

SUPPORT FOR CHANGES IN THE CRIMINAL AND CIVIL
STATUTES OF LIMITATION ON THE SEXUAL ABUSE OF
CHILDREN IN THE PROVINCE OF QUEBEC

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Thomas P. Doyle, M.A., M.S., M.Ch.A., J.C.D., C.A.D.C.

THE NEED TO CHANGE THE STATUTES OF LIMITATION THAT APPLY TO THE MOLESTATION OF CHILDREN

1. The Sexual Violation of Children in Our Society

The sexual abuse or molestation of children and minors is considered to be one of the most despicable crimes in our society. Sadly this awareness is not deeply rooted in the history of North American and European countries. Child abuse has taken various forms through time: inhuman labor conditions for child laborers, slavery, physical and emotional abuse and the most heinous, sexual violation. The issue of civil and human rights for children was not seriously considered until the mid-twentieth century. All forms of abuse took place in our western societies but it never reached the level of a widely accepted social, psychological and legal issue.

This all began to change in the mid-twentieth century where we find the beginnings of serious concern for the effects of the age-old patriarchal model of the family on children and women. Harsh forms of physical discipline which today would easily be deemed abuse, were rarely questioned because they remained within the family and the family was sacrosanct. A major breakthrough took place in 1962 when a pediatrician named Henry Kempe published a history changing paper "*The Battered Child Syndrome*," (Henry Kempe et al, "The Battered Child Syndrome, 1962. " Journal of the American Medical Association 181:17-24). This study focused on various kinds of physical abuse by parents and guardians but it laid the groundwork for the recognition of sexual abuse by showing that actual abuse as opposed to discipline, was not rare and was not unthinkable. It had however, been intentionally hidden and minimized by society.

The paradox is that sexual abuse of children, though remaining in the shadows up to the 1970's, was long recognized as a serious crime by the laws of various countries. The oldest continuously functioning legal system, the Canon Law of the Catholic Church, first legislated against sexual abuse of minors in the year 309 AD. Through its history the Catholic Church has considered the sexual abuse of minors to be such a horrific crime that at various periods of the Church's history, the perpetrators, especially if they were clergy, were subjected to severe penalties which included various forms of physical punishment, imprisonment and even execution.

The harsh reality is that the sexual violation of children by adults is far more commonplace today than one can or would want to believe. Recent statistics from the U.S.:

- * 1 in 4 girls and 1 in 6 boys have been sexually abused before age eighteen
- * Children between 7 and 13 are the most vulnerable,
- * 3 of 4 victims were abused by someone they knew.
- * Only ten percent of sexual offenders are ever reported
- * Only 37% of minors who are sexually violated ever report it

The sexual violation of children who are pre-pubescent is known by the clinical term *pedophilia*. This is a very highly compulsive psychosexual disorder, found almost exclusively in males. Pedophiles are compelled to seek sexual gratification from children well into their advanced years, that is, into the eighties with known cases of men in the early nineties offending.

The sexual abuse of young adolescents by adults is another matter. The perpetrators are now commonly referred to as *ehebophiles* that is, adults who seek sexual gratification from young adolescents. Here we find a significant minority of women among offenders.

It took the feminist revolution, which began in the seventies, to finally focus the deserved and crucially necessary attention on the sexual violation of children and young adolescents. The immediate focus was on incestuous abuse. In the late seventies and early eighties there were a series of investigations into sexual abuse perpetrated at childcare centers, which alerted society to the institutional dimension of this crime.

The behavior of private, public and religious institutions when faced with reports of child sexual abuse by members follows similar patterns. The leadership of the institution's first concern is the impact of public knowledge of the abuse upon its image and power. Victims are often isolated, convinced or threatened to keep silence and the offenders are either reprimanded internally or moved to another position. Secrecy is paramount. Involvement with the media, Child protective Agencies and law enforcement is to be avoided at all costs. The institution, e.g., the company, school, military unit, church or youth organization must remain distanced from the abuse. In truth, the instances where authority figures in such institutions knew about sexual abusers in their midst and did nothing are shockingly high. Thus the institution becomes a shelter for the abuser and an enabler of sexual abuse.

