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# Historical Overview

### 1. HISTORY OF RESIDENTIAL INSTITUTIONS IN NOVA SCOTIA

Residential institutions in Nova Scotia have been in existence since at least the mid-1700s. Early institutions were charitable in nature and housed young persons for a variety of reasons, including delinquency, neglect and poverty. Young persons were not always treated separately from adults; indeed, they were sometimes housed together. However, as social theories shifted, so did the purpose and nature of residential institutions. Starting with St. Mary's Convent in 1849, a number of institutions were opened specifically for children and youth.

Throughout the 20<sup>th</sup> century, different approaches were taken to the institutionalization of young offenders. At times, caretakers sought to discipline them, reform their social values, or rehabilitate them. Recently, greater emphasis has been placed on a restorative justice approach, which calls upon offenders to acknowledge their errors and demonstrate accountability to their victims. For children and youth placed in institutions as a result of a disability, there is currently a trend toward de-institutionalization through the use of in-home supports and community integration.

#### (a) Shelburne Youth Centre

In 1865, the distant precursor of the present-day Shelburne Youth Centre, the Halifax Industrial School for Boys, was opened in Halifax. The school was a charitable Protestant institution set up to meet the needs of delinquent, neglected and dependent boys. In 1885, the Catholic Church opened the St. Patrick's Boys Home to meet the similar needs of Catholic boys. Although at times government funding was provided, these were non-governmental institutions.

In 1947, school officials announced that the Halifax Industrial School for Boys would be closed due to lack of funds. The provincial Department of Public Welfare responded by taking

over the facility on September 15, 1947. It was renamed the Nova Scotia School for Boys.<sup>1</sup> The enabling legislation permitted young men serving sentences of imprisonment in common jails, city prisons and the Nova Scotia Reformatory to be transferred to the school.

The Halifax facilities were quickly deemed inadequate, and in 1948 the school was relocated to the Town of Shelburne, over 220 kilometres from Halifax and 100 kilometres from Yarmouth. The move generated a good deal of controversy. People questioned the motivation for it, and whether it was a good idea to locate the school so far away from services provided in urban centres like Halifax and Yarmouth. The move to Shelburne also made it more difficult for most families to visit their children.

In 1955, the St. Patrick's Boys Home was no longer able to operate. Residents of that facility were consequently moved into the Nova Scotia School for Boys. The school's average population increased from about 40 to around 70 residents.

In the mid to late 1980s the institution underwent more fundamental changes. The school had traditionally housed only boys. In 1985, however, girls who had resided in the Nova Scotia School for Girls were moved to the facility, which was renamed the Shelburne Youth Centre ("SYC"). Later, all male residents aged 16-17 were moved to the Nova Scotia Youth Centre, which was opened in Waterville in 1988.

The physical layout of the school changed over the years. Two abandoned World War II Navy barracks were initially used to house the residents. By the early 1960s, the facility contained seven dormitories, five dining rooms, four TV rooms, two libraries, games-rooms, storerooms, laundry rooms, clothing stores, a kitchen, an assembly hall, and a canteen. A separate administration building contained classrooms, an industrial arts shop, hobby facilities and a staff conference room. A chapel and gymnasium were also available to the residents. By 1978, all the old buildings had been replaced with new facilities, including 'H' shaped cottages. The grounds were also built up over the years to provide lawns and gardens, a skating rink, a playing field and a swimming jetty. A school campsite was set up at Alvin Lake. Currently, accommodation is provided in ten 12-bed living units that are interconnected and form a circle around a recreational area.

The school historically operated under the auspices of the Department of Community Services. On August 1, 1994, however, responsibility for the centre shifted to the Department of Justice.

Youth workers currently perform a wide range of duties, including those of counsellor, teacher, security officer and recreation officer. The facility holds about 45 male and 15 female residents.

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<sup>1</sup>Fitzner, Stan, *The Development of Social Welfare in Nova Scotia* (unpublished paper prepared for the Department of Public Welfare, December 1, 1967). Much of the information contained in this section came from this study.

