10

The Evidentiary Process

10.1 Introduction

Through phone calls, letters, emails, interviews, and application forms, redress programmes get evidence from survivors. Programmes also get evidence from other sources, including religious organisations, care institutions, governmental departments, and professionals, such as counsellors, psychologists, and medical practitioners. Often complex and working through successive phases, the evidentiary process constitutes a critical element of programme operations and the survivors' redress experience.

Information is the primary instrumental purpose of the evidentiary process. Because information is costly for survivors to provide, and for programmes to manage, an efficient programme would only acquire what it needs to distinguish eligible from ineligible claims and, where relevant, assign them to the correct severity standard. But because a redress programme provides a way for survivors to tell their story, there are also participatory values inherent to the process (Hanson 2016: 12). For Lana Syed-Waasdorp, Queensland Redress was 'a great thing to have' because '[i]t gives us a chance to write to the government and let them know how we did all suffer and it lets us be heard, lets our stories go and be heard'. ('Official Committee Hansard' 2009a: CA25). If the application process is viewed primarily through an instrumental lens, policymakers might try to limit survivors' engagement. But participatory values can provide reasons to amplify survivor engagement and increase the costs of their involvement. Tensions between participatory values and instrumental optimality reinforce the need for flexible programmes that negotiate the resulting trade-offs.

10.2 Advertising Redress to Survivors

Survivors need to know about a redress programme before they provide it with evidence. Effective advertising must reach survivor populations

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that are 'information disadvantaged through low income, poor education, an inadequate knowledge of English, disability, geographical isolation or other reasons' (Redress WA 2008b: 10). Moreover, survivors who are suspicious of governmental institutions may mistrust or ignore outreach attempts. Success depends on informing survivors in ways that motivate them.

To cast a wide net, exemplars used radio advertising to target high-profile sporting and cultural events, and ran print adverts in popular and/or freely available newspapers, while state agencies, such as prisons, displayed posters, distributed pamphlets, and hosted information sessions. Confronting challenges of both geography and Indigenous cultural difference, both Redress WA and IAP staff held community-level sessions in remote communities. Redress programmes are popular news items and programmes can use newsletters and periodic reports to provide content for the media. Making information available to journalists and other observers can also be a way of ensuring accountability and transparency.

Redress programmes should leverage survivor networks and community agencies. These bodies can advertise the programme on their websites, mailing lists, newsletters, and social media pages, and host in-person events. If survivors already trust these local networks and agencies, redress programmes can piggyback upon their reach and credibility – Chapter 5 notes the Child Migrants Trust's effective organising of Redress WA applications. To motivate survivors, advertising must clearly and accurately represent the programme. It should also be iterated. An iterative strategy increases not only the numbers reached but also the probability of repeated engagement. People are more likely to act when they are repeatedly exposed to information (Keller and Campbell 2003). As Chapter 6 observes, Canada's advertising strategy for IRSSA sought to reach each survivor an average of fourteen times. As a result, the CEP and IAP received applications from over 100 per cent of their eligible population estimates. Moreover, as different survivor communities (rural, disabilities, Indigenous, and those incarcerated) may belong to different networks, the programme may need different forms of advertising to reach all those eligible effectively. This may include advertising in minority languages.

First-contact advertising merely tells survivors that the programme exists and where to find the pamphlets, guidebooks, and websites that provide more detailed information. Websites are cost-effective and easy to update, but some survivors may find accessing text-based websites

challenging. Because phones are now more common than computers, programmes should present information in a manner optimal for mobile viewing. In general, survivors need to know whether they could be eligible, what they could be eligible for, what they need to do to apply, and, perhaps most importantly, where they can obtain assistance – most survivors will not complete and submit effective applications on their own. Immediately connecting survivors with support groups allows programmes to outsource some of the work involved in getting usable evidence to lawyers and other support workers.

