..... 9, or 10%
- 3 years : ..... 28, or 31%
- 4 years : ..... 16, or 18%
- 5 years : ..... 15, or 16%

Medical diagnosis

- Mentally deficient : ..... 29 people, or 32%
- Mentally defective : ..... 35 people, or 39%
- Mentally retarded : ..... 21 people, or 23%
- Two different diagnoses: ..... 15 people, or 17%

Violence

87% of respondents (72 out of 90) told us that **violence was omnipresent and cruel. 62%** (59 people) were confined to **cells**. Authorities abused their authority in punishing children for breaking the rules.

Sexual Abuse

Boys suffered the most from sexual abuse.

- Sodomy : ..... 22 boys, or 25%
- Molestation : ..... 23 boys, or 26%

Among the women, 5 had been abused or molested. Altogether, some fifty children—55.5%—were sexually abused, and their purity destroyed.

Sources of Income

Member sources of income vary. The main ones are as follows:

- Employment : ..... 36 people, or 41%
- Welfare : ..... 36 people, or 40%
- UI : ..... 5 people, or 6%
- Pension : ..... 7 people, or 8%
- Disability pension : ..... 5 people, or 6%
- Worker's compensations: ..... 1 person, or 1%

Marital Status

- Married : ..... 12 people, or 13%
- Separated : ..... 1 person, or 1%
- Divorced : ..... 19 people, or 21%
- Single : ..... 55 people, or 61%

(continued...)

5. THE JUDICIAL SYSTEM IS NO LONGER THE APPROPRIATE FORUM FOR RESOLVING THE ISSUE

5.1 The courts recognize the limits of the judicial system

Over the past three years, the matter has been referred to both civilian and criminal courts. However, conditions of admissibility and the rules of evidence and prescription[59] are an insurmountable obstacle to a settlement[60]. In this case, as Superior Court Justice André Denis has declared, it would appear that the judicial system can no longer do justice:

> "It is a paradoxical situation, if ever there was one, one in which plaintiffs and defendants wish to be heard. The former claim injustice, the latter seek to explain their point of view—both with the same desperate energy. We have seen that a class action suit is not the appropriate avenue. There remains the inalienable right of each to individual recourse. The task will be immensely difficult, and perhaps impossible. The same goes for the defendants: trying to explain, after so many years and with the required nuances, behavior and attitudes no longer acceptable today. An immensely difficult, perhaps impossible, task.
>
> We are nearing the limits of judicial recourse in this case. The parties have perhaps come to the wrong place by addressing themselves to the courts. But this is a right that the court respects". (Our translation)[61]

(...continued)

- Widowed : ..... 1 person, or 1%
- Common Law : ..... 2 people, or 2%

These results lead us to deduce that are members were psychologically unprepared to live a healthy, happy couple's relationship. Love relationships were completely lacking in the institutional setting. We knew nothing of the real meaning of love, but pedophilia had its place. For many of us, our lack of sexual knowledge, the unisex system, the lack of education, the asylum routine, etc. were undoubtedly obstacles to healthy social integration. The right to experience pure love without anything expected in return did not exist. Were we not worthy of receiving a little love?

Of course, of the 55 single respondents, some of them have chosen to live alone. As we did not pursue our research, it is difficult to elaborate any further. But we are certain that the percentage of singles would have been less."

59 Case No. 200-06-000001-936 *Marion Kelly* vs *Communauté des Soeurs de la Charité de Québec*, Justice André Denis, 95.09.01 and Case No. 500-06-006673-949, *Sylvestre Joseph* vs *Communauté des Soeurs de la Charité de Québec and the Attorney General et al. and Dr. Louis Roy.*

60 Case No. 200-06-000001-936, op. cit., supra note 59 :
"The facts brought to the court's attention are troubling. Because they were orphans, these individuals lived in misery and continue to experience the after-effects of a painful experience.
It is important to remember that the class action suit is only one way of proceeding: everyone has a right to individual recourse. Let us hope that we can find an effective, practical and relatively beneficial means, to use the word of Justice Amédée Monet (Nagar vs City of Montréal, op.cit.) to allow these people to be heard." (Our translation)

61 Dossier n° 200-06-000001-936, op. cit., supra note 59.
Also see the Sylvestre case cited above in note 59, and the words of Justice Danielle Blondin.

The judge added:

> "The events referred to in this case date back forty, fifty, even sixty years. In an interlocutory judgment rendered by the undersigned in this case, the following issues are raised:
>
> > *This case is not only sensitive and demanding, it is also infinitely painful for all parties concerned, and to some extent unique.*
> >
> > *The lawyers for the defendants point out that their clients are elderly and have lived in anxiety since petitions were filed calling into question their very lives' work. Their clients refuse to die in shame without having the right to be heard by the courts.*
> >
> > *The argument is serious and troubling. The right to be heard is a fundamental one, and a strict rule of natural justice.* (Our translation)

The Honorable Justice Danielle Blondin of the Québec Superior Court commented as follows[62]:

Before stating the terms of judgment required here, I wish to endorse the position expressed by Justice Denis in his rejection of the applications for leave for further class action suits from other "Children of Duplessis." (Our translation)

5.2 Damage suits

Essentially, the "Children of Duplessis" were seeking individual or group damages from three sources: certain religious orders, the Québec government and the medical establishment.

5.2.1 Certain religious orders

The plaintiffs claimed that the religious orders in question had failed to adequately assume the responsibility delegated to them by the Québec government: to keep, care for and maintain the minors in their care. They also reproached them for falsifying records and making false medical diagnoses, illegally interning children in institutions, making them work for free, depriving them of a suitable education, and subjecting them to corporal punishment and mental cruelty.

The religious orders claimed for their part that admissions, diagnoses and decisions regarding institutionalization were made by hospital medical superintendents, and not the orders. In their writings and public declarations, they evoked five motives in their defense:

---

62 See the Sylvestre case.

- Different times, different ways

It is not only risky, but also unfair, to judge the past with today's values. All societies evolve. What was once considered normal, right and morally acceptable may seem reprehensible and unjust to a later generation. Yet corporal punishment, limited schooling, child labor and religious values were norms once accepted and shared by society as a whole[63].

- Christian charity

The religious orders were the only organizations caring for abandoned children. They devoted themselves to the task with the limited means at their disposal and acted to the best of their ability on the basis of the knowledge available to them at the time.

- Scientific knowledge

Scientific progress—particularly in medicine, psychiatry and the social sciences—is a recent phenomenon. The distinctions made today between mental handicaps and mental illness, or between mental illness and delinquency, were much less clear in the past. Children were withdrawn from their home environments for their own protection, and institutional placement was seen as preferable to foster homes. Institutionalization was the response to deviance[64].

- Religious orders on trial

Although some people acknowledge that there may have been excesses and abuse—as in any other societal institution—they fear that such incidents will be used as a pretext to put entire religious communities on trial and feed the wave of denigration of the Catholic faith.

