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The IIU Report

1. INTRODUCTION

In December 1999, the Internal Investigations Unit (“IIU”) provided a Report to the Minister of Justice “regarding the investigation into allegations of abuse by former residents of Provincial youth facilities.” The Report outlined the IIU’s conclusions about the veracity and verifiability of the many claims of abuse levelled against both past and present employees of the Shelburne Youth Centre (“SYC”), the Nova Scotia Residential Centre (“NSRC”) and the Nova Scotia Youth Training Centre (“NSYTC”).¹ It was largely written by Frank Chambers, the IIU’s Director at the time, and David Baker, a former file assessor with the Compensation Program, and it is therefore sometimes referred to as the “Chambers - Baker Report.”

The IIU’s basic conclusion is stated in an early chapter of the Report:

To the best of our information and belief, neither credible nor reliable evidence exists to corroborate or substantiate the vast extent and severity of allegations made by adult complainants who were residents of institutions for the detention of juvenile delinquents/young offenders and other children, at about the time of the operation of the *Compensation Program* in about 1994-1999. The more that these allegations (including those made through the Stratton investigation) are strictly scrutinized according to the discovery of relevant information, the more that reasonable doubts are raised about their legitimacy. When assessed against the background of objective, confirmable information, most of the allegations are either unsustainable or implausible.

The 529-page Report was initially provided to the Government. An edited version was subsequently released to the public. Although the edited version is summarized here, I have had access to the complete report, as well as the 23 volumes of appendices.

2. BACKGROUND AND MATERIALS REVIEWED

¹As noted elsewhere, the names of two of these institutions changed over time. The Shelburne Youth Centre was previously called the Nova Scotia School for Boys. The Nova Scotia Residential Centre was previously called the Nova Scotia School for Girls. For ease of reference, only the most recent names of the institutions are used here.

The Report was based on interviews of numerous individuals and a review of between 1,500,000 and 2,000,000 documents. Much of this documentary information was not available to the Stratton investigation.

The Report lists and summarizes in some detail the types of materials reviewed by the investigators. An abridged list is given here:

- ! Statements made by individuals claiming to have been the victims of abuse, many of whom were claimants under the Government's Compensation Program ("claimants," sometimes referred to as "complainants" in the Report);
- ! A handful of statements from former residents of the institutions under review who were not claiming to have been abused during their residency;
- ! Statements from current and former employees of the institutions under review;
- ! Findings of RCMP and other police investigations with respect to abuse allegations brought to their attention (a reference to investigations that predated Operation Hope);
- ! Personal information regarding many claimants, including medical, educational, counselling, employment, child welfare, and social services records, and file materials held by correctional authorities;
- ! Incident reports prepared pursuant to the policies of the institutions under review, documenting incidents involving residents, including those where physical force was used;
- ! Ordinary business records from the institutions, including daily logs, shift and medical reports, and infirmary records;
- ! Institutional yearbooks;
- ! Memoranda, minutes of staff meetings, and other documents, describing the environment of the institutions and the history and evolution of their programs and policies;
- ! Documents, policies and procedures relating to discipline and the use of force by institutional staff;
- ! Information regarding certain notable events which occurred at the two institutions and which (according to the IIU) would likely be long remembered by residents and staff alike;

- ! Correspondence from Department of Social Services files relating to incidents and activities at SYC;
- ! Governmental and non-Governmental reports on the institutions prepared from 1959 to 1993.

The IIU asserted in the Report that it had reviewed and assessed a sufficient quantity of material to safely draw its conclusions and deductions. However, it acknowledged that there was much additional relevant information that it did not review, either because of insufficient time or because the information was no longer available.

3. FINDINGS

As noted above, the IIU was very sceptical of the great majority of the allegations of abuse. It argued that they were unconfirmable, incredible and implausible. It did not deny that a limited number of incidents of child abuse had likely occurred, but it contended that such abuse was aberrational or sporadic, not systemic. Further, it claimed that reports of the incidents seemed to have been embellished over time.

The IIU offered several reasons for its conclusions. They are summarized below.

(a) Context of the Compensation Program

The IIU argued in the Report that the allegations of abuse by current and former employees of SYC, NSRC and NSYTC had to be assessed within the context in which they arose. Most of the allegations were made in the “highly extraordinary environment and context” of the Compensation Program. In other words, they were only made after a promise of financial compensation was offered or reasonably foreseeable.