### **(b) Nova Scotia School for Girls**

The Nova Scotia School for Girls in Truro was first called the Maritime Home for Girls. It was established by the Protestant Churches of the Maritime Provinces on September 1, 1914. Its purpose was to provide a home and training school for girls from Nova Scotia, New Brunswick and Prince Edward Island who were homeless or who were being reared in “vicious and degrading” surroundings. The emphasis was on teaching the girls to cook, sew and keep house, in addition to providing a curriculum that paralleled the public school system.

When it opened, the home consisted of only one large building. However, by 1920, there were three large buildings which contained bedrooms, dining rooms, living rooms and kitchen facilities. By the early 1960s, the facility had single rooms for most girls, with a few five-and eight-bed dormitories for use when the single rooms were full. The facility also operated a farm which helped to finance its operation. It provided farm training opportunities for residents during the summer months.

In the mid-1960s, the Board of Governors encountered difficulties in financing the institution. As a result, the Department of Public Welfare took over responsibility for it on April 1, 1967.<sup>2</sup> It then became known as the Nova Scotia School for Girls.

The Government determined that the facilities required upgrading. One building was demolished and another was renovated. New residences, which included dining facilities, administrative offices and a pre-release unit, were completed by 1972. A new education centre was opened in 1980.

The enactment of the *Young Offenders Act*<sup>3</sup> in 1984 caused the Government of New Brunswick to develop its own facilities, with the result that the population of the school decreased. In February 1985, a decision was made to convert the school into a provincially funded co-educational facility for emotionally disturbed children, called the Nova Scotia Residential Centre. Residents from the former Nova Scotia School for Girls were transferred to the Shelburne Youth Centre.

The Nova Scotia Residential Centre closed in June 1997. A new secure treatment facility, the Wood Street Centre for emotionally and behaviourally challenged children, is currently under construction in Truro.

### **(c) Nova Scotia Youth Training Centre**

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<sup>2</sup>The Department of Public Welfare was later renamed the Department of Community Services (“DCS”).

<sup>3</sup>S.C. 1980-81-82-83, c.110.

In 1927, an *Act to Establish a Nova Scotia Training School for the Treatment, Care and Education of Mentally Defective Children* was passed.<sup>4</sup> A Board of Management was appointed on April 15, 1929, and a school, the Nova Scotia Training School, was opened. It later became known as the Nova Scotia Youth Training Centre.

The centre was operated by the Department of Community Services. By the late 1980s, it served on average 36 to 38 mild to moderately challenged children between the ages of 10 and 19. Other centres in Digby, Dartmouth, Pictou and Sydney provided services to 160 severely challenged children from infancy to 18 years of age.

All of the centres closed by September 1997. The residents had been reintegrated into their communities.

## **2. REPORTED ABUSE PRIOR TO 1994**

In order to better understand the Government's response, it is useful to set out some of the background events, as well as some of the information that the Government knew or ought to have known when it determined how it was going to address the claims of institutional abuse.

### **(a) Policies**

Early in the operation of the Nova Scotia School for Boys, officials developed policies concerning the use of force by provincial employees upon their wards. In September 1948, soon after the School moved to Shelburne, institutional policy dictated the following:

Supervisors are not to strike boys with anything except the regularly prescribed strap and this should be rigidly enforced. ... Corporal punishment is administered by the supervisors who have trouble with the boy. He must do it after consulting with the Principal. ... It must be done in the presence of at least two supervisors and must be done with only the prescribed strap. A written report must be submitted by the supervisor who had the difficulty with the boy. ... A boy is not to be struck with the hand or other instrument unless in self-defence. Corporal punishment should come within a reasonable time after misconduct and should not be administered when a supervisor is mad or annoyed.

By today's standards, the use of the strap, "regularly prescribed" or otherwise, is unacceptable. Nonetheless, it is clear that by 1948 officials had turned their minds to defining the 'appropriate' use of disciplinary force.

In the years that followed, managerial direction on the use of force became more detailed.

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<sup>4</sup>S.N.S. 1927, c. 5.

From various documents outlining the policies and procedures to be followed by staff, it is clear that school officials were actively involved in providing guidance on the day-to-day supervision and control of the boys, and on the operations of the school. It is also clear that there was ongoing dialogue among staff and management with respect to appropriate methods for supervising the boys. Many of these discussions arose from specific encounters with residents or differences in opinion over the best way to deal with difficult situations.