- Fabulation

Some of the "Children of Duplessis" are looking for explanations and a scapegoat for the fact that they were abandoned in childhood. Since they don't know who their biological parents are, they take their frustrations out on the only parents they know, the members of the religious orders who cared for them. Their anger, combined with the passage of time and, in some cases, mental problems, has deformed the truth.

---

63 ROY, Bruno. "Y a-t-il une historien libre dans la salle", *Bulletin d'histoire politique*, Vol. 5, No. I, (1996), p. 76. However UQAM sociologist Jacques Beauchemin affirms that present-day Québec society can judge its social history on the basis of contemporary social ethics, that there exists a moral foundation on which the past can be judged.

64 MALOUIN, p. 272 and ss. Opinions on this issue vary. "For example, in the case of the Duplessis orphans, Doctor Heinz Lehman considers that any diagnostic errors that may have been made were not the result of inadequate psychiatric knowledge. In his view, doctors of the day were capable or recognizing a psychiatric illness." (Our translation)

5.2.2 The government of Québec

In substance, the plaintiffs claimed that it was the government's duty to act as legal guardian for orphans and abandoned children, and thereby ensure they were cared for and educated. They blame it for not exercising its legal powers of control and surveillance, and for not ensuring compliance with the contracts it signed with the institutions.

In contesting the suits that had been filed against it, the government did not answer the charges, except to repeat the arguments of the religious orders. It limited itself to refuting the legal arguments.

5.2.3 The medical establishment

The plaintiffs also accused the medical establishment of wrongful diagnosis. No official response was released by the medical establishment. However, in certain cases, the Corporation professionnelle des médecins du Québec took the position that it was not responsible for "assessing decisions by hospital management, particularly ones made over thirty years ago"[65]. (Our translation)

Media coverage of the issue shows that each of the three parties has claimed not to have been in control of the situation at the time, and said that the other two parties were making the real decisions.

5.3 Criminal complaints

5.3.1 To the Attorney General

The majority of complaints concerned two types of repeat behavior: physical and psychological abuse on the one hand, and sexual assault on the other. In the first case, examples included beatings, being tied to a boxspring for bed wetting, unjustified confinement to a cell, icewater baths and subjection to restraint measures and electroshock treatment. In the second, allegations included sodomy, molestation, being forced to provide sexual favors, etc.

Some victims took their cases to the police as early as 1970. Complaints filed involved some 30 institutions, 240 complainants and 341 suspects. The majority of complainants made three statements: the first to municipal police, the second to the Québec Provincial Police, and the third to representatives of the Attorney General. The latter met with hundreds of victims and analyzed thousands of accusations.

On February 24, 1995, the Attorney General announced that no charges would be laid.

---

65 ROY, p. 155. The same author cites the testimony of Dr. Louis Roy, who admitted in July 1991 that diagnostic errors had been committed, see p. 118 and ss.

According to his explanation, there were several reasons not to prosecute:

- In 161 cases, there was a six-month limitation.
- In 44 cases, the Attorney General ruled that there was insufficient proof (contradictory accounts, failing memory, inability to testify, etc.).
- Fifty-two suspects were deceased, and 5 others suffering from mental alienation or Alzheimer's disease were unable to present full answer and defense.
- Forty-two suspects had not been identified or located.
- Fourteen complaints had been withdrawn, or abandoned after the death of the complainant.

In almost all cases, the reasons invoked by the Attorney General did nothing to deny the existence of the facts. Neither the statute of limitations nor the death of a suspect or complainant throw the alleged acts into question.

The Committee has contested some of the Attorney General's reasons for refusing to proceed, pointing out, among other things, that it is troubling to note that two individual complaints rejected by the Attorney General were later allowed by a judge. The committee has also contested the way in which complainants were questioned: investigators used vocabulary that was inappropriate and ill suited to illiterate persons[66].

5.3.2 Individual complaints

Certain individuals launched private legal action against their presumed aggressors. Private criminal prosecutions are an exceptional occurrence. Normally it is the state, which has a duty to protect the public, that prosecutes on behalf of citizens[67]. The procedure is also rendered difficult when plaintiffs are not represented by a lawyer, which was the case here.

The first stage consists of convincing a judge that the allegations are serious enough to warrant the laying of information. A first examination is then conducted complete with witnesses and a summary presentation of evidence to decide whether formal charges will be laid. If they are, the plaintiff is in the same position as the Attorney General when he decides to prosecute. The next stage is the preliminary hearing, which determines whether there is sufficient evidence to send the accused to trial. If so, then the actual trial can begin.

---

66 Letter from Bruno Roy to minister of Justice Paul Bégin, dated April 26, 1995.

67 Private prosecutions are governed by section 785ss of the Criminal Code.

Of the four private suits filed in 1994[68], all against the same person, only one made it to trial. It resulted in a guilty plea and the imposition of a six-month suspended sentence[69].

6. SIMILAR SITUATIONS OUTSIDE QUÉBEC

Other vulnerable groups outside of Québec have suffered harm similar to that endured by the "Children of Duplessis." Generally speaking, the authorities involved have demonstrated common sense and compassion by settling out of court.

6.1 The other provinces

6.1.1 British Columbia

In 1993, the B.C. Ombudsman tabled a report[70] on the provincial government's handling of complaints of sexual abuse involving deaf children at the Jericho Hill Provincial School for the Deaf.

In the report, the Ombudsman stated that criteria for proving criminal responsibility beyond all reasonable doubt and obtaining corroboration of victims' testimony should not be determining factors for authorities responsible for children's safety. He found that the government had not taken students' revelations seriously enough, leaving them no choice but to seek compensation through the courts. It is neither fair nor reasonable that children mistreated in a provincially funded and operated institution be obliged to turn to the courts: the costs and trauma of the judicial process can easily "victimize" people all over again. The Ombudsman therefore recommended that the B.C. government agree to find other methods than legal confrontation to compensate the victims[71].

The recommendation was accepted. The government named a special commissioner to investigate the extent and severity of sexual abuse, the responsibility of the province and the compensation options available.

The special commissioner tabled his report in March 1995. His investigation revealed a 35 year record of sexual abuse dating back to the 1950s—abuse perpetuated by staff, by older students preying on younger children, and by the same young victims as they grew older and turned on new

---

68 Case Nos. 500-01-016545-946, 500-01-011829-943, 500-01-011830-947, 500-01-011831-945.

69 Case No. 500-01-016545-946. A suspended sentence allows the guilty party to avoid a prison term or fine if he or she does not commit any criminal acts within the period determined by the judge. (The lightness of this sentence heightened the orphans' sense of bitterness and mistrust regarding the legal system).

70 Office of the Ombudsman of British Columbia, Public Report No. 32, November 1993, "Abuse of Deaf Students at Jericho Hill School."