The Report outlined the historical background to the claims of abuse. The story began with the conviction in 1993 of Patrick MacDougall, a former employee of SYC, on a series of sexual offences against former residents of the centre. A number of civil actions against the Province followed, with the plaintiffs claiming that they had been assaulted by counsellors at SYC or NSRC or by Cesar Lalo, a probation officer who had been convicted of certain sexual offences in 1994. At the same time, the subject of institutional abuse in various parts of Canada was receiving a lot of media attention, and a number of compensation programs had already been or were then in operation across the country.

As stated elsewhere, the Government of Nova Scotia announced its three-pronged response to allegations of institutional abuse on November 2, 1994. One part of the response was a commitment to provide fair compensation to the victims. In July 1995, the Government

announced that it would enter into an alternative dispute resolution process in which \$10,000,000 would be set aside for compensation. In May 1996, the final Compensation Program was announced with a total budget of \$33,500,000. As described in Chapter VII, the Program awarded greater financial compensation to those who suffered more serious and more frequent abuse.

The IIU noted that in November 1995, about 25 claimants were making allegations against nine former staff members of SYC. The allegations pertained to physical, not sexual, abuse. By December 18, 1996, the number of claimants under the Compensation Program was 1,457. The extent and magnitude of the allegations had expanded considerably.

The IIU suggested it was likely that claimants were actively recruited by some of the lawyers negotiating with the Province over the creation of the Compensation Program. It further suggested that once the Program was in place, former residents may have been influenced into giving statements by the schedule of awards, with its description of the various categories of abuse and compensation. The Report suggested that this schedule was likely to have been provided to the former residents by their counsel.

The IIU also contended that the claimants under the Compensation Program were not exposed to serious scrutiny. The clear thrust of the Report was that serious scrutiny would have deterred false claims. Claimants were not subjected to adversarial cross-examination or a duty to disclose relevant information to the Province. Indeed, many claimants were not subjected to any questioning at all. Their statements were made under a promise of secrecy and confidentiality, and past and present employees had no opportunity to confront their accusers and defend themselves. Further, complaints were made in a context where there was a fair degree of public and official consensus that widespread abuse had occurred, likely because of some “fairly inflamed and prejudicial media reaction and coverage of the Stratton Report and related issues.” The IIU suggested that this climate of pressure and intimidation appeared to have led to the creation of the ADR program.

The IIU concluded from all this that claimants may have had strong motivation and incentive to fabricate or exaggerate allegations in order to receive monetary compensation. It stated that “basically all of the allegations made in connection to alleged abuses in provincial residential institutions, over the course of the last few years, may have ostensibly been made in anticipation of or for the purposes of receiving compensation from the provincial Crown.” It accordingly counselled caution in assessing the allegations, and emphasized the need for confirmation of their truth (confirmation which the IIU could not usually locate).

(b) Absence of Contemporaneous Complaints

The IIU placed great emphasis on the absence of contemporaneous complaints about the abuse. That this important piece of corroborative evidence was missing was a fact which further raised suspicions that the complaints were fraudulent and made for the purpose of receiving compensation.

The IIU concluded that in the great majority of cases no evidence of a contemporaneous complaint about the abuse could be found. Further, where such evidence did exist, it disclosed instances of fairly minor physical or sexual abuse. According to the IIU, “[t]his body of information does not substantiate the severity and extent of the allegations made recently.” The IIU acknowledged, however, that in most cases it could not find evidence to either dispute or support the allegations.

The IIU also examined information on some of the claimants found in such documents as correctional files, pre-sentence reports, and psychological assessments. No indication was found in documentation prior to 1994-1995 of the individuals in question having been victims of abuse by employees of the institutions in question, even though there was frequently evidence of complaints about childhood abuse at the hands of parents and foster parents.

The IIU reviewed records of a large number of incidents where residents had run away from the centres. They were often apprehended and returned to the institutions by agencies such as municipal police forces and the RCMP. Not a single piece of evidence was located that a runaway made a contemporaneous complaint of having been mistreated at the institution from which he or she had fled.