Sexual abuse in churches, both Christian and non-Christian, has traditionally been deeply hidden and for many, almost impossible to believe, yet it exists. Both religious and secular society woke up to the serious problem of sexual abuse by ministers of religion in the 1980's beginning with two horrific cases: the sexual violation of scores of pre-pubescent boys by a single priest who was a true pedophile in a Catholic Diocese in Louisiana (1983), and the institutionalized sexual abuse of young boys by Christian Brothers at Mount Cashel Orphanage in St. John's Newfoundland (1988). From that period to the present there have been almost continuous revelations of sexual violations in Catholic

institutions and parishes throughout the world. The revelations about Catholic clergy quickly led to reports of sexual abuse by clergy of other denominations. This is a very serious problem of worldwide dimensions but sadly it has not been treated as seriously as it should be by public and private institutions, by governments and by the general public. Why? Because the sexual abuse of children and minors, despite all that has been exposed especially over the past thirty years, remains cloaked in guilt, shame, denial and disbelief. The very crime is so horrific that it defies the ability to completely wrap one's mind around it. The perceived need to protect institutions from exposure remains a deeply engrained value even at the expense of children.

2. The Effects of Sexual Abuse

For far too long the various effects of sexual violation on a child or young adolescent have been actively denied or minimized by institutions and by individual adults. Over the past quarter century more research has been done in this area than has been done in all the preceding centuries. The damage is severe and long lasting, more often for the duration of the victim's life. The physical damage, sometimes very serious, done to the child or adolescent from the act or acts of rape and violation are only the beginning. The emotional and psychological effects are devastating and incremental in the sense that they unfold in a gradual fashion depending on time and circumstances. For the many victims of clergy, there is an added layer of damage and that is the spiritual damage of having been violated and betrayed by one whom the victims were taught to trust, believe in, obey and hold in awe. One prominent American psychologist, Dr. Leo Lothstein of the Institute for Living in Hartford Connecticut, refers to sexual abuse by priests as "*soul murder.*"

The effects of rape and violation on a child or adolescent or even an adult usually last for one's lifetime. Sexual violation at any age is never something one puts behind himself or herself and then moves on to a normal, productive life. This is completely false wishful thinking by those either in denial or more often, those in institutional authority positions. One bishop in the U.S., when questioned about why he didn't do anything when informed that one of his priests had raped and molested at least twenty-five boys, said "*Little boys heal.*"

It has been clearly established in the mental health field that latent injury from childhood sexual abuse may not manifest itself for a long time. Often childhood sexual molestation is associated with serious mental and physical health problems, substance abuse, victimization and criminality in adulthood. Mental health problems include posttraumatic stress disorder, depression and suicide. In addition, Childhood sexual abuse may interfere with attachment, interpersonal relationships, emotional regulation and major stress response systems. (Policy Forum, Science Magazine 4.22.05) One study found that the average age of victims of sexual violation is twelve and the average age of disclosure is forty-two.

It is an insidious and toxic myth that the wounds from sexual abuse heal by themselves over time. On the contrary, time often intensifies the pain, which has most often been allowed to fester and intensify while the victims have been locked in an emotional prison that remains closed by guilt and shame.

A word about language. A lexicon of euphemisms and code words has grown up around child sexual abuse. It has been created by the perpetrators themselves to some extent but mostly it is the fruit of the imagination of people in the institutions that have enabled abuse as a manifestation of both their denial and their attempts to avoid responsibility. There are a variety of curious phrases used:

Misplaced affection
Improper touches
Boundary violations
Results of depression and overwork
Unnatural behavior
Questionable relations
Failure in discretion
Unacceptable behavior patterns
Emotional immaturity
Adjustment problems
Inappropriate associations with a minor

This list can easily go on but the point is that the euphemisms are intended to hide the truth. Such misleading language serves as a thin cover for the harsh reality: sexual abuse or violation is precisely that: the violation of the body and soul of a child in a variety of ways, ranging from anal, vaginal or oral penetration to sado-masochistic acts to fondling and groping. Sexual violation does not have to involve touch but can be limited to verbal violations. With the rise of the internet in our lives, the especially insidious form of child sexual violation through child pornography has been acknowledged.