71 The report also made a series of recommendations regarding the rights of the deaf, the use of American Sign Language (ASL) and methods used by police and Crown attorneys.

students themselves. He drew parallels with certain native residential schools and boarding schools for the handicapped where a general culture of sexual abuse involving staff and students had developed, just as at Jericho Hill. He also noted the difficulty of establishing a clear picture of the true situation given failing memories, the ravages of time and the risk of accusing innocent people, including those already dead.

After an exhaustive study of the rules of law, he concluded that although the courts had neither ruled on the government's legal liability nor absolved it of responsibility, nothing prevented authorities from acting without admission of liability. Given the vulnerability of these particular children—isolated from society due to their handicap, and from their own parents, who were unable to understand sign language—and the fact that many of them were sexually abused, he recommended that the government accept responsibility so that both the province and its deaf community could turn the page.

After analyzing existing jurisprudence and the sole out-of-court settlement to be reached ($50,000), he established three levels of damages:

1. $3,000 minimum for sexual abuse
2. $25,000 maximum for serious sexual abuse
3. $60,000 maximum for serious, long-term sexual abuse

Other terms of the settlement were as follows:

- Maintenance of victims' right to receive social assistance or other government benefits even if compensation were paid
- One-year time limit for filing a damages claim
- Setup of a tripartite committee made up of representatives of former students, the government and the school
- Hiring of a damages specialist to assist applicants not represented by a lawyer
- Reimbursement of legal fees for those dropping civil suits still pending
- The option of foregoing compensation and taking legal action
- Waiving of all recourse by those agreeing to the compensation program
- Compensation for the deaf community in the form of a cultural center for the deaf
- Free therapy for victims requesting it[72]
- A series of nonpecuniary measures for the establishment of a medical care interpretation service, sign language recognition, etc.

To date, 187 applicants have been identified, and 81 of them have filed claims. The program is still in place.

---

72 At the time of the report, 150 of them were already receiving free treatment.

6.1.2 Nova Scotia

Nova Scotia also had to come to terms with cases of abuse. In 1994, following complaints from former residents at the reform school in Shelburne[73], Nova Scotia's minister of justice recommended to Cabinet that an independent inquiry be held to investigate incidents of sexual and physical abuse between 1956 and the 1970s. The goal of the inquiry was to prevent recurrence of abuse, retrace past events, identify those responsible and provide fair compensation to the victims. The investigation was subsequently extended to cover four other schools as well as the Lalo affair, the case of a former employee fired for setting up a prostitution and sexual abuse ring involving young delinquents.

After six months and $140,000 in costs, inquiry head Justice Stuart G. Stratton released his report. He readily acknowledged that public opinion and government approaches to dealing with "youth who had gone astray" had changed over time, and that the philosophy of "imprisonment and punishment" had been replaced by one of "education and treatment." However, changes in attitude did not excuse the sexual and physical abuse of children. Stratton's investigation identified 89 victims and attributed responsibility for the events to the government departments involved and to elected officials. He blamed them for not providing sufficient resources to hire enough qualified staff to ensure decent living conditions for school residents, and for turning a deaf ear to their complaints.

He concluded that legal liability aside, Nova Scotia had a moral obligation to respond to the victims' claims. After a year of negotiations with the 20 odd lawyers representing the victims, the government agreed to a settlement in May 1996 establishing a $33 million compensation fund.

Compensation paid to the 89 victims identified by the inquiry, as well as to all other victims filing claims, varied from $5,000 for minor physical or sexual abuse to $120,000 for more serious cases.

The settlement also covered therapy, victims' legal fees and the possibility for victims to "tell their stories" in book form.

The minister of justice held a press conference to formally apologize on behalf of the government and people of Nova Scotia. The RCMP is currently investigating the allegations of abuse and an internal inquiry into employees at the institutions in question is in progress. Procedures and practices across the province are also being analyzed with a view to taking preventive measures.

The deadline for claims was December 17, 1996. To date, 327 of the 433 claims received have undergone first-stage processing, 147 have been settled and 37 are under review. Compensation paid has averaged approximately $36,000, including legal fees.

---

[73] The Nova Scotia School for Boys.

6.1.3 New Brunswick

In New Brunswick, it was events at the Kingsclear Training School that drew attention. For administrative policy reasons, the school was home to both juvenile delinquents and orphans. As a result, the latter were also treated as delinquents.

In 1985, a counselor at the school reported an incident of sexual molestation involving an employee and a student. The employee was subsequently transferred, but no further action was taken. Some years later, one of his colleagues and three other boys filed complaints of sexual assault against the same individual. Investigations by municipal police and the RCMP failed to lead to any charges, and the employee was rehired at the same school to work at summer camp. Allegations of interministerial interference then began to circulate and in September 1991, the man was arrested and charged with 27 counts of sexual assault. In 1992, 12 additional charges were laid. The accused pleaded guilty on 34 counts and was sentenced to 13 years in prison.

Shaken by the long delays and the system's inability to take action on what proved to be 30 years of generalized and known incidents of pedophilia, the New Brunswick government set up a committee of internal and external experts to investigate the running of the Attorney General's department. On the day of the sentence, it set up a Public Inquiry Commission chaired by Justice Richard L. Miller to investigate cases of physical and sexual abuse and mistreatment at the school.

In October 1993, the Miller Commission had to suspend operations so that the RCMP could file 15 further sex-related charges. The Inquiry Commission received 157 accounts by witnesses. It concluded that during the course of the thirty years, none of the Department of Justice officials who had been informed about the alleged sexual abuse had undertaken a serious investigation or sought police assistance. Labeled as delinquents, the orphan victims were not believed despite the state's obligation to watch out for their interests.

Justice Miller concluded that the government had a moral responsibility to make up for the damage the victims had suffered. "This is not a case of bones that might have healed without medical treatment, but of broken lives and souls" (Our translation). He recommended a series of measures, including abandoning the practice of lodging young offenders with children requiring protection, strict monitoring of staff qualifications and training, setting up a special program for medical, psychological and psychiatric care and creating a no-fault compensation program.

Four months later, on June 8, 1995, the New Brunswick government adopted a compensation program worth $5 to $7 million for the 350 victims sexually abused by provincial employees. The program aimed to provide "an alternate solution to settle their legitimate claims." The deadline for filing claims was set for August 30, 1996.

Under the program, claimants denied compensation were entitled to have their cases reviewed by an independent arbitrator. Maximum compensation was set at $120,000 in damages for inconvenience and suffering, legal fees and loss of past and future income and opportunities—along with an additional $5,000 for psychological counseling.

Settlements of under $50,000 are exempt from restrictions on social assistance. Victims have access to free financial advice and guidance counseling, and also enjoy an exemption on tuition fees and school books and supplies.

To date, 237 claims have been filed and a total of $4.5 million in compensation has been paid. Payments have averaged $41,000. The arbitration phase is still in progress.