Over the years, a number of reports were prepared reviewing various aspects of life at SYC and NSRC.² These included both official Government-sponsored reports, as well as media reports by various journalists. In several of the reports, residents were asked whether they had any complaints, or were at least given the opportunity to disclose complaints. Some complaints were made, but none related to physical or sexual abuse. For example, in 1971, a reporter with a local newspaper interviewed residents at SYC without any counsellors present. She specifically asked the residents if counsellors had ever hurt them. The only reported response was from one boy, who said: “If a counsellor cuffs a kid, it’s usually because he had it coming.” Another reporter, in 1979, stated that the biggest complaints he heard were about homesickness and restrictions on smoking. A 1993 report on female young offenders by the Department of Community Services noted no concerns or suspicions about abuse of residents by staff. To the question “Describe staff at Shelburne,” 35 residents said they were helpful and only two said they were hurtful.³

The IIU stated that in negotiating claims for compensation, the Province was “beset” by arguments that memories of the abuse had been repressed until the announcement of compensation. In response, the IIU commented that the theory of repressed traumatic memory syndrome was highly controversial. It also argued as follows: “Where an intervening explanation, such as opportunity to receive monetary compensation, is part of the context of disclosure, the immediate application of the theory must be queried: is it plausible that nearly

²Very little reference is made in the Reports to NSYTC.

³Nine said they were too strict and six said they were too lax.

1,500 claimants remembered being abused in 1994-1999 without any evidence of prior disclosure or complaint?”

The IIU considered whether residents had had reason to believe that complaints would have been taken seriously, and not just ignored or covered up. It found that they had. Evidence indicated that complaints from residents were investigated and documented, leading in some cases to a variety of disciplinary actions against staff. For example, the IIU uncovered correspondence concerning a 1961 complaint of indecent assault at NSYTC which showed that efforts were made to terminate the employment of the alleged perpetrator (although the then Minister of Highways was trying to intervene on the employee’s behalf). Another document reflected that a 1966 complaint of sexual abuse at SYC was “thoroughly investigated” by the Superintendent of the school and the Supervisor of Corrections, but insufficient evidence was uncovered to substantiate the claim. A 1980 investigation of the staff response to misbehaviour by two residents at SYC led to a finding that one staff member had assaulted one of the boys. A 1983 complaint of assault at SYC was investigated by the RCMP and led to an initiative within the Department of Social Services to revise institutional policy on the use of force. Finally, one former employee of SYC told the IIU that many complaints were referred to the RCMP for investigation.

The IIU also noted that SYC had a restrictive policy regarding the use of force by staff, and that residents were aware of it. A formal, comprehensive policy on the use of force was adopted at SYC in 1980. It was subsequently modified and reissued in 1984 and 1987. The policy stated generally that the use of physical force against a resident was strictly prohibited except in cases of self-defence and protection of residents. A 1994 SYC policy on child abuse investigation procedure reflected that residents were to be apprised of the limits on the acceptable use of force by staff and their right to file a complaint if they felt they had suffered abuse. The IIU contended that residents would likely have made complaints if they felt their rights were, or the use of force policy was, being violated.

The IIU found no evidence that staff members and other individuals conspired to cover up alleged incidents of abusive conduct by staff. As noted above, there was evidence that incidents were noticed and investigated. Further, there was evidence that staff members were prepared to complain about each other. For example, a 1979 letter by an administrator at Family and Children’s Services reflected that he had received a complaint (seemingly from an employee) that staff at SYC were abusing the residents; the administrator agreed to look into the matter. The IIU found that staff were prepared to complain about the conduct of other staff even on “fairly insignificant” matters.

The IIU also pointed out that residents would have had numerous opportunities to complain to individuals who were not employed at the institutions, yet in a great majority of cases no reliable supporting or corroborating evidence from any third party could be found. A review of institutional profiles and daily logs at SYC indicated that it was common for members of the public to visit the institution, including physicians, social workers, clergy, lawyers, police officers, students and residents’ family members. Furthermore, SYC profiles and policies reflected that residents also had contact with the outside world when they were allowed to leave the institution for activities like community service, educational field trips, and family visitations. The

documentary evidence for NSRC was not as extensive, but the IIU interviewed various former employees and felt justified in stating that the institution “would have been open and accessible to the public and that residents had various points of contact with the local community of Truro.”