In 1959, Dr. Fred MacKinnon, the Deputy Minister of Public Welfare, provided a report to the Minister concerning the morale, discipline and general situation of the Nova Scotia School for Boys. In his report, he stated that although corporal punishment has been used in the past, “we have not used it for some time and I am quite certain the present administration will not resort to corporal punishment and beating boys unless as a last resort for a situation.” He also stated that, though the public may demand corporal punishment for the residents of the school, beating and punishment are not as effective as understanding and firm discipline.

In 1978, a Review Committee was established at the Nova Scotia School for Boys to develop a protocol to investigate use of force situations. This appears to be the first attempt by school officials to develop a consistent institutional response to claims of excessive use of force. The purpose of the committee was as follows:

1. To investigate the circumstances in a situation where force was used, or allegedly used, by a staff member in dealing with a boy;
2. To determine whether a staff member using force with a boy acted outside the philosophy and policy of the Institution;
3. To submit a written report to the Superintendent or, in his absence the Assist. Superintendent.

Throughout the following year, the Review Committee developed a written policy on the use of force, and by January 1980, the Policy Statement on the Use of Force in a Training School was completed. It provided that physical force should be used only in exceptional circumstances: to protect oneself, to prevent the resident from harming himself, and to separate residents before they do harm to each other. The policy also outlined the procedure to be followed if force was used by a staff person. In the ensuing years, the wording of the policy changed, but its essence remained the same. In 1987, a procedure for referring matters to the police was added as a result of residents and staff inquiring as to their ability to initiate investigation and prosecution for incidents of assault.

The existence of a policy does not necessarily mean that all incidents were reported as they happened, nor does it say anything about the frequency of incidents. It does establish, however, that on the issue of physical abuse there was an ongoing and serious concern on the part of at least some management and staff about the appropriate use of force in the institution. I did not see any similar documents on issues surrounding sexual behaviour or abuse in the institution, either between residents or between residents and staff, until the 1990s.<sup>5</sup>

## **(b) Police Investigations**

### **(i) *Shelburne School for Boys***

In the 1980s and early 1990s some incidents of alleged physical abuse were referred to the RCMP for investigation. However, there is no record of a staff member ever being charged with assaulting a resident. The situation with respect to allegations of sexual abuse was slightly different. While some allegations were dealt with internally,<sup>6</sup> others were reported to the police and charges were sometimes laid.

In February 1986, three female residents at Shelburne complained that a counsellor had made sexual advances towards them. The management at Shelburne immediately investigated the allegations. Within two days, all individuals concerned were interviewed and the matter was reported to the RCMP. The RCMP conducted their own investigation and laid charges against the employee, but the charges were later dismissed when the three complainants failed to appear in court.

By far the most notorious case of reported abuse in a government-run institution in Nova Scotia is that of Patrick MacDougall. It was a complaint against MacDougall in 1991 that

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<sup>5</sup>The institution did develop a Code of Conduct for residents that made reference to “sexual misconduct.” The term was defined simply as “an unlawful sexual act.” The exact date of the original Code is unknown, but is not likely to be before 1980.

<sup>6</sup>For example, in 1961 a resident at the Nova Scotia Training School accused a maintenance man of having unbuttoned her blouse and touched her breast. The girl was interviewed and found to be truthful, but the police were not contacted. The employee was retiring soon and had what was called an “ungovernable temper,” and it was considered better to simply wait for him to retire. The Superintendent expressed concern that the employee might harm the girl and her family if he was told of the complaint.

There were also internal reports of improper behaviour by counselors at Shelburne. For example, it was reported to management that in January 1984 a male employee had, in the presence of other staff, crawled into bed with some boys, thereby alarming them. When asked to account for his conduct, the employee explained that he had done it as a joke. He was advised not to repeat the behaviour in the future.

sparked an RCMP investigation which took approximately 18 months and which led to the first (and only) successful prosecution of any counsellor or former counsellor from Shelburne. The complainants in the case subsequently initiated civil proceedings against the Province – proceedings which spurred the Government to consider and ultimately implement the response which is the subject of my review.