6.1.4 Alberta

Between 1940 to 1960, abandoned children in Alberta were housed with juvenile delinquents, irrespective of age. a practice confirmed in inquiries in 1944, 1945 and 1949.

The press called them the "Children in Iron Cages." They endured conditions harsher than those found in adult prisons and penitentiaries. They were locked in basement cells, and sometimes went weeks without any exercise, instruction or activity. Resources allocated for their care by the government were inadequate, and the staff unqualified and untrained.

Red Deer Centre was the largest institution for "retarded" children at the time. "Normal" children, some of above average intelligence, were also placed in the facility.

The 1929 Sexual Sterilization Act, a piece of legislation providing for the compulsory sterilization of intellectually handicapped youth, was still in effect during this period. An estimated 3,000 sterilizations were performed before the act was abolished in 1972 as "morally repugnant." Under the terms of the act, children placed at the Red Deer Centre were assessed upon admission and required to take two intelligence tests prior to the operation. This procedure was not followed in the case of Lehani Muir, who was sterilized against her will in 1959 at the age of 14. Subsequent testing showed her intelligence to be above average.

At age 51, Muir sued the Alberta government and, in 1996, obtained nearly $1 million in damages, including $300,000 for having been wrongfully classified and treated as intellectually handicapped.

The Muir settlement followed a failed attempt by the Alberta Association for Community Living to persuade the government to set up a comprehensive compensation program for victims of compulsory sterilization.

Not long after, other victims—a little over 30 all told—filed similar suits against the Alberta government. Proceedings are still underway.

6.1.5 Manitoba

In Manitoba, the issue of mistreated children arose with regard to native residential schools. Under past federal and provincial policies of cultural assimilation, native children were removed from their families and sent away to distant boarding schools run by religious orders. Since parents were very often unable to visit the schools due to the distance involved and the cost of transportation, children were totally cut off from them, except during summer vacation. School staff tried to wipe out all traces of native culture that ran contrary to the religious beliefs of the majority. As a result, several generations of natives grew up cut off from their origins and rejected by most of society. Many were also humiliated, physically and sexually abused or otherwise mistreated. Their frustration, despair, shame, loss of identity and low self-esteem led to individually and socially destructive behavior that has plagued native communities and the majority community alike.

In 1995, the United Church of Manitoba acknowledged these facts by publicly apologizing to the Grand Chief of the Manitoba First Nations and admitting to the abuse that had occurred in church-run schools[74].

Although no legal action had been taken, the Church set up a $500,000 healing fund—the Enashtabne Ke-Ke-Wan Fund—administered by a joint committee whose mission is to fund community projects intended to help heal the scars of the past.

6.1.6 Ontario

Ontario was one of the most severely affected provinces. There were four main groups of children who were victims of physical, sexual and psychological abuse:

- Two of the groups were made up of students at the St. John's and St. Joseph's Training Schools, which were run under the supervision of the Ontario government by the Christian Brothers, a Catholic order, in Toronto and Ottawa.
- Another group of girls were students at Grandview Training School, run by the Ontario government.
- A group of native boys and girls were sexually abused by Jesuit priest George Epoch in the communities of Cape Croker, Saugeen and Wikwemikong.

---

74 In Québec, the Oblate Order of Canada recently apologized for the treatment received by native children from Northern Québec.

6.1.6.1 St. John's and St. Joseph's

Former residents of these two schools—ex-delinquents and children from poor families—joined forces to set up Helpline, an association of 300 members. As legal proceedings were launched, the former residents decided to seek the services of a mediator. Their goals were as follows:

- Validation of rejected complaints of abuse
- An apology from school authorities along with the acknowledgment that they had failed in their duties
- Acknowledgment of the harm done to Association members and their families, and of the need for reparations, notably through financial compensation
- Professional support services and training
- An offer of personal reconciliation from the Church
- Ultimately, the attainment of some form of personal or inner peace

In January 1991, Helpline, the Ontario government, the Ottawa Christian Brothers, the St. John's Training School for Boys, the Diocese of Toronto and the Diocese of Ottawa agreed to conciliation. The sole holdouts, the Toronto Christian Brothers, subsequently changed their minds after being sued for damages. All parties recognized the advantages of the mediation process:

- There are no winners or losers—everyone has something to gain.
- The effects tend to be more stable and longer lasting.
- The parties are more likely to view the outcome as fair and comply with recommendations.
- The process provides for more varied and flexible solutions, such as public apologies, etc.
- Parties maintain relations.
- Mediation allows traditionally powerless victims to exercise influence and affirm themselves.

At the outset, the number of claims was estimated at 400 and the filing deadline set for June 24, 1992. Given victims' reluctance to come forward, difficulties in contacting them and the avalanche of claims that poured in after the deadline, a second group was created, then a third. A total of 301 claims have been processed from the first group, and 246 from the second. Since victims continue to come forward, the parties have decided to look into extending the agreement without the original committee or Helpline funding. Negotiations are underway to set terms for the third group.

The initial agreement provided for five types of compensation: $30,000 for inconvenience and suffering, $3,000 to pursue self-employment or training opportunities, $800 for loss of income and $5,000 for professional, psychological or other support services, for a maximum total of $38,800 in addition to legal fees.

Helpline received $410,000 to organize and take part in designing and setting up the program.

Compensation payments averaged $26,000.

The program was strongly criticized, mainly because of its $750,000 in operating costs and a similar amount in legal fees for the lawyer representing the victims. The integrity of the Committee chair was called into question. And the isolation and unwieldy nature of the process had disastrous consequences for the victims, apparently causing some 15 suicides. There was no review mechanism, and claimants filing complaints were obliged to waive all right to legal recourse before they even knew the outcome of their claims.

6.1.6.2 The St. John's agreement

The Toronto Christian Brothers, who had refused to sign the above-mentioned agreement, negotiated a different conciliation process with a highly credible representative of the victims.

The resulting mechanism was very flexible. No schedule of damages was set and no agreement or waiver of rights was signed. Claimants presented their claims to the order's and victims' representatives. The two representatives then agreed on an amount to be submitted to each claimant for approval. In the event of refusal, negotiations ensued. Any claims still unsettled after negotiations were referred to a committee made up of individuals specially chosen for their credibility with all parties. The Committee would then met to set a figure for damages. Claimants who rejected the Committee's proposal still had the option of exercising their legal right to go to court.

This procedure appears to have been quite effective, with 500 claims processed in one year and 300 remaining. Certain settlements exceeded $50,000. Average settlements have been around $14,000, but it is too early to get an overall picture.

Those responsible for the procedure stress that it works because of their credibility with the victims and the mutual trust established between both sides.

6.1.6.3 The Jesuits of Upper Canada reconciliation agreement

Father George Epoch was a Jesuit priest who served the native communities on the Saugeen, Cape Croker and Wikwemikong reserves between 1971 and 1983.