The IIU summed up its view as to the significance of all this evidence as follows:

All things considered, whether or not contemporaneous complaints are made – in a context independent of a possible monetary incentive to report or fabricate accounts of abuse – should be viewed as *a* critical factor in the assessment of the *prima facie* legitimacy of complaints. We are not suggesting that it should be a *determinative* consideration, because clearly there has to be an allowance for instances where contemporaneous disclosure may not have been forthcoming. However, given all the other factors reviewed (for example, that, in the vast majority of cases, there is no evidence of complaints being made until about 1994, when compensation is offered), the lack of any prior disclosure about institutional abuse in reference to the vast majority of complainants and allegations cannot be easily ignored. (Emphasis in the original.)

(c) Problems with the Statements of Claimants

The IIU examined the statements given by claimants to the Stratton investigation team, the RCMP, the Validation Investigation Unit, and the IIU itself. It concluded that this evidence was the most unreliable and untrustworthy of all the evidence reviewed. The statements were “contradictory and rife with inconsistencies and improbabilities.” Some were internally inconsistent, and others were inconsistent on non-peripheral matters, such as the identity or names of the perpetrators or the nature of the alleged abuse. For example, several individuals made allegations against a particular employee at SYC even though they were never resident at the institution when the employee worked there.⁴ The IIU also found that most taped statements raised questions about lack of detail and context, vagueness, lack of forthrightness, demeanour and appearance.

The IIU expressed added concern about statements which had been taken by Facts Probe Inc. (the Murphys), the company retained to conduct interviews for the Stratton investigation. The IIU contended that these statements were not ‘pure version’ statements, but rather statements “prepared, written and edited by Facts Probe Inc. There is a possibility that these statements were prompted by Facts Probe Inc. questions and information supplied by investigators.”

(d) The Stratton Findings

The Report addressed the fact that Mr. Stratton had identified 89 individuals as having

⁴Many other former residents had also made complaints about the same employee, leading to a concern about collusion.

suffered abuse. The IIU said it had strong reason to believe Mr. Stratton's Report was based on statements which were fabricated or exaggerated, having been influenced by the promise of financial reward.

In support, the IIU referred to the fact that prior to the appointment of Mr. Stratton, the Province had announced that compensation would be paid in the event that liability was found. This would have provided an incentive to former residents to provide misleading statements to the investigation.

The IIU offered other reasons for its conclusion. There were the weaknesses mentioned above in how statements were taken by Facts Probe. Statements were taken in confidence, and claimants were neither sworn nor cross-examined. Most of the claimants had extensive criminal backgrounds, many with convictions bearing upon their credibility. Many claimants were related by family. A number appeared to be psychologically disturbed.

(e) Collusion

The IIU contended there was a strong possibility that many claimants had colluded or collaborated in the giving of false statements in order to receive compensation. This undermined the reliability of the allegations taken as a whole, and raised the issue of whether the evidence was essentially contaminated.

The IIU suggested that the best evidence of collusion lay in the statements of claimants who made allegations against employees at SYC when records indicated either that the claimants never attended the institution or that the named employees did not work at the institution when the claimants did attend there. Further evidence included the fact that many statements alleged, against the very same employees, incidents which were very similar (but not identical). The opportunity for collusion was also "virtually unlimited," given that statements were taken over a five-year period and many claimants shared the same legal counsel.

The IIU's essential reasoning on this issue is contained in the following paragraph from the report:

It is indeed reasonable to postulate that where a strong monetary incentive exists, information would be quickly transmitted among former residents of the ... SYC and of the other institutions in question (who may be related by family connection, are incarcerated together, come from the same neighbourhoods or geographical areas, or are associated in criminal circles, or any combination thereof) to the effect that if certain employees or former employees are identified in statements to receive compensation, then this will yield a compensatory award. Over the course of the past four years, these claims were gradually legitimized through the payment of compensation that may have spawned similar claims. This whole matter is reduced to simple economic opportunity, without much risk of negative consequences. Indeed, the number and extent of allegations by former residents can probably best be explained through basic neoclassical economic analysis. People respond to incentives, which depend on the relationship between expected benefits

and marginal opportunity cost. In this case, it appears that expected marginal benefits involved in the filing of a false statement would have far outweighed any opportunity costs. For many persons who chose to file a claim, it was probably too good of an opportunity to pass up.