The police investigation into MacDougall's conduct began in January 1991, when Peter Felix Gormley contacted the RCMP in Charlottetown to file a complaint of sexual assault. He alleged that while he was at Shelburne from 1963 to 1968, a counsellor by the name of 'Jim' MacDougall had fondled him and performed oral sex on him. He also stated that he saw the counsellor assault other residents, some of whom he could name, some of whom he could not. The RCMP determined that 'Jim' MacDougall was actually one Patrick MacDougall, who had been transferred out of Shelburne in the mid-1970s due to an allegation of having fondled a resident. The RCMP believed that given MacDougall's 17 years at Shelburne, there may have been other boys with similar experiences, and efforts were made to identify at least one other resident who could corroborate Gormley's complaint.

Police reports indicate that current and former employees at Shelburne cooperated fully with the investigators. For instance, Lee Keating, a former employee, spoke frequently with the RCMP. He provided information about rumours concerning MacDougall's close relationship with young boys, and he told of having overheard residents refer to his colleague as "the old fruit." But Keating had never been able to get any of the residents to elaborate on why they referred to MacDougall in that manner. Further, the persons named by Gormley as having been additional victims of MacDougall's behaviour denied any impropriety. Officials from the Department of Community Services also advised the RCMP that most of the records from Shelburne were destroyed when the *Young Offenders Act* was implemented.

The RCMP was able to locate boxes of index cards at Shelburne which gave basic information on former residents. A list of all former residents was prepared from the index cards. Keating then reviewed the list and identified residents who had been under MacDougall's care. By September 1991, a number of these individuals were contacted and interviewed. None offered any confirmation of sexual abuse by counsellors, but the investigators felt that some of the witnesses were not being entirely truthful. By November 1991, the RCMP located one other potential complainant against MacDougall. They also spoke to an individual who made an allegation against another former counsellor, Murray Moore. However, they did not pursue the complaint as Moore had committed suicide in 1990.

A decision was made to take a 'task force' approach to the investigation. Further documentation was found at Shelburne in the form of the admission log books and the 1975 Supervisor's Daily Journal. The stated intent of the investigation at this point was to pursue allegations of repeated physical abuse, of assault causing bodily harm, or of physical assault that was said to have occurred during an attempt at sexual assault.

Many of the former residents contacted denied any knowledge of physical or sexual abuse by a counsellor. Some acknowledged receiving injuries at the school, but were emphatic that the injuries had occurred during events such as track and field and soccer and had nothing to do with counsellors. Several described inter-resident sexual activity. There were, however, isolated references to claims of physical abuse with attendant bodily harm. Some also described the use of force, such as being rapped on the head with knuckles or being picked up and shaken or thrown against a wall.

Six former and two current employees were interviewed by RCMP investigators in the months that followed. Staff members acknowledged that with one counsellor having to look after 40 to 45 residents it was no easy task to keep control, and that youths were often grabbed or shaken to make them stop misbehaving.

Two counsellors remembered receiving a complaint in 1975 of sexual abuse by MacDougall. They identified the victim as M.D. and gave names of possible witnesses. Michael Thorburne was one of the counsellors who received the complaint. He indicated that he had passed it on to his supervisor, and after that MacDougall had never returned to work at the school. He also told the police that there was a 'no physical force' policy in effect from the start of his tenure at Shelburne in 1967.

The RCMP interviewed M.D. He advised the police of two incidents. In the first, MacDougall tried to grab his penis; M.D. got up and walked away. The second incident was the one that led to the end of MacDougall's employment at the school. M.D. said he allowed it to happen. Knowing that MacDougall was sexually abusing residents, he and other residents set up a situation where MacDougall would be caught. M.D. put himself in a position where MacDougall would be tempted, and MacDougall took advantage of it by fondling M.D.'s penis. Other residents then came into the area and saw it happen. The incident was reported to other counsellors and it led to MacDougall's dismissal by the Superintendent, Barry Costello.<sup>7</sup>

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<sup>7</sup>As it turned out, despite Costello's action, MacDougall was not actually dismissed from the public service, but rather transferred to another institution.