Following accusations of child sexual abuse, the Jesuits launched an investigation that brought to light a vast pedophilia network set up by Father Epoch. The Jesuits accepted moral, but not legal, responsibility for these acts. In 1992, the leader of the province's Jesuit community presented a public apology on behalf of the order. The Jesuits tried to help the victims by providing financial

assistance. But in 1994, four years and some $2 million dollars later, they withdrew their assistance when they realized that few concrete, positive results had been achieved

A small group of victims then contacted them and negotiated an alternative solution, not just for themselves, but for the other victims as well. The negotiations led to a reconciliation agreement comprised of the following: individual apologies, $25,000 per person in damages, $4,000 per person made available for training or employment-related projects, and a $500,000 fund for professional, psychological or other support services. The settlement also provided $25,000 for a financial consultant, $40,000 for program setup costs and $150,000 for the Committee overseeing program application[75].

A further $40,000 was allocated so that the story and individual accounts of events could be set down in writing by someone assigned to record the memory of events as a lesson for future generations.

In the end, 83 of the 97 claims were accepted.

6.1.7 Newfoundland

In early December 1996, the Newfoundland government announced that it had reached an agreement with former residents of the Mont Cashel Orphanage who were demanding compensation for the physical and sexual abuse they had suffered there. The settlement by the Department of Justice put an end to a series of civil suits launched after the 1989 revelations of child sexual abuse at the institution. The 38 victims will share approximately $10 million in damages.

6.2 Other initiatives

6.2.1 The federal government

6.2.1.1 Japanese interned during World War II

Acceptance of moral responsibility, even in the absence of legal responsibility, is not new for governments.

In 1988, the federal government apologized to Japanese Canadians who had been interned in camps during the Second World War on the grounds that they posed a threat to national security.

---

75 The committee is made up of Justice Walter McLean, a representative of the victims and a representative of the Jesuits of Upper Canada. They are assisted by an administrative assistant, a mental health counselor and a financial adviser.

The government chose to act despite the fact the Privy Council had absolved it of all legal liability in 1947. Along with the apology, each ex-internee was awarded $21,000 in compensation, and the Japanese Canadian community received $12 million to promote its culture. Overall compensation paid totaled around $300 million.

6.2.1.2 Ex-Patients of the Allan Memorial Institute

Ex-patients at the Allan Memorial Institute who were unknowingly subjected to drug and psychiatric experiments were each awarded $100,000 for suffering, inconvenience and loss of enjoyment of life.

6.2.1.3 AIDS virus victims

Lastly, individuals contaminated by the AIDS virus after receiving transfusions of tainted blood from the Red Cross each received $50,000 in damages for loss of life expectancy, suffering and inconvenience. Each province was expected to complete the program with its own compensation payments.

6.2.2 Religious communities

Three religious communities have stood out for their willingness to make up for the harm suffered by victims of sexual abuse and "cultural genocide," all in cases involving Canada's First Nations.

6.2.2.1 The Canadian Conference of Catholic Bishops

The ad hoc committee on child sexual abuse set up by the Canadian Conference of Catholic Bishops issued a report in 1992—*From Suffering to Hope*—dealing with all aspects of the question. The document clearly indicated the Conference's willingness to assume its responsibilities and find ways to both face up to the sexual scandals involving the Church and avoid their recurrence.

Although the report was aimed mainly at priests, it also covered other religious personnel and lay staff. It recommended that an advisory committee be set up in each diocese to draft a protocol, that victims find an attentive ear, that a victims committee be set up to provide assistance to any minors claiming to have been sexually abused, that special training and selection measures be taken for priests, etc.

Certain recommendations were aimed at all Canadian Catholics as well as their bishops.

6.2.2.2 The Anglican Church of Canada

In 1991, the Anglican Church of Canada set up a residential schools task force with a 3 year mandate and an annual budget of $135,000.

A video and a study guide entitled *Search for Healing* were produced to provide First Nations peoples with a discussion forum allowing them to tell their stories "without the Church feeling the need to defend itself." Screenings of the video were also intended to foster reflection and dialogue on the legacy of the residential schools, where several generations of native children were brought up in isolation from their families and an atmosphere of cultural denigration.

A $250,000 fund was set up offering $15,000 and $20,000 grants for projects designed to enhance awareness and encourage healing. These initiatives were also meant for the residential schools at Fort Georges and La Tuque in Québec.

6.2.2.3 Missionary Oblates of Mary Immaculate

At the annual First Nation pilgrimage to Lac Ste. Anne, Alberta in 1992, the Missionary Oblates of Mary Immaculate, acting in the same spirit, publicly apologized on behalf of 1,200 Oblate priests and brothers for "the role they had played in cultural, ethnic and religious imperialism." Recognizing that the healing process for the victims could not begin until wrongs had been acknowledged, the Chairman of the Oblate Conference of Canada also apologized for the physical and sexual abuses committed in Oblate-run schools.

In 1991, the Québec Oblate provincial council also joined with two other representatives of religious orders, Henri Légaré and the provincial council of the Sisters of Providence, for a meeting with the Lesser Slave Lake Native Regional Council at High Prairie.

At the meeting, Mr. Légaré read a declaration of apology on behalf of the three orders stating that "they were aware of the suffering endured by children at the residential schools." (Our translation)

6.3 The overall Canadian experience

In the majority of cases, although the courts had not ruled on their legal liability, governments and religious orders assumed their moral responsibility, without admitting any obligation to compensate, after negotiating with the parties concerned. Initial reparations took the form of public apologies. Moreover, in virtually all the cases examined here, a certain sum of money was accorded to the affected groups, generally to fund assistance and development programs, which were often run by joint committees. These funds were intended to improve victims' living conditions by helping them overcome psychological after-effects and enhance their employability.

Individual indemnities were also paid in a number of cases, sometimes in recognition for harm suffered, sometimes to cover the cost of specialized services. With the exception of the sums paid to Japanese Canadians, monetary compensation generally varied with the frequency, gravity or duration of the harm caused.

In addition, we have seen that children and youth who were victims of violence and/or sexual abuse while in institutions received indemnities averaging $14,000[76], $25,000[77], $26,000[78], 36,000[79], and $41,000[80].

7. THE QUÉBEC OMBUDSMAN'S GENERAL PROPOSITION: TOWARD A NO-FAULT ASSISTANCE PROGRAM

7.1 Acknowledging a dead-end situation unhealthy for all

As we have seen, the legal system cannot meet the needs of the "Children of Duplessis" because of technical and legal obstacles, delays and the time elapsed.

We have also seen that the parties involved have all refused to accept responsibility, blaming either the other parties or the prevailing values of the day. In addition, neither the media coverage nor the petitions, criminal accusations, legal proceedings or lobbying of the National Assembly and various departments have been sufficient to reconcile the different visions or determine specific responsibilities. Indeed, after so many years, it is very difficult to go back in time to identify those responsible—an exercise bound in large part to fail.