(f) Absence of Supporting Medical Evidence

The Report highlighted the absence of supporting medical evidence. The IIU suggested that many of the alleged assaults would have resulted in injuries requiring medical attention and treatment, and this treatment would have been chronicled in records of the institutional infirmaries or local hospitals. The IIU reviewed many such records, yet found almost no corroboration of the alleged assaults. Many residents were given treatment over the years, but usually for reasons apparently unconnected to allegations of abuse: “regular medical checkups, blood tests and a number of out-patient referrals for any number of possible injuries that any youth might encounter” (from such things as sports, accidents and fights with other residents).

The medical records often indicated a reason for or cause of the injury being treated. With few exceptions, the explanations did not support or corroborate allegations of abuse by institutional staff, that is to say, allegations of assault causing bodily harm. The IIU did discover a handful of documented instances where residents received medical treatment after a contemporaneously made complaint of abuse, but these instances were relatively few compared to the large number of complaints made in connection with the Compensation Program. Furthermore, doctors and nurses interviewed by the IIU were unaware of complaints or evidence of institutional abuse. The IIU felt that trained medical personnel would have been able to recognize signs of child abuse, regardless of any explanation proffered by the patient. It uncovered no evidence of a conspiracy by medical staff at local hospitals to conceal such evidence.

(g) The Institutional Environment

The IIU reviewed several reports prepared over the years to assess certain aspects of the programs at SYC and NSRC. These reports dated from 1962 to 1993. They were prepared for various provincial Government departments, sometimes by Government employees, at other times by outside experts. None made mention of abuse by staff, even though the authors of the reports had often toured the institutions and spoken to both staff and residents. The IIU further noted that some of the reports were quite comprehensive and fairly critical on the whole.

The IIU placed significant weight on evidence that SYC and NSRC were relatively open institutions where the issue of using force against residents was frequently addressed. This evidence was considered not only proof that residents had both a reason and the opportunity to make contemporaneous complaints of abuse, but also as an independent factor undermining the suggestion that the institutions were rife with abuse and unconcerned with the welfare of the

residents. The IIU concluded that “most allegations, in whole or in part, made since about 1993, cannot be reconciled with information we have discovered about the institutional environment and culture” at SYC and NSRC.

The IIU located various documents (institutional profiles, memoranda and handwritten notes) which outlined the correctional and pedagogical philosophy at SYC. In brief, these documents indicated that residents were offered a wide variety of educational and recreational opportunities, and that thought was given to the residents’ mental, physical, and spiritual well-being. For example, a 1980 profile of SYC reflected that, *inter alia*, the academic program is tailored as much as possible to the special needs of the residents, recreational activities such as dancing, swimming and curling are offered, dental and eye care needs are addressed, psychological and psychiatric services are available, and staff are expected to “reach out to youngsters in their care” and “take advantage of every opportunity to be helpful to [a] boy’s growth and development.”

The IIU also traced the development of policies at SYC on the use of force against residents. It located a number of documents (position papers, policies and minutes of staff meetings), dating back as early as 1970, in which the issue is discussed and debated. On the whole, the documents reflected concern over the application of force, and a desire to set limits on its use. The discussion culminated in the adoption of a formal use of force policy in 1980, in which force against residents was prohibited except in self-defence or protection of residents. The IIU concluded that from about 1960 onwards there appeared to have been a concerted effort to eliminate the use of force at SYC. The documentary evidence for NSRC was more sparse, but various minutes of regular staff meetings reflected discussion of appropriate behaviour by staff and the proper use of physical force.

(h) Contradictory Evidence

Over and above evidence which was incompatible with the allegations of abuse, the IIU also pointed to evidence which was directly inconsistent with the abuse having occurred. This evidence came in several forms.

There was evidence that a number of former residents saw their time at the institutions as a positive experience. A study by the Department of Social Services interviewed 39 women who were released from NSRC between 1967 and 1972. Most felt that their time at the centre was of benefit to them. Thirty-two felt they were treated fairly, while six felt they were treated unfairly, either by the staff or because they were committed to the centre in the first place. A 1993 study of female residents at SYC found that most thought the staff was helpful to them. In general, the IIU stated that it located a substantial amount of material showing residents actually liked being at SYC and other residential institutions, with some expressing a desire to remain there or (after release) to return there.