Donald Lawrence Higgins, a retired Chief Supervisor who worked at Shelburne from 1953 to 1984, recalled a number of complaints that Patrick MacDougall was involved in sexual activity with boys. He once confronted MacDougall about these complaints in 1969, but the matter was dropped after MacDougall suffered some kind of attack and was admitted to hospital. Higgins also mentioned that Murray Moore had been the subject of a sexual complaint, but that the complaint had later been withdrawn when the resident claimed he had made it up because of punishment he had received from Moore.

One counsellor, George Allan Guye (known as Mickey), recounted that in the mid-1960s two boys reported that they had seen MacDougall with his hands down a boy's pants. The report was passed on to a supervisor, who decided there was no truth to the allegation. Guye claimed that during the 1960s physical abuse was an accepted way of life. Force was sometimes used when a staff member lost his temper, and sometimes when a staff member honestly believed that force was justified. New counsellors were told by older ones that using force was the only way to keep control. Guye declined to give a statement or to name anyone. He added that the school started to change when Barry Costello took over in 1970.

The RCMP calculated from entries in the Shelburne index cards and admission logs that during MacDougall's employment from September 1959 to June 1975 there were 2,693 residents. Of that number, possibly 877 were under MacDougall's care, either in his role as counsellor or through Boy Scouts. Eighty-four were contacted,<sup>8</sup> and police reports indicate that many talked readily of their life at Shelburne. Some described their stay at the school as the best time of their lives. Others referred to it as being part of their past and did not wish to dwell on it. All denied being victims or witnesses to *sexual* assaults. With respect to *physical* abuse, the majority expressed the view that 'if you asked for it you got a rough time.' Those who claimed to be a victim of or a witness to physical assaults would not give statements. The nature of the assaults described were slaps or cuffs to the head, hair pulling, kicks and punches. The investigator concluded that corporal punishment was part of the life at Shelburne in the 1960s and early 1970s.

A statement was obtained from J.M., who initially said that he was abused by Peter Gormley (whom he described as a staff member, but who was, in fact, a fellow-resident). He described MacDougall as a really nice guy, a gentleman, and a good man. He said he had nothing against MacDougall, and that he respected him. However, in answer to a question from the RCMP investigator, J.M. later said the abuser was MacDougall, not Gormley.

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<sup>8</sup>Exactly how many of the 877 the RCMP tried to contact is unclear.

Ultimately, nine charges were laid against MacDougall in August 1992: five counts of indecent assault and four counts of gross indecency. The complainants were Gormley, J.M., M.D., and two other former residents, C.C. and P.H. MacDougall pleaded not guilty to all of the charges. His trial began in Provincial Court on January 18, 1993 before His Honour Judge Joseph Kennedy (as he then was).

At trial, Gormley testified that he had once been anally raped by MacDougall, even though in two pre-trial statements he had described only incidents of fondling and oral sex. J.M. also testified to anal intercourse on one occasion, as well as extensive acts of fondling and oral sex. The remaining complainants testified to acts of fondling and oral sex.<sup>9</sup>

Former Superintendent Barry Costello was a witness at the trial. He testified that he had confronted MacDougall with the allegation of fondling M.D. and that, at the end of the meeting, he had dismissed MacDougall from his staff. Judge Kennedy did not allow the Crown to introduce into evidence the utterance attributed to MacDougall “Can you find some way to punish me other than firing me?”. Other residents testified that they witnessed MacDougall fondling M.D. MacDougall testified and denied committing any indecent act. He claimed that the boys would vie to see who could sit on his lap.

On February 17, 1993, Judge Kennedy convicted MacDougall of five counts of indecent assault and one count of gross indecency. The other three charges of gross indecency were dismissed. On March 29, he was given a sentence of six years in jail.

Joseph McKinnon, Director of Personnel for the Department of Community Services, was also a witness at the trial. His evidence revealed that, shortly after being supposedly dismissed from Shelburne, MacDougall was in fact transferred to the Sydney Children’s Training Centre to work as a night watchman. In a statement given to the RCMP on January 7, 1993, MacKinnon related that the Deputy Minister, Dr. Fred MacKinnon, had once advised him that there were problems in Shelburne with MacDougall. The Deputy Minister told him that “they” – presumably the Department of Community Services – needed to get MacDougall out of there, and to arrange a transfer as soon as he could. After some discussion, arrangements were made to transfer MacDougall to the centre in Sydney, with the same classification as before, but with a clear understanding that MacDougall would not have access to the children.<sup>10</sup>

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<sup>9</sup>The Crown also called two similar fact witnesses, E.W. and J.O.