10.3 Testimonial Evidence

Evidential testimony comes from different sources and can be either pre-recorded or provided in person. With one exception (New Zealand), all the exemplars used application forms. These forms shape what, and how, testimony is given. As Robyn Green argues,

> the bureaucratic *form* [emphasis supplied] requires consideration in the study of reparations because it is by way of the application documents that specific categories are created to represent residential school experiences and the possibilities for compensating its problematic outcomes [emerge]. (Green 2016: 124)

Green rightly emphasises that application forms shape how survivors describe their claims. To illustrate, many female survivors were subject to unnecessary internal examinations to check for venereal disease when in care. Survivors applying to the Australia's NRS now claim that those injuries constitute sexual abuse (Kruk 2021: 72–73). Some of those claims may be products of the NRS's eligibility requirement. Sexual abuse is necessary to get redress from the NRS: applicants must provide evidence of a sexual event, and the application form requires survivors to 'describe . . . your experience of child sexual abuse . . .' (National Redress Scheme c2019: 10). If the programme was otherwise structured, then some survivors might describe their injury differently, perhaps as physical assaults or medical malpractice. The categories a programme uses will shape the evidence it receives.

An evidentiary process requires survivors to learn what injuries the programme can redress, what information is relevant, and how to craft their evidence accordingly. Well-designed forms help applicants give officials the information they need (Howlett 2017). While application forms can vary, universally beneficial techniques include using simple

language and separating complex information into manageable portions. Because survivors are culturally diverse, the programme may need different application forms to convey and acquire information effectively, changing not only the language, but also the style and approach to suit cultural norms. If the programme has more than one pathway, then the application form should be divided so that applicants need only provide information relevant to the pathway(s) they want to apply for, thus avoiding inefficiencies. Forms can be both web-based and on paper, enabling survivors to use technology that works for them. Programmes should vet their forms using accessibility software and run pilot tests with users.

The application form should clearly explain why it is collecting information and indicate what evidence is necessary and what is optional. As noted in Chapter 8, it should, of course, also tell the applicants what will be done with the information. The form should capture necessary identification and contact details, including any previous names or other identifiers (such as numbers or nicknames) by which the applicant was known in care. Because redress can take a long time, and some survivors are itinerant, the application should ask for alternative contact persons or organisations. Where institutional residence is relevant, the form should prompt applicants with a list of named institutions, such as orphanages or schools. Because some placements (like foster care) will not have proper names, or applicants may not recall where they resided, the form should include free text space so applicants can describe what they do know. It is good practice to ask for information in more than one way. For example, the IAP's application form asked for information about abuse using both a table and free text space. The table summarised the relevant experiences and encouraged survivors to define those experiences using concepts and categories used by the programme. The free text space then allowed applicants to describe their experiences in their own words.

Chapter 9 recommends that programmes accept pre-recorded testimony to offset the risk of a survivor dying during the application process. Pre-recording also enables survivors to develop their evidence over time. Survivors can revise for clarity, accuracy, and effectiveness, making reference to programme guidelines and receiving assistance from support workers. Some programmes accept testimony initially recorded for other purposes. For example, New Zealand's HCP accepted transcripts of testimony given to CLAS. The overarching point is to enable survivors to use processes and formats that suit them, while at the same time

providing the programme with the necessary information. One could imagine a programme operating a web portal through which survivors (or their lawyers) could log on to progressively develop their application. Survivors could upload written, audio, photographic, or video-taped testimony, alongside written accounts and electronic records. This would allow programme staff to review that material as the application develops, helping survivors provide clarifying or missing information.

I advocate flexible programmes that provide survivors with different pathways through to redress. To choose how they will participate, survivors need to be well-informed about the available options. If the application needs to provide a lot of information about a complicated set of options, they will become very large and complex in themselves. That is a worrisome result. Large application forms are more difficult, even intimidating, to complete. To mitigate the problem, programmes can offer more simplified information as a first resource, putting more complex information into guidebooks with explanatory sections that match the structure of the application form. Greater complexity is an inevitable and necessary trade-off to flexibility and is an unfortunate consequence of ensuring that survivors have the information they need to understand the programme. This is another reason to ensure that survivors have competent support during the process.

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When pre-recorded testimony is insufficient, oral testimony can help add or develop pertinent information. Oral testimony is usually provided through interviews. Interviewers who know what evidence a successful claim needs can help identify evidence helpful to the survivor's claim and ask clarifying questions. Centred on the survivor, the interview is, perhaps, the most survivor-focussed aspect of redress. '[W]e need to have an opportunity to say what we need to say' (CA Interview 2). An interview offers important participatory values, enabling survivors to speak directly to the programme. When an interview goes well, it can help survivors feel validated, empowered, and, potentially, to heal.