The IIU noted that a large number of past and present employees had submitted to polygraph examinations, the results of which were exculpatory in the great majority of cases. On

the other hand, all claimants who were offered the chance to submit to a polygraph examination under the Compensation Program either declined the opportunity or failed the test. The IIU defended the polygraph as a valuable investigative tool, which is frequently used in police investigations. It also pointed out that the Province had accepted polygraph results as legitimate and credible evidence in the context of the Compensation Program and disciplinary decisions.

Finally, the IIU interviewed a handful of former residents of SYC and NSRC who were listed by claimants as witnesses to the alleged assaults. A number of these individuals denied witnessing any abuse, or ever experiencing any themselves. In a similar vein, the IIU pointed to the case of a complaint made in 1971 by a resident of SYC. The boy had been treated at a hospital for a dislodged metal plate in his head, and had claimed there were beatings and brawls involving residents and counsellors at the institution. The complaint attracted media attention, and a local journalist wrote an article about the case. It reflected that SYC staff members and residents indicated no counsellors harmed or attempted to harm the complainant.

4. THE REPORT'S CONCLUSION

The IIU drew the following conclusions from all of the above:

Most of the allegations made by former residents against employees are unsubstantiated, uncorroborated and counterfactual. Available evidence, including evidence which in our view demonstrates the likely institutional environment, does not support the vast number of allegations brought forward.

On a balance of probabilities, there is neither credible nor reliable evidence, in the form of either witnesses or real/documentary evidence, that corroborates or substantiates the bulk of the allegations made by former residents over the last few years. As regards the great majority of the allegations, we have discovered no reliable corroborative evidence. When we consider here the absence of corroborative evidence, we mean that there is no credible evidence or information, independent of most of the allegations, which significantly supports the veracity of the allegations. We conclude that the bulk of the allegations are therefore unsustainable and have likely been fabricated from a motivation to receive compensation.

We conclude on the basis of the materials reviewed that there is some evidence of minor physical abuses and of limited sexual abuse and sexual interference. However, the occurrence of these incidents appears to be relatively aberrational, and do not support a finding of widespread or systemic abuse at institutions including the NSSB/SYC, NSSG/NSRC and NSYTC.

5. ANALYSIS

The IIU Report has generated, like the Compensation Program itself, a great deal of

controversy. Current and past employees find in the Report confirmation of what they have said all along about the Program and about the merits of the vast majority of abuse allegations made. They regard the Report as vindication. They indict the Government for ignoring the evidence cited in the Report and continuing on with the Program when its own internal investigators recognized how fundamentally flawed it was during its currency.

On the other hand, claimants' counsel regard the Report as seriously flawed. In their view, the Report relies upon stereotypical notions of how abuse victims should be expected to act, contains a myriad of factual mistakes about the presence or absence of corroborative evidence, places reliance upon unreliable polygraph test results and, in general, represents a biased evaluation, driven by investigators who became too close to the employees they were investigating and who, ultimately, became advocates for the employees' cause. Claimants' counsel note that the Report's co-author, David Baker, was a file assessor who demonstrated antipathy to the Program that should have disqualified him from objectively evaluating it.

Finally, claimants' counsel rely upon Madam Justice Heather Robertson's evaluation of the IIU Report in R. v. Lalo,⁵ where she was invited to stay the criminal charges against Cesar Lalo on the basis that continuation of the prosecution would amount to an abuse of the court's process or an infringement of the Charter. In dismissing the application, Robertson J. said, in part:

The Chambers Report cannot be relied upon as proof of false allegations of abuse at Shelburne, or collusion respecting claims made to the ADR programme. In my view it was an employee centred inquiry that favoured the word of those accused of abuse over the word of the former residents. It assumed that many of these residents, most of whom are now adults, had formed criminal associations and were thus likely to collude to take advantage of the compensation scheme. The report is a smoking gun and a condemnation of the compensation programme that appears to have been seriously flawed, in its delivery.