<sup>10</sup>The RCMP confirmed the restrictions on MacDougall’s employment in an interview with George Kingham, Superintendent of the Sydney Children’s Training Centre.

On February 11, 1993, eight new charges were laid against MacDougall for indecent assault and gross indecency with respect to four complainants, K.S., J.G.O., J.O., and E.W. (the latter two having testified as similar fact witnesses at MacDougall's first trial). MacDougall pleaded not guilty on March 11, 1993, and his trial was scheduled for July 28, 1993.

One additional complainant, H.S., later came forward. He had previously given information to the RCMP alleging abuse at the hands of Karl Toft, a counsellor at the New Brunswick Training School. At the time, he had also claimed that he had been the victim of sexual and physical assaults by fellow-residents and counsellors while a resident at Shelburne. On April 12, 1993, he gave a statement to the Ontario Provincial Police in which he alleged that Patrick MacDougall had performed oral sex on him a dozen times. This resulted in an additional charge of gross indecency being laid against MacDougall on July 3, 1993.

On July 6, 1993, MacDougall appeared, without counsel, in Provincial Court. He entered guilty pleas to the counts of indecent assault involving the complainants K.S., J.G.O., J.O. and E.W., and to a count of gross indecency involving H.S. The presiding judge, Her Honour Ann E. Crawford, sentenced him to five years in jail, consecutive to the previous sentence, for a total period of incarceration of 11 years.

### **(ii) *Nova Scotia School for Girls***

In January 1991, the RCMP division in Truro commenced an investigation into an alleged sexual assault committed by George Moss, a former counsellor at the Nova Scotia School for Girls ("NSSG"). The complainant was B.N. She was in the process of initiating a lawsuit over the matter, and the Deputy Attorney General asked the RCMP to look into it. This led to a comprehensive investigation of several complaints of physical and sexual abuse at the NSSG, which culminated in criminal charges against Moss and another former counsellor, Douglas Gerald Hollett.

Moss and Hollett were hired as counsellors at NSSG in the fall of 1975, along with Ronald Shea and Roy Mintus.<sup>11</sup> They were the first men to be hired as counsellors at the school. Complaints were eventually made against all of them except Shea.

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<sup>11</sup>Mintus had been a counselor at Shelburne. He transferred to NSSG in December 1975.

In July 1976, while Hollett was still on probation, allegations were made that he had offered drugs to residents. The school administration found the allegations to be valid. His employment was ultimately terminated in October 1976.

On August 18, 1977, M.M., a former resident at NSSG, went to the school and complained that she had been sexually assaulted by Moss. She said he had kissed and fondled her. She also named another resident who had been subjected to similar abuse by Moss. Her allegations were not referred to the police for investigation, and no action appears to have been taken by management.

In 1979, a resident named A.L. ran away from the school. When she arrived home, she explained to her mother that she had run away because Moss had touched her inappropriately. Her mother complained to the school management and to the Director of Special Protection in the Department of Community Services. An investigation was started, but no further action was taken when Moss resigned. The matter was not reported to the police.

In 1982, Moss reapplied for a position as senior counsellor at the school. By letter dated May 31, 1982, Marilyn S. Brookes, Assistant Superintendent, and William Macleod, Superintendent, advised William Grotorex, Administrator, Family and Children's Services, of their grave concerns if Moss were to return to the school. They cited Moss' inability to follow directions and his "need" to relate in a physical manner to the residents. They made reference to A.L.'s complaint, commenting that A.L.'s mother's "original intent was to charge Mr. Moss; but with support and careful handling she appeared to back down somewhat." Despite this warning, Moss was hired in 1985 by the Department of Social Services as a Social Service Worker, Family Benefits, in the Cape Breton regional office.