Due to the limits of the judicial process, the "Children of Duplessis" now believe themselves to be the victims of a hostile and inaccessible legal system that will not allow them to expose and prove the injustices they claim to have suffered.

As for the government, the medical establishment and the religious orders, they have also fallen victim to the limits of the legal system. The rejection of criminal complaints by the authorities and the courts, and the impossibility of launching class action has undermined the credibility of the three groups, although they did nothing more than use the legal means at their disposal to defend themselves. As a result, serious doubts about their role will always remain, even if legal proceedings are impossible. The situation is an unhealthy one for all.

7.2 The need for an out-of-court settlement

The fact remains that the government, the medical establishment and the religious orders approached their responsibilities in such a way that the "Children of Duplessis" suffered widely acknowledged

---

76 The Toronto Christian Brothers

77 The Jesuits of Upper Canada

78 St. John's and St. Joseph'

79 Nova Scotia

80 New Brunswick

harm that is virtually "common knowledge" today. Even more, common sense urges that they be compensated. A recent poll conducted for Télé-Québec's current affairs program *Droit de Parole* found 54% of respondents were in favor of compensation[81].

In the view of the Québec Ombudsman, the focus must now shift to the search for an out-of-court settlement. At very least, the government has a moral responsibility to find a solution, especially since it had such an important role to play in the lives of these children at the time the events occurred.

Normally, parents are the ones who protect and exercise their children's rights. But the "Children of Duplessis" were wards of the state, and the government and the religious orders were acting in place of their parents. It is therefore worthwhile to highlight certain principles that must underlay a settlement.

7.3 The principles justifying a settlement: human rights

The children's rights contained in modern-day charters, codes and laws didn't just appear out of nowhere over the past two decades.

In 1924, the *Declaration of the Rights of the Child* stated that "every child must be given the means requisite for its normal development... must be fed, ... nursed, ... sheltered and succoured." This principle was reiterated in the declaration of 1948, and its scope clarified in 1959: "The child shall have the right to adequate nutrition, housing, recreation and medical services[82]."

Furthermore, article 39 of the *Charter of Human Rights and Freedoms* provides that "Every child has a right to the protection, security and attention that his parents or the persons acting in their stead are capable of providing."

The Charter, which came into effect in 1975, simply confirmed, in most cases, preexisting or socially accepted rights. In addition, section 3 of the 1979 *Youth Protection Act* recognizes the need to protect children with respect to their development.

The Québec Ombudsman believes that it is necessary to make up for lost time and give meaning to these rights for those who suffered harm in their childhood, without resorting to a complex, costly, random bureaucratic process.

---

81 Telephone survey of 1002 adults throughout Québec conducted by the SOM polling firm between January 20 and 25, 1995. The question asked was: "A number of orphans abandoned during the 1930s and 1940s (at the time of Premier Duplessis) have denounced that fact that they were wrongly classified as mentally deficient. They have also denounced the mistreatment they claim to have suffered in religious institutions. They are known as the "Children of Duplessis." Do you think the government should financially compensate the "Children of Duplessis?" 29% of respondents said no. Opinions varied with respondent age and income.

82 MALOUIN, op. cit., supra note 11, p. 59.

Although today's public authorities were not actors in past events, they hold the same roles and duties as their predecessors. They are held to the same rules of accountability, transparency, fairness and reasonable action[83]. Justice and a sense of responsibility require that the government and the main actors remedy the harm unjustly caused to the "Children of Duplessis."

7.4 The position of the Committee on Institutions in January 1996

Certain elected officials have recognized the urgency of the situation and the need for the government to devise a solution. In January 1996, the National Assembly Committee on Institutions, which was designated to receive the Québec Ombudsman's report and recommendations, conducted hearings. It is worthwhile to report on the essence of what was discussed.

The former minister of justice and member for Laurier-Dorion declared: "I'd like to hear how the Ombudsman sees this issue, and what he views as possible recourse for those who, in my view, fell victim in the cruelest manner to institutional and administrative concerns that ignored their needs as human beings and who today, faced with the decision to stifle their voices, risk experiencing exactly the same cruelty. So, I'd like to hear the Ombudsman speak on this and see what possibilities he envisages so that we can see if there is anything we can do on our side to push for a settlement based on the values of fairness and human justice."

The Québec Ombudsman replied, "when I look at the situation and I see how we're trying to resolve it, I realize that the measures being used will never do justice. It's not a case that can be resolved by conventional judicial means... Furthermore, we also know that each and every person who was a victim of this operation has suffered in some way from after-effects

Conventional justice requires proof that someone was at fault. And it's very penalizing to have to go back 30, 40 years and say that something is someone's fault or someone else's fault. To what extent did the religious orders commit wrongs? With the eyes and values of 1995, and the values that prevailed 40 years ago, I'd say that there's a good chance that in terms of civil liability, no fault could be established [...]

[...] We have to forget about all that and look at things from another angle. Everybody recognizes that things did in fact occur that are unacceptable from today's standpoint, everybody recognizes that

---

[83] For a list of government duties, see *A New Social Contract, 24th Annual Report of the Québec Ombudsman 1993–1994*, p. 59 and ss., particularly the following points:

"3. Does the government seek to ensure that its actions are legal and reasonable? Means of combining thoroughness with a concern for equity:
- 3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
- 3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.
- 3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.

8. Does the government act responsibly in performing its various duties? Methods for the government and its employees to acknowledge the actions for which they are accountable:
- 8.3 Establish, as needed, conciliation or mediation mechanisms.

the victims—and we don't even know how many there were right now—suffered harm that varied from case to case [...]

[...] Let's look at the situation from the perspective of no fault compensation [...]

[...] Let's simply accept that there were victims, and that the victims deserve to be compensated in some way or another. It's time to stop putting religious orders, former governments and the medical establishment on trial. It won't change much 50 years later. We can't undo past events. The important thing is that the victims, today, before they die, benefit from compensation in line with the injustices they endured, and that's the avenue I want to develop in the proposal I will present, if required."

The member for Richelieu, now minister of International Relations and member of the Conseil du Trésor, declared, "The problem is a humanitarian and political one, so we have to look at it from those angles and find solutions in response to that. This is the type of initiative that the [Ombudsman] is currently taking by submitting a report suggesting approaches the government can take in response to an uncommon problem, a problem that the government apparatus is poorly equipped and prepared to deal with."

7.5 An alternative damage settlement mechanism that is not new

Is the Québec Ombudsman's proposal for no-fault compensation a new idea? It does not appear to be. Problems with determining shared liability, legally proving individual or group responsibility and dealing with obstacles to court access have arisen in Québec before, as have issues of multiple recourse and high legal, social and administrative costs. And solutions have been found.