> The hearing is not just a step in a compensation process: it is an opportunity for the parties to achieve, together, a degree of the healing and reconciliation intended ... (Indian Residential Schools Adjudication Secretariat 2009a: 11)

Transitional justice practice promotes the benefits of testimony. In the 1990s, the South African Truth and Reconciliation Commission

embraced the idea that testifying about injurious experiences can be good for people psychologically (Hamber 2003). Building upon popular understandings of the 'talking cure' in psychotherapy, the commission's posters told the world that 'Revealing Is Healing' (The Truth and Reconciliation Commission c1995). The message was received enthusiastically, spurring an evolving and dynamic range of testimonial-based remedial initiatives (Skaar 2018: 415).

Some survivors say that testifying has therapeutic or other benefits (Independent Assessment Process Oversight Committee 2021: 24). But that therapeutic potential is matched by serious concerns for the survivors' well-being (Senate Community Affairs References Committee 2009: 55–56; Dion Stout and Harp 2007: 19) (IR Interview 6). Imagine a survivor preparing to tell the worst parts of their life story in an unfamiliar room to someone they just met. Interviews ask survivors to relive detailed memories of their past abuse and submit that testimony for judgement. Their words will be judged for veracity and weighed as evidence. The survivor is effectively 'on trial' and the stakes are high. Not only is money involved, survivors also risk having their accounts discredited. Being disbelieved or understood differently than intended can undermine the participatory value of testimony (Turner 2016: 37).

Whereas trained psychologists conduct therapy under controlled low-stress conditions, a high-stress inquisitorial interview is, almost inherently, conducive to retraumatisation. It is, therefore, unsurprising that every exemplar that used oral testimony received complaints that it harmed survivors. Sinead Pembroke's findings concerning the Irish RIRB are symptomatic. In her study of twenty-five Irish survivors, several respondents described their interview as 'cathartic', but the majority 'emphasi[sed] that it caused further trauma and opened up psychological wounds' (Pembroke 2019: 56). Illustrating those different experiences, Canada's National Centre for Truth and Reconciliation's Report is balanced. At one point, it states that

> [some] Survivors commented that the IAP and CEP processes brought their memories back to the experiences they had in residential schools, which sometimes lead [sic] to healing and reconciliation for themselves as individuals as well as for their families as a whole. (National Centre for Truth and Reconciliation 2020: 8)

But the report also highlights Eugene Arcand's more difficult experiences:

> For me, the invasiveness, persistence and depth of the questioning we were subjected to inside of our compensation hearings was obscene and did not need to occur to verify whether sexual or physical abuse it occur. That day of my hearing, and the days that followed, were some of the worst days in my life second only to when my abuse actually occurred. (Quoted in, National Centre for Truth and Reconciliation 2020: Foreword)

From the perspective of the programme, interviews need to produce evidence. That purpose need not require lengthy discussions about traumatic events, and interviewers may naturally avoid spending more time talking about injuries than is necessary for evidential purposes. But a too-short exposure to the traumatic experience during testimony may aggravate the interview's harmful character. Karen Brounéus suggests that short-term engagement with traumatic memories can intensify trauma as the body's bio-psychological responses are triggered without the survivors having enough time to work through the traumatising memory (Brounéus 2008: 62). A short interview that leaves traumatising memories unprocessed may aggravate retraumatisation. To protect the well-being of survivors, interviews must work in a trauma-informed manner. No seriously injured survivor should tell their story for the first time in an evidential interview. If survivors are not comfortable engaging with those memories, the highly stressful evidentiary interview can lead to further and serious psychological harm.

Testimony may have real value for some survivors, however, because those benefits are neither universal nor unmitigated, interviews should be optional for survivors, which, in turn entails pathways that do not require oral testimony (Lundy and Mahoney 2018: 281). Given the difficulties associated with testimony, survivors who choose to participate in an interview need the option of having support persons attend. Reflecting the psycho-emotional difficulties involved, one interviewee (a therapist who worked with the Irish RIRB) observed that people could lack memory of the interview in the same way that people can lack memories of traumatising injuries.

> There's a little fog that various people get. They can't remember what their lawyer said, they didn't remember what happened [during the interview]. They want you in the room because you need to remind them two days later what actually happened. Because people completely forget the experiences, have no idea what actually happened. (IR Interview 6)

While not all survivors will want family or friends with them – they may have privacy concerns, and participation risks vicariously harming

everyone involved – having support in the room can be crucial to making the process safer and more effective.