3. The Law and Sexual Violation of Children

Sexual violation of a child is a felony crime in every State in the United States, in every Canadian province and in every European country. It is a crime in most countries in the Middle East as well. Punishments range from imprisonment to the equivalent of physical torture to death. In many civil jurisdictions there is no statute of limitation for the crime of sex abuse of a child or minor. Unfortunately

there are exceptions. In the Province of Quebec there is no statute. A perpetrator can be prosecuted no matter when the offense took place.

Child sexual abuse has also entered the legal system by way of lawsuits filed by victims for monetary damages against perpetrators but especially against those who enabled them, hid them or failed to report them. This has been a problematic and oftentimes slow process because the common response of institutions has been to deny any responsibility and to vigorously and at times viciously challenge the victim/accuser. Civil lawsuits unfortunately do not show the extent of the problem. The Statutes of Limitations in many jurisdictions, including the Province of Quebec, prevent most victims from ever entering the courtroom. The rapidly developing body of knowledge about the nature and effects of sexual violation are being used to enlighten legislatures to the fact that victims do not report the assault they experienced not because they don't want to but because they can't. Hopefully by better understanding the complex and highly destructive nature of child sexual abuse, lawmakers will put politics and favoritism aside and focus on the victims so that they can change or completely eliminate statutes of limitations in civil cases.

The prosecution and imprisonment of a sexual violator puts him out of commission and removes the threat of his presence for what hopefully is a long time. Unfortunately the unrealistically short statutes of limitation for civil cases actually help perpetrators. The FBI in the United States estimates that 90% of all child molesters are never caught. They attribute this in great part to archaic, arbitrary and overly restrictive statutes of limitations which allow abusers to continue to wreck innocent lives and who will not be jailed or exposed.

They know their victims will remain traumatized and silent for a period of time and they know that once that statute runs out, their chances of exposure are significantly decreased. The logical and

realistic solution is to either eliminate the statute or lengthen it to the extent that any living victim will have an opportunity to go to court. Even if this is done, there remain countless men and women who were prohibited from seeking justice because their cases were barred by the passage of time. In the U.S. several States have taken these people into consideration and opened what is called a “*window*” which is a period of time when anyone whose case has been time-barred has the opportunity to go to court.

4. The Problem

Legislative reform is urgently needed here in Quebec and in every jurisdiction that still retains unrealistic time limits. Why?

- a. It provides far greater protection for children today but especially for the children of tomorrow
- b. It will enable the exposure of predators. In 2003 the State of California opened a two-year window. **Approximately 1200 previously barred cases were filed and 300 perpetrators were discovered and put out of commission**
- c. It will respond to the reality of the crime of sexual abuse of a minor in that it will recognize the fact that child and adolescent victims rarely are able to disclose their abuse for years and even decades. In reality only about 37% of those violated as minors ever come forward.
- d. It will allow those whose sexual violation happened because of the willful negligence of an institution to have a chance at receiving justice.

- e. It will force institutions to examine and improve their child protective policies and the manner with which they respond to victims.

5. The Opposition

Ironically the strongest opposition to any changes in the statute of limitations and especially the opening of a retroactive window has been the Roman Catholic Church. In the U.S., where there has been more work done to change the SOL's than anywhere else (primarily because the laws differ in each of the 50 States), there has been occasion opposition from the insurance industry and from some non-Catholic religious denominations but the one institution that has consistently opposed any change in every State where revised legislation has been introduced has been the Catholic hierarchy. The Catholic Church has a *State Catholic Conference* in every State made up of the bishops in the State. Their purpose is to represent the institutional Church in public policy matters.

The bishops in the States where legislation has been introduced have worked directly and through the Catholic Conferences. They have hired expensive public relations firms as well as lobbyists, who are equally expensive. They have also conducted public campaigns to convince the Catholics in the State to directly contact their elected representatives and urge them to oppose any change. These campaigns have included erroneous and misleading information, outright lies and slanderous personal attacks on the reputations of legislators who have sponsored the legislation.