In similar situations where collective well-being and security have been jeopardized, society has not hesitated to take a no-fault compensation approach. In cases where proving wrongdoing is difficult or impossible, but where individual or collective harm has ensued, this is the means that has been used to arrive at a settlement without laying blame. Examples include the universal automobile insurance plan, workman's compensation[84], disaster relief[85], the *Act to promote good citizenship*[86], etc.[87].

---

84 *Act respecting industrial accidents and occupational diseases* (R.S.Q., c. A–3.001); *Act respecting occupational health and safety* (R.S.Q. c. S–2.1).

85 *Act respecting the prevention of persons and property in the event of disaster* (R.S.Q., c. P-38).

86 R.S.Q., c. C-20.

87 Another example of a no-fault regime at the provincial level is the section concerning victims of bodily injury following voluntary immunization in the *Public Health Protection Act* (R.S.Q., c. P-35, s. 16.1 to 16.11).
A federal example is the compensation offered for goods destroyed, used or requisitioned in emergency situations or in the public interest under the *Emergency Measures Act* (S.C. 1988, c. 29, s. 46 and ss).

In the area of compensation for crime victims, legislators passed the *Act respecting assistance for victims of crime*[88]. Its provisions have broadened the concept of victim, both in terms of bodily or physical injury as well as certain types of material damage. They have also extended the notion of damage as well as the amounts set aside for compensation. Since 1971[89], we have accepted the principle of using public funds to compensate for the direct or indirect consequences of crime, crime prevention and incidents that violate integrity of the person.

Again just recently, after the catastrophic flooding in the Saguenay region, the government did not hesitate to apply the principle of no-fault compensation. Although it set up a Scientific and Technical Commission to investigate management of the public and private dams involved in the flooding, it quickly established a humanitarian program to compensate relocated individuals and make up for the loss of personal goods as well as small business revenues[90]. The fact that the government did not wait to find out the exact extent of the damages or whether any fault had been committed prior to offering assistance to citizens in distress was widely appreciated by the public, as was the simplicity and celerity of the process.

It is not property that has been damaged in the case that concerns us here, but rather the physical and moral integrity of the person. Yet the principle remains the same. There is no need to know who committed what wrongs to respond to the claims of society's most vulnerable members. The important thing is to take measures to remedy, as much as possible, the damaging effects of this page in Québec history.

In short, it requires common sense. If subsequent generations recognize that people suffered serious harm as a result of failings in a system set up by their predecessors—failings related to fundamental values—they have the right and duty to ask questions about the reasons behind such injustices.

Moreover, if they have living among them people who are suffering from the after-effects of these failings, they have a duty to find a solution; not to repair the harm done—that is impossible—but to restore their dignity and help them live with the long-term consequences that remain.

For these reasons, the Québec Ombudsman is convinced that it is unrealistic to seek out those responsible on one hand, and identify the victims on the other. Instead, he believes that the organizational weaknesses of the system of institutionalization that failed the "Children of Duplessis" require a no-fault compensation settlement.

---

88 1993, R.S.Q., c. 54, sanctioned December 13, 1993, and not yet in effect.

89 This new law is a reform of the regime that had been established in 1971.

90 As of November 13, 1996, the Ministère de la Sécurité publique had paid over $54 million to victims of the floods of July 19 and 20, 1996, after analyzing 3,216 of the 5,408 claims received. Over 1,700 claims remain to be examined.

8. PROPOSAL APPLICABILITY

8.1 Who should be compensated

For the purposes of an out-of-court settlement, the Québec Ombudsman recommends compensation be paid for the following cases: persons interned without being diagnosed as seriously retarded or mentally ill or persons so diagnosed and interned without a credible examination; persons who suffered physical abuse as a result of punishment in excess of moderate, accepted methods of the time[91]; and victims of sexual abuse[92]. Victims must have been institutionalized prior to the age of 12 between 1930 and 1965.

The Québec Ombudsman considers that those not corresponding to the above categories do not require compensation, even if they did not receive a suitable education or worked without pay. Unpaid labor in families and on farms was the lot of many children at the time, and a good portion of the population had little or no schooling.

8.2 Compensation of a personal nature

The harm suffered by the "Children of Duplessis" was of a personal nature. Although money cannot adequately compensate victims filing claims, the money they do receive must be first and foremost aimed at improving their living conditions.

---

91 PINEAUT, Jean. *La famille*, 1982, Montréal, Les Presses de l'Université de Montréal, p. 286.
Trudel taught that the goal of punishment was "to educate and train the child... current practice is the accepted norm: commonly inflicted punishment is permitted. However, punishment should never cause serious injury requiring medical treatment. This was the right to punish that was transferred to teachers in compliance with former section 245, which has since been abrogated."

OUELLETTE-LAUZON, Monique. *Droit des personnes et de la famille*, 1976, Montréal, Éditions Thémis, p. 166.
"This is the right to punish children: parents may punish their children to make them respect parental authority. This right correlates with the parents' obligation to bring up and educate their children. Of course, we only mean nonsevere punishment that is administered in the child's interest. (1)

The norm: 1) Commonly inflicted punishment
2) Punishment proportional to the fault
Punishment that causes injury and requires medical attention would be illegal and criminal."

(1) See Art. 43, Crim. C.
/ Disciplining children/ "Any schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances."

92 See articles 135 to 149 of the *Criminal Code* (sexual offences), 1953–1954, Chapter 51, 2-3, Eliz II. For example, article 148 provided that—

"Every male person who assaults another person with intent to commit buggery or who indecently assaults another male person is guilty of an indictable offence and is liable to imprisonment for ten years and to be whipped."

8.3 The prerequisites for an out-of-court settlement

8.3.1 Acknowledgment of harm and an apology

Acknowledgment of the harm that certain people were caused is essential to any settlement. The point is not to identify guilty parties, but to acknowledge that acts and decisions taken by the government, institutional authorities, health professionals and society in general caused these individuals considerable harm. The social context of the time cannot justify their internment in asylums for reasons more financial than medical, just as it cannot justify physical and sexual abuse.

Today's society has a duty to officially acknowledge the harm done. Official apologies on the part of the government, the medical establishment and the religious orders involved would undoubtedly be a good place to start.

8.3.2 Voluntary adherence to the compensation program

Since no-fault compensation is not compulsory, those unhappy with their proposed settlements should, in the event they turn them down, retain their right to take legal action. As seen above, this right of refusal was recognized in the programs set up in other Canadian provinces.

8.3.3 Compensation paid by the government, the religious orders and the medical establishment

The harm done occurred at a time when the government and the religious communities shared responsibility for abandoned children. The medical establishment also had a role to play. The Québec Ombudsman believes that, without portioning out blame, all parties should financially contribute to the compensation fund in proportions to be negotiated between them.