Survivors should also have some choice over who hears their testimony. It is easier to have a single interviewer hear testimony, while a multi-person panel communicates formality. Moreover, an interview panel may be better at obtaining information, with members from different professions – social workers, psychologists, legal and medical professionals – attuned to different kinds of data. The use of panels can also help with consistency. Ireland's RIRB panellists were regularly shuffled by lot so that panellists did not develop idiosyncratic and inconsistent procedures. However, survivors may find the presence of multiple interviewers intimidating. Wherever possible, programmes might permit survivors to choose the number of interviewers at their hearing. Recall the recommendations made in Chapter 8: where possible, survivors should be able to choose the ethnicity, gender, and language of their interviewer.

Considering the well-being difficulties involved, survivors need to be provided with pathways to redress that do not involve interviews. And where it is likely that an interview risks harming survivors, the survivor should have the support of long-term counsellors (or other support people), not merely their lawyers. Programmes have a responsibility for the well-being of applicants, and staff need training in trauma-informed engagement to help them identify problems and respond appropriately. Survivors should be monitored by trauma-informed supporters during the days immediately following testimony, for they may be at a high risk of psychological deterioration, including suicide. Moreover, a programme needs to manage the public relations (business) risk that retraumatisation poses. A programme will be less effective if it develops a retraumatising reputation that deters potential applicants. On that point, Redress WA is candid.

> While the retraumatisation of individuals can be managed, what is less manageable is general public criticism of the 'traumatising nature' of the scheme and allegations that the scheme 're-abuses' applicants. (Western Australian Department for Communities c2012: 10)

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Some programmes include representatives of 'offending institutions' at interviews. Canada's IAP required legal representation of Canada (the SAO) at hearings and Ireland's RIRB could include church entities and

other institutional representatives. The RIRB even permitted alleged individual offenders to cross-examine survivors, although that rarely happened. The value of including offenders in an evidentiary interview is uncertain. Some might provide useful information, but equally they might provide that information at some other time. Sometimes their inclusion is justified by a potential restorative justice benefit. Restorative justice involves processes that bring offenders and survivors together as a way to help repair damaged relationships (Strickland 2004).[1] When representative offenders listen to the survivor's testimony and offer condolences:

> [the interview] helped them to start healing because they were able to tell someone in authority – and have the defendants there – about what happened. (CA Interview 7)

A Canadian report quotes an unnamed SAO representative as saying,

> It's a very important step in the hearing process . . . to have someone who is there on behalf of the government to tell them, 'I believe you're credible. I believe these things happened to you.' Just those words, you could hear and see the emotion on their face. (Independent Assessment Process Oversight Committee 2021: 70)

I think involving offenders is expensive and risky, it also makes logistics more challenging. Staffing shortfalls in Canada's SAO contributed to delays in the IAP. And some SAO representatives did what a lawyer is supposed to do – look out for the interests of their client – helping some interviews become more adversarial (National Centre for Truth and Reconciliation 2020: 31). Regardless of how offenders (or their representatives) act, the survivor may be uncomfortable testifying in front of people they see as opponents (CA Interview 8; IR Interview 9). Moreover, should the survivor wish to pursue a civil claim against the offending institution, the offender's participation may provide them with information prejudicial to the survivor's claim.

When programmes confront countervailing considerations, the best option is to enable choice. But choice is always constrained, a point that is clear in the issues involved in asking survivors to name offenders. Survivors will have to give the names of offending institutions so that programmes can get evidence of their time in care. However, survivors

[1] I express reservations with restorative accounts of state redress in: (Winter 2014: 211–13; 2009: 53–56).

may not need to give the names of alleged individual offenders. Most programmes are legally obliged to refer potential criminal prosecutions to the police and take steps to safeguard young people from potential offenders. But, as Chapter 9 observes, these (otherwise reasonable) steps create privacy and safety concerns for survivors.