Some Government officials also take issue both with the accuracy of the Report and, indeed, with the fact that it was even written. Some expressed the view that the Report represents a piece of advocacy that was not sought by the Government and which does not truly fall within the IIU's mandate.

Resolution of this debate – while no doubt of importance to the participants – does not advance the systemic focus of my review and, in any event, would require me to make findings which I am unable in law to make. Although there are 'process' issues associated with how and by whom this Report came to be written, the real debate is over its accuracy. Although it might be frustrating to some, I reiterate yet again that I am not in a position to determine the merits of individual claims of abuse or the prevalence of abuse generally. Nor do I regard Madam Justice Robertson's comments – which in my respectful view were unnecessary to her decision – as

⁵Released February 16, 2001. This decision, dismissing an application for a stay of the proceedings, is the subject of a publication ban to protect the identities of the complainants. I have, of course, respected the ban.

controlling.

That being said, I do, however, have some comments on the Report.

At times, undue emphasis is placed upon the failure to contemporaneously complain about abuse, given the institutional setting in which abuse allegedly occurred. The Report may be read as raising questions as to the guilt of MacDougall on some of the charges to which he pleaded guilty, a view I do not share. The Report, while appropriately raising concern about the possibility of collusion and about how providing the chart of compensable abuse to former residents could produce exaggerated claims, is careless about ascribing improper motives to some claimants' counsel. The evidence disclosed in the IIU Report did not support their conclusions in this regard.

My staff and I have reviewed much of the documentation referred to in the IIU Report and conducted many interviews. There is significant evidence, direct and circumstantial, that false and exaggerated claims were made to the Government, and that these claims were motivated by monetary awards being offered by the Program and the known absence of a true validation process. There is significant evidence that some individuals colluded in making false claims. Indeed, some individuals have admitted that they participated in making false claims or that they are aware of false or exaggerated claims made by others.

In one statement I have read, the witness, incarcerated at Dorchester Penitentiary in New Brunswick, described how he assisted a fellow inmate to write a letter of complaint. Although the fellow inmate had described some abuse, the witness included details of abuse he had heard from the victims of Karl Toft (the main perpetrator at Kingsclear, New Brunswick). He described the letter as "just a scam to get big money." The fellow inmate had confirmed that this was the kind of letter he wanted, "as it covered a multitude of abuses and would get the top compensation amount." The witness was to get 10% of the compensation awarded.

Another witness, whose lengthy statement to the IIU I reviewed, stated that, although he had undergone some physical abuse, his allegations of sexual abuse against four employees, for which he was compensated, were false. One wasn't even in his unit; he didn't think another was there when the witness was. He got the names from other inmates within the correctional centre. He also admitted that he had exaggerated claims of physical abuse. He described the free flow of information between inmates, including himself, concerning their allegations of abuse, the names of counsellors and how they could get money from the Program. Inmates read other inmates' statements and provided input. Others acknowledged that they had made false claims as well.

The IIU also assembled materials that attempted to correlate inmates who had made claims, when those claims were made, what those claims alleged and what, if any, connection there was between the inmates prior to their incarceration together. In the least, these materials demonstrated that the opportunity for collusion by a number of inmates was substantial.

Finally, I note here that there also appears to be significant evidence that some contemporaneous complaints made by residents, or statements previously provided to the RCMP and others, are incompatible with claims later advanced by the same individuals within the Compensation Program. Although I recognize – as I have noted elsewhere – that it would constitute stereotypical thinking to conclude that the absence of any contemporaneous complaint compels the conclusion that no abuse occurred, the discrepancies noted here, in the least, invite close scrutiny and, in some cases, scepticism, about some of the claims now advanced.

There remain very different perspectives on the extent to which abuse claims made to the Compensation Program are true or false. The IIU Report represents one of those perspectives. I am convinced that, with limited exceptions (for instance, where admissions had been made, criminal convictions have been registered or where reliable, corroborative evidence exists), it is now extremely difficult, if not impossible, to reconstruct what abuse did or did not occur within the institutions. In part, this is a function of the passage of time and the unavailability of some witnesses. But of most importance to my Report, it also reflects the shortcomings of a Government response that failed to appropriately consider and address the interplay between the Compensation Program and the criminal process. Our inability now to effectively sort out true and false claims of abuse does a disservice both to true victims of abuse and innocent employees.