8.4 Implementing the compensation program

8.4.1 A solution born of consultation

It is essential that all parties, including victims' representatives, take part in negotiations to set up and implement the program. Such a process has the advantage of enhancing awareness among all parties by focusing attention on the moral obligation of authorities to jointly repair the harm that was done, rather than on which party was responsible for what. However, negotiations on the sharing of the financial burden must not unduly delay a settlement.

8.4.2 A quick solution

Given the nature of the process and the extensive delays that have already occurred, it is important to proceed quickly and efficiently. Once in place, the all-party committee should act within three

months to propose a compensation model, draw up terms of compensation, make provisions for payment of claims, establish a short deadline for reaching decisions and set up a review mechanism.

8.4.3 Compensation based on objective criteria

Indemnities should be determined on the basis of objective criteria. In other words, compensation would only be offered to those able to present a medical certificate or other reasonable proof showing that they were sent to a psychiatric unit or asylum after being placed in a foundling home or orphanage, or were victims of physical or sexual abuse while institutionalized.

Furthermore, compensation awarded should be in relation to the number of years spent in a psychiatric unit or asylum[93], from institutionalization until, at the latest, December 31, 1975, the year when the first phase of deinstitutionalization was completed.

8.4.4 The right to assistance

A number of victims bear psychological scars, are illiterate, or have problems expressing themselves. It goes without saying that those who so wish should be assisted or represented by the person of their choice. Moreover, it may be necessary, as has been the case elsewhere, to provide them with access to a financial adviser.

8.4.5 Easing the burden of proof

Lists of institution residents, information on length of stay and numerous medical certificates are in religious order archives. These orders should cooperate in establishing proof.

Physical and sexual abuse is harder to prove. However, the study conducted by the Ombudsman as part of the analysis of criminal accusations could serve to establish whether physical or sexual abuse occurred—not to identify suspects or guilty parties, but rather to reveal the nature and extent of the harm done. Claims may be supported by objective criteria—for example, corroborative testimony, or medical certificates attesting to treatment—without their necessarily being linked to a specific event. Again, archives will be an invaluable source of information.

8.4.6 Tax-free compensation that does not affect other government benefits

Many "Children of Duplessis" are currently receiving income security benefits. Others receive old age security benefits. It would be unfair for the government to claw back compensation intended to

---

[93] Curateur public du Québec vs. *Syndicat National des employés de l'hôpital de St-Ferdinand*, 1980, R.J.Q. 359, upheld by the Supreme Court in 1996. The facts, according to the Court, justify damages of $300 per month for each month spent in the care facility.

The interest of this ruling lies in the use of the duration of stay criterion to set compensation in the absence of precise criteria that might have enabled the court to differentiate individual damages.

improve their living conditions by applying rules from other support programs governing income from other sources. Several precedents exist with regard to income security. Compensation awarded to several groups has been exempted from calculations of last resort assistance, for example, Japanese Canadians, thalidomide victims and people who were infected with the AIDS virus by blood transfusion.

Payments should be tax exempt for this same reason, and because they are meant to compensate for nonproperty damages, as are non-pecuniary damages paid to workplace and highway accident victims.

8.5 Types of compensation

8.5.1 Individual assistance

8.5.1.1 Lump sum payments

Lump sum payments have the advantage of resolving outstanding claims for good and leaving beneficiaries free to choose how they wish to use their money, enabling them to obtain, as required, the services they deem appropriate for their own personal situation.

However, victims unaccustomed to managing large sums of money run the risk of quickly spending away their compensation or being unduly influenced by people out to take advantage of their situation.

8.5.1.2 Lump sums payable in installments

For victims requiring a certain degree of protection, this solution has the advantage of protecting their assets for a predetermined period lasting a number of years.

8.5.1.3 Annuities

This solution has the advantage of providing for the well-being of victims until their deaths and ensuring that they are the exclusive beneficiaries. Annuities also make it easier for victims to manage their personal affairs. A number of them already depend on government benefits for support. In many cases, it would be a matter of increasing these benefits without penalizing their recipients.

8.5.2 Lump sum payment to a support group

Given the psychological after-effects and the isolation of the victims, some special support should also be provided. In other very similar situations, the federal government and a number of provincial

governments have recognized this need and provided lump sum payments directly to groups concerned to enable them to meet the special needs of their members.

This solution has the advantage of addressing the real after-effects of past events. On the other hand, it obliges victims to receive services from a group undoubtedly incapable of meeting the full spectrum of their widely varied needs. Some victims may also seek to distance themselves from the group.

It could be beneficial to establish an assistance mechanism that would be jointly managed by representatives of all the groups involved, thereby demonstrating a collective desire to remedy the wrongs of the past.

8.6 The outcome favored by the Québec Ombudsman

The Québec Ombudsman suggests that after the setup of an all-party committee, regrets and apologies be rapidly presented to the "Children of Duplessis" by the main parties involved.

As for individual compensation, the options examined above have their pros and cons. However, certain studies show that in virtually all cases where victims have received a single lump sum payment, "25% of the beneficiaries had nothing left within two months of the settlement, a proportion that increased over time, until 9 out of 10 were destitute after five years[94]." This is certainly something to keep in mind.

In conclusion, the Québec Ombudsman invites the all-party committee to seek a settlement inspired by the following guidelines:

1- The main parties concerned—the government, the religious orders involved and the medical establishment—should express regrets and apologies.

2- Individual compensation should be paid in a single lump sum; or

3- For amounts in excess of a certain limit determined by the committee, in installments for a period of no more than five years, at the request of the compensated individual or on the advice of a professional in light of the individual's vulnerability; or

4- Exceptionally, and taking into account the beneficiary's age and needs, in the form of a lifetime annuity.

---

[94] GILBERT, Guy. "L'évaluation du préjudice par blessure et décès," *Revue du Barreau*, Volume 47, No. 1, p. 36.

5- Payment by installment and, where applicable, lifetime annuities should be administered by a government agency or, on request and on the basis of conditions to be negotiated, by a private organization.

6- A lump sum should be paid to a support group to help meet specific needs (therapy, financial advice, literacy and other training, funeral expenses, etc.).

7- Individual compensation should be based on the number of years spent in an institution after wrongful diagnosis of mental illness or deficiency ($1,000 per year), as well as on harm suffered for physical or sexual abuse; in the latter two cases, indemnities could range from $10,000 to $20,000 depending on the extent of damage.

8- Average compensation awarded should be based on amounts paid elsewhere in similar circumstances.

9- Compensation should be tax-free and should not have the effect of reducing amounts received for other government benefit payments.

10- The committee should, to the extent possible, negotiate and design the compensation program within a maximum of 3 months.

11- The committee should assess claims on the basis of the evidence submitted and take into account, when possible or necessary, information found in archives or investigative reports.

12- Decisions should be handed down quickly and be eligible for review.

13- Anyone not wishing to take part in the program or refusing to accept the amount of compensation proposed should maintain the right to legal action.