Since testimony is psychologically difficult, a programme might try to minimise the number of times that survivors testify. As previously mentioned, that is one reason to accept testimony produced for other bodies, such as public inquiries. Limiting testimony also reduces the amount of information flowing into the programme, which will tend to lower operating costs and, hopefully, increase processing speeds. But these measures confront trade-offs. Most interviews last only a couple of hours. In such a short period, survivors may fail to say all that they wish. They may fail to recall certain facts. Or they may fail to mention them at the right time. Human memory is not a well-sorted catalogue; testimony is active, creative, and, importantly, partial. Survivors often progressively recall more information about abusive events each time they testify (Tener and Murphy 2015). In New Zealand,

> Many [survivors] also later recalled details that they had forgotten or not felt comfortable sharing during the interview and were reluctant to follow up with MSD staff for fear of being a 'hassle' or the emotional impact of repeatedly discussing their experiences. Additionally, some felt that the session was too short to comprehensively and safely share their story. (Allen and Clarke Policy and Regulatory Specialists Limited 2018: 3)

In Canada, progressive disclosure during an interview could result in significant delays as applications were recalibrated, new potential offenders notified, and new professional reports obtained. While new disclosures will, usually, increase processing time and costs, there are mitigating steps that programmes can take, such as not contacting named offenders and dispensing with the need for professional reports to evidence familiar forms of consequential damage. It is important that survivors know that progressive disclosure is normal and acceptable, and that they can add to their testimony at minimal cost.

Generally, survivors benefit if they can present their evidence in a well-ordered narrative, with all the details in the right places. But memories of abuse may not fit that model. Perfect recollection is improbable, not least because trauma can disorder and fragment memory (Samuelson 2011). Oral testimony is likely to differ from that recorded in written applications. Inconsistencies should be expected and are not necessarily evidence of

dishonesty. Programmes that emphasise the potential legal consequences of making errors risk deterring survivors, especially those used to being disbelieved by hostile officials. For many survivors, testifying will involve emotional and challenging behaviours, others may be reticent, not wishing to tell a stranger the most intimate details of their lives.

That said, a programme's integrity is in tension with the oft-heard injunction to 'Believe Survivors'. The fact that a survivor says something does not guarantee its truth, and 'acknowledging and respecting the pain suffered by victims does not entail a suspension of critical faculties' (McEvoy and McConnachie 2013a: 130). The practice of simply believing survivors can create problems. In the 1980s and 1990s, many people believed in the widespread satanic ritual abuse of children. As lurid stories of demonic rituals spread through the media, more and more people came forward claiming to be survivors. The desire to believe what complainants said led to hundreds of false allegations and wrongful convictions, demonstrating how well-intentioned practice can lead to injustice (Smith 2008a, 2010). When the act of questioning survivor testimony is seen as disrespectful, or even abusive, people will fail to check basic facts, and errors will occur (Smith 2008a: 32).

Inaccurate testimony need not result from fraudulent intent. A well-known experiment colourfully demonstrates how people can be encouraged to remember things that never happened. The experimenters showed people a childhood photograph of them taking a hot air balloon ride and asked what they could remember about the experience. The trick was that the subjects had never ridden in a balloon. The childhood photograph had been doctored to include a photo of the subject in a stock balloon ride photo. After seeing the doctored photograph, nearly half the subjects invented some memory of an experience that never happened. Some of those memories were very detailed. One subject said,

> [the balloon ride] occurred when I was in form one (6th grade) at um the local school there . . . Um basically for $10 or something you could go up in a hot air balloon and go up about 20 odd meters . . . it would have been a Saturday and I think we went with, yeah, parents and, no it wasn't, not my grandmother . . . not certain who any of the other people are there. Um, and I'm pretty certain that mum is down on the ground taking a photo. (Wade et al. 2002: 600)

Human memories are not stored data recalled from the past, they are contemporary constructions that respond to what is happening in the present. Research has found that media reports, peer discussions,

therapy, even what people think they ought to have experienced, will influence what they remember (Kebbell and Westera 2016: 125). Human memory is so suggestable that it would be surprising if the publicity given to injurious care histories did not affect survivors' testimony.

These qualities of human memory are a serious problem. People want to believe survivors, yet it is normal for survivors to construct memories, that is what everyone does all the time (Wilson, Lonsway, and Archambault 2020: 27–28). In non-recent abuse cases, it can be difficult to cross-reference survivors' memory with other evidence. However, when cross-referencing can happen, errors are uncovered. In 2009, Debra Rosser, an archivist who helps survivors find records, told an Australian Senate inquiry that she was presently working with twenty-one cases. Of these, Rosser thought that around half had told her stories that 'do not make sense in terms of the practices of child care institutions of the time' ('Official Committee Hansard' 2009b: CA4). However, these errors concerned who was legally responsible for the survivor at the time, which is information that might not have been relevant to the young person at the time. Things are different when survivors are asked about their injuries. One widely cited review into the adult recall of childhood abuse indicates that positive claims of abuse tend to be accurate (Hardt and Rutter 2004: 270). That review compared testimony with recent records of abuse. It observed a significant rate of under-reporting, survivors did not testify to around one-third of documented abusive events. Under-reporting may be common. Kimberley Community Legal Services told the McClellan Commission that their 'clients frequently received less than they were entitled to [from Redress WA] because they were reluctant to fully divulge past abuse' (Royal Commission into Institutional Responses to Child Sexual Abuse 2015b: 251).