The Catholic Church has used the same basic arguments throughout:

- a. Old cases can't be prosecuted because witnesses are dead or gone, memories have faded and evidence has disappeared
- b. The proposed legislation unfairly targets the Catholic Church
- c. An increase in lawsuits will severely damage the Church's ability to carry on its programs and take care of the poor
- d. The legislation will promote anti-Catholicism
- e. The Catholic Church already has adequate programs in place to protect children and has done more than any other institution to respond to child abuse
- f. Claims based on recovered memories are based on false science
- g. There will be a significant increase in false claims of abuse
- h. The proposed laws discriminate against the Catholic Church and do not cover other institutions, especially schools

6. The real concern of the opposition

The Catholic Church is not being attacked or discriminated against by those who criticize its campaigns to block legislation that will protect children or bring justice to the victims of past crimes. In the first place, such legislation in other jurisdictions, especially in the U.S., is for the benefit of all children. No proposed bill has ever been drafted that specifically targeted the Church. Some bills have limited their scope to private institutions because other, similar legislation had been proposed for public institutions such as schools.

The fact remains that the Roman Catholic Church throughout the world has received massive public attention and criticism primarily because of the discovery that it had engaged in systemic and organized cover-ups in every area where sexual abuse had been discovered. Although Catholic bishops have invested hundreds of millions of dollars to fight victims of its clergy who have gone to court, the reason these people have resorted to the civil courts is because they have been ignored, rebuffed or demonized by Church authorities when they have reported sexual abuse.

The claims by bishops and their public relations firms that they are concerned about judicial fairness for everyone if prescription is changed are contrived and insincere. Most bishops did not even know what statutes of limitations were until they learned that such laws might protect them from being held legally accountable.

The institutional Church's office-holders are concerned that statute change will bring more lawsuits which will in turn mean more monetary compensations for victims and more legal costs. This is a valid concern but certainly not a noble one since the neglect of Church leaders has been the root cause of most sexual abuse. *(I did a survey of reports that had been done on the issue of sexual abuse by Catholic clergy between 1971 and 2012. These included church-sponsored reports, private reports, commissioned reports and official reports from some form of government agency such as grand juries in the U.S. or special commissions in Ireland and Australia. There were twenty-three such reports of an official nature and in the conclusions of each the actions or inactions of the bishops were named as the primary causative factor).*

The real reason for the strong opposition has not been the drainage of money but the exposure of Church documents. The exposure of the documents in court and to the general public reveals the monstrous

secrets: the cover-ups and shameful way the Church authorities have responded to victims.

7. Response to the common arguments in opposition

- a. Old cases. This objection amounts to a presumption that after the statute has run there will be no evidence even if it extends for only three years. Experience in child abuse cases, even those reaching back to the forties and fifties, has been that there *is* evidence and it is *not* stale or useless. The more realistic response however is that the change in legislation will give victims the opportunity to go to court where they will bear the burden of proof. Getting into the courthouse is not equal to winning.
- b. The Catholic Church is unfairly targeted. This is a charge that is totally unfounded. There is no evidence to support bias because the legislation in fact is directed to protect all children. Catholic leaders and Catholic spokespersons often claim that any criticism of the institutional Church or of the hierarchy is anti-Catholic and prejudicial. In regard to clergy sexual abuse, the accusations have been solidly demonstrated by facts.
- c. Severe financial damage. In the U.S several dioceses have had to sell buildings and property but this has not impacted any pastoral or educational programs. No diocese has been forced to eliminate or cut back on needed programs because of payment of compensation. Those who predict financial damage have always neglected to mention that insurance companies provide a significant part of settlements or jury awards. Some have pointed to the bankruptcies. No diocese

has filed for bankruptcy protection because it was insolvent (“broke” or about to be “broke”). All have done so for two basic reasons:

1. To stop the court processes and avoid trials at which all the secrets will be revealed
 2. To try to limit the number of victims who will be compensated and to limit the amount of money available for compensation.
- d. Anti-Catholicism. Revelation in court of a Church’s negligent and harmful actions towards victims is truth, not anti-Catholicism.
- e. Existing adequate programs. Child-protection programs, awareness programs, background screening and other similar protocols and programs, all of which have been forced on the Church, do nothing for those already violated. The institutional Church’s record of compassionate support for victims from past abuse is dismal at best. Victims who approach many dioceses are sometimes offered counseling but rarely if ever are they given financial compensation for the costs they have incurred because of the abuse suffered. In short, the Church has no programs that properly care for victims of abuse.
- f. Recovered memories based on false science . Cases from the past are sometimes based on recovered memories. Church defenders claim there is no such thing as a recovered memory. Their scientific evidence for these claims is either out of date or baseless. There has been significant research into the causal connection between childhood sexual trauma

and various biological processes in the brain including memory. (Cf. Charles Whitfield et al, editors. 2001. Misinformation Concerning Sexual Abuse and Adult Survivors, Haworth Press. See also Walter Sipe, M.D., “Report Regarding the Causal Connection between Childhood Sexual Trauma and Damages to Fundamental Biologic Processes,” 2015.)

- g. False Claims . There are regular complaints and accusations of false claims made against clergy. There is no statistic evidence in general that reports the number of false claims. In 2004 I did a telephonic survey of all attorneys who had represented victims of any kind in California after the legislature had created a two-year window. There were approximately 1200 new civil suits files, 800 of which were based on claims of sexual abuse by a priest. Only one attorney reported that he had been initially engaged by two different individuals who claimed abuse by a priest. After the screening interview the attorney determined both claims for false and did not take the cases. In 2002 Patrick Schiltz, an attorney who had represented several dioceses said in the New York Times that of more than five hundred cases be defended, fewer than ten were based on false accusations.

- h. Proposed laws discriminate against the Catholic Church. No legislation that has been passed or proposed has singled out the Catholic Church. The proposed changes here and elsewhere are for the protection of all children and justice for all victims.

8. Concluding Thoughts

I have been directly involved with the problem of sexual abuse of children and minors for thirty-one years. Most of my experience has been with the Catholic Church and in this regard I have been a consultant and an advisor in Catholic dioceses throughout the United States. I have also been directly involved in Canada, Ireland, England, Belgium, Australia, New Zealand, Germany, Austria, Spain, Italy and Poland. The patterns of behavior are virtually the same all over the world. The terrible impact on victims has also been very similar in its destructive effects.

I have also had extensive experience working with victims of several Protestant denominations, with the Mormons, Jehovah's Witnesses and Hasidic Jews. I have been asked to assist with cases involving teachers at public schools and private academies. The response of all the institutions I have had experience with has been similar and the most egregious aspect is that the welfare and image of the institution has been protected at the expense of the victims.

The history of the Roman Catholic Church and its response to sexual abuse perpetrated by clerics from deacons up to cardinals has been well demonstrated by official court documents, reports from investigations, the secular media but most important, by the testimony of tens of thousands of brave victims who have come forward. These victims are not only members (or former members) of the Catholic Church or other Churches, but they are citizens of the country in which they live. The men and women who have conquered their fear and guilt to stand up and report sexual violation in the churches and institutions of the Province of Quebec are citizens of this great province. As citizens they not only deserve but have a fundamental right to the due processes of law and to the protection by their government.

Unfortunately the hierarchy of the Catholic Church are learning far too slowly that their victims and the society in which they live are running out of patience and toleration for such horrific behavior. Bishops and archbishops in diocese after diocese throughout the world are learning the hard way that their claims of non-responsibility for the actions of their clergy are being rejected. Here in Quebec, the cardinal has rejected the appeals of adult victims of the clergy claiming that he has no authority over or responsibility for the behavior of the priests. This claim is not only outrageously erroneous in the Church's own canon law, but more important, it is being rejected in the civil courts in one country after another.

Expanding or eliminating the Statute of Limitations is not about the Catholic Church. It is about real justice for people who could not have it because of the disastrous effects of the very crime they seek to bring to court. It is about exposing more predators so that children today and tomorrow will be safe. It is about doing what a democratic government in an enlightened society must always do and that is protect its citizens.