When thousands of survivors apply for redress, many will make honest mistakes, both in their own favour and against it. Others will try to cheat the programme – survivor populations include a share of rogues. Although redress programmes rarely identify out-and-out fraud, they tend not to look for it and, when they do discover potential cases, they may dismiss the claim instead of reporting it. I am familiar with only one review that explicitly looked for fraud, and it found numerous cases, including a claimant who had his mother lie about his claim (Kaufman 2002: 298). The prospect of fraud involves two concerns. First, survivors who get redress illegitimately reduce the programme's efficiency. Second, if suspicion of fraud becomes widespread, payments may lose some of their value. If the general public begins to see those who receive payments

as potential cheats, that will undermine public acknowledgement of the survivors' injurious experiences.

Deciding how much credibility programmes should give testimony is difficult. Programmes can expect some false claims. Programmes should take particular care with evidence arising from group processes, where one individual is asked to support claims made in another's application. A natural wish to help one another might not be an incentive to be truthful, especially when collaborators live in the same families and communities. But disbelief is harmful to survivors who may believe what they are saying, even when it is inaccurate. Although a lenient approach risks inviting false claims, it may be more efficient to quietly pay some non-meritorious claims, than to attempt to invalidate them.

10.4 Institutional Records

Apart from testimony, institutional records are most important sources for evidence. I have frequently noted that the records of young people in care are very poor. Institutions did not invest adequate resources in creating and archiving records. Many records were never created, many more are now missing and those that remain are hard to locate and access. Some records contain false information. *Forgotten Australians* quotes an anonymous survivor,

> . . . mistakes were common, the files are something to behold, they are inaccurate & sloppy, they make me think of the saying: 'Never let the truth get in the way of a good story' as some of the stuff that is in my file are just 'nice' stories, it never happened. (Senate Community Affairs References Committee 2004: 270)

And institutional records seldom provide evidence of specific injuries:

> [T]he number of files that would actually confirm that the person has been abused by the person they're saying, would be, you know, you could almost count them on the hand, on the fingers of a short-sighted butcher, as the old saying goes. (IR Interview 6)

It is unfair to survivors when deficiencies in record-keeping and records-access harms their claims, especially when the offender was (and is) responsible for developing and maintaining those records (Ministry of Social Development 2018c: 22). For that reason, making access to available records as easy as possible is critical to the evidential process. Records can provide survivors with relevant information about where

they were in care, what happened to them, and who they were in care with. Programmes should develop, as quickly as possible, high-quality accessible databases and begin to compile and analyse relevant documents. Moreover, programmes should move to secure access to records held by relevant private organisations, potentially funding the necessary archival work. Transparency requires that all records used as evidence should be available to both survivors and programmes.

The records needed by a programme will reflect the demands created by its ambit of eligibility. Programmes that assess consequential damage engender the greatest demands because, as Chapter 9 argues, assessors must develop a comprehensive picture of the survivor. Such claims can involve thousands of documents, each taking time to obtain, compile, distribute, and analyse. In general, increasing informational demands will increase costs for both states and survivors. Conversely, programmes can reduce the costs of records-management by reducing the programme's epistemic demands. As an example, using only placement-duration as a metric, Canada's CEP focussed on a relatively narrow set of records, with the state assuming primary responsibility for accessing and analysing those documents, reducing the costs associated with distribution. But no option is costless, as the challenges faced by the CEP demonstrate. Poor-quality records meant the CEP proceeded slower than expected and survivors often disagreed with the outcome, leading to large numbers of reconsideration requests. Again, transparency is important, had survivors been able to view the relevant records when the CEP was assessing their claims, they might have been able to understand how their claim was adjudicated and point out errors of fact present in the files.

10.5 Professional Evidence

Survivors in Ireland's RIRB who claimed for consequential damage needed to submit one or more reports from a medical professional. These reports had to say what damage the survivors suffered and how their care experiences caused that damage. Similar provisions applied in Canada's IAP and Queensland Redress Level 2. Professional reports hold out the prospect of objective evidence. That objectivity enables programmes to outsource judgements about survivors, using independent professionals for a more impartial process. Moreover, if professionals prescribe effective treatment, or catch undiagnosed illnesses, the process can support survivors' health and well-being.

However, getting professional reports can create significant delays, stress, and expense. Canada's IAP experienced long delays as survivors

waited for appointments with the few professionals willing to work in rural locations. Medical specialists often have lengthy waiting lists and they may not prioritise report-writing over the acute needs of their other patients. The expense of professional reports makes them inaccessible to self-funding survivors, yet, if the state defrays the costs, the taxpayer will shoulder the resulting burden.

The added costs in time and money mean that programmes should only require professional reports when those are necessary. Programmes that contract external professionals to provide these reports confront the usual problems associated with outsourcing. Training external contractors is harder than training employees and inconsistencies may increase as different contractors apply differing standards. Because consequential damage is only ever stochastically linked to injuries in care, and the range of potentially linked harm is very large, almost any syndrome might be said to be caused by injurious care. The difficulties involved in causal diagnosis mean that a judgement formed during a single consult is not guaranteed to be accurate. In some cases, these difficulties will be aggravated by cultural barriers, for example, standard psychological tests may not appropriately assess Indigenous applicants (Dingwall and Cairney 2010: 26–27; AU Interview 5; CA Interview 2). In other cases, programmes will confront bias. Professionals might be predisposed to link syndromes to care experiences out of a natural wish to help claimants. But if the survivor's lawyer arranges the professional reports, those professionals will also have a financial incentive to encourage repeat business. Quality concerns led Ireland's RIRB to engage relevant professionals to analyse reports submitted by their peers. Similarly, Canada's IAP sought to stop lawyers from leveraging biased expertise by having the Oversight Committee approve a schedule of acceptable professionals. These measures added further delays. A flexible redress process should have at least one pathway to redress that does not require third-party reports. In those pathways for which they are required, reports should be available free of charge for survivors; however, programmes should take steps to ensure robust quality control and to minimise the number and depth of such reports.

10.6 Evidentiary Recommendations

- The evidentiary process should aim to be optimally efficient, engendering adequate information while minimising burdens borne by applicants and costs to the state.

- Programmes need to use a range of techniques to engage hard-to-reach survivor populations. Repeat contact is likely to be necessary. Programmes should leverage existing survivor networks and agencies.
- Programme information must be accessible. It should be tested on a representative sample of users, including members of hard-to-reach communities.
- Application forms should help survivors present information that is easy for staff to use. But survivors should have options to use a range of technologies to provide testimony in ways that suit them.
- The difficulties that survivors experience with testimony means that they should have options as regard to what they testify about and the processes involved. If interviews are to be optional, a programme needs a pathway to redress that does not require in-person testimony. Programmes should have at least one pathway to redress, wherein survivors can quickly and efficiently obtain a settlement by providing a limited amount of evidence.
- Interviews must be conducted in a trauma-informed manner. Given the difficulties associated with testimony, survivors need the option of having the presence of support persons. As far as possible, survivors should not be testifying for the first time in an evidentiary interview.
- Programmes should consider having multi-person panels hear testimony. Survivors might want to choose the number of interviewers at their hearing.
- Survivors need to be able to progressively develop their applications over time. Survivors may not provide all salient information during a single interview.
- Survivors should be able to choose whether alleged offenders (both institutional and individual) participate in the survivor's interview.
- Survivors should be able to choose not to name individual alleged offenders, or, if they do name them, that those names are kept confidential. If that is impossible, then survivors need to be clearly informed of the consequences of naming offenders.
- If programmes are going to believe survivors, they must accept that they will receive some inaccurate testimony. Particular care should be taken with group processes.
- Programmes need to develop secure, high-quality databases that include all relevant records. Survivors should be able to progressively augment their claim.

- Survivors should be given access to all the records (and other evidence) used to process their claim.
- Programmes should minimise the use of third-party reports. Where reports are necessary, programmes need to monitor their quality and work with professionals to overcome delays and avoid excessive costs.

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