The first police investigation into Moss' conduct was carried out while he was employed in the Cape Breton office. In March 1988, Moss' son told the RCMP that he believed his father had molested girls from NSSG at a summer camp in 1975-78. He named M.M. as one of the victims. A complaint was also made that Moss had molested a family member, but it appears that the RCMP ultimately concluded there was insufficient evidence to lay criminal charges arising from that complaint.

The Department of Social Services immediately suspended George Moss without pay. Moss' wife advised the RCMP of a contemporaneous complaint made by M.M. M.M. confirmed the abuse in an interview with the RCMP. She also named B.A., R.G. and B.N. as possible victims. B.A. was interviewed and confirmed that sexual advances had been made by Moss. B.N. was also interviewed and she too said that she had been molested by Moss. No charges were laid

in connection with these allegations at the time. It is unclear why the charges were not pursued.

Moss was fired in June 1988, but he grieved the dismissal. The matter went to arbitration in December 1989, solely in relation to the incident of alleged abuse against a family member. The Nova Scotia Government Employees Union (“NSGEU”) conceded that, if proven, the allegation would justify dismissal. In a decision dated January 15, 1990, the arbitrator found that the Government had not established just cause for the dismissal because it had not satisfactorily proven that Moss had committed the abuse.<sup>12</sup> He ordered the Province to reinstate Moss. The Government brought an application for judicial review, but was unsuccessful.<sup>13</sup> Moss was subsequently offered a different position in which he would not have direct contact with clients.

As noted above, the RCMP began its investigation into allegations of sexual abuse at the NSSG in January 1991. Investigators quickly identified five persons, M.M., B.N., A.L., R.G., and C.B., who claimed they were abused by Moss. They also identified G.B.R. who complained about improper conduct by Douglas Hollett, and T.M., who alleged abuse by Roy Mintus. Further allegations were made by an ex-employee, Margaret Grant, who said that a counsellor, M.G., had grabbed residents in an inappropriate manner.

In June 1991, the Crown concluded that the only matter that would stand up in court was an incident involving M.M. and Moss. However, M.M. advised the RCMP that, at that point in her life, she was not interested in seeing her complaint pursued in the criminal courts. A decision was made that no charges would be laid at that time against Moss or any of the other suspects.

The decision not to lay charges against M.G. was apparently based on the fact that her conduct was in the nature of teasing or joking. The decision not to charge Mintus was made in light of the investigators’ view that the complainant was a consenting party. While this may not have been a defence in law, it was felt that without other witnesses the case would not stand up in court.

The investigation continued. The police contacted every person identified either as a

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<sup>12</sup>One of the former residents testified at the arbitration hearing to being kissed and fondled. The arbitrator made a finding that he was satisfied that Moss did engage in improper conduct towards students at the school, and that he was overly familiar with some of them and touched and kissed them in inappropriate ways. However, since Moss’ suspension and firing were based solely on the allegation that he had sexually abused a family member, that was the only incident legally germane to the arbitration.

<sup>13</sup>*Civil Service Commission (N.S.) v. N.S.G.E.U.* (1991), 107 N.S.R. (2d) 24 (N.S.S.C.).

possible victim or as a witness to any act of alleged impropriety. Search warrants were also executed at the school to obtain records of former residents, staff, and contemporaneous reports of incidents where force was used. The police received complaints of assaults causing bodily harm, but decided that they were unfounded. The police also heard about incidents where staff had used force on residents, but determined that the use of force had always been justified and reasonable. Indeed, in many instances former residents agreed that staff members were justified in using force and that the force used was not in excess of what was necessary and reasonable in the circumstances.

On February 7, 1992, Hollett was charged with indecent assault, sexual intercourse with a female person 14 to 16 years of age who was of previous chaste character, and possession of a weapon for the purpose of committing an assault. He was alleged to have sexually abused a young resident who had escaped from the school and come to live with him. On November 26, 1992, after a trial before a judge and jury, he was found guilty of the sexual intercourse charge. He was sentenced on February 5, 1993, to imprisonment for a term of two years and four months.<sup>14</sup>

On February 19, 1992, Moss was charged with seven counts of indecent assault on a female in relation to seven different complainants (including B.N., A.L., M.M., and R.G.). He was arraigned in Provincial Court on March 3, 1992 and elected trial by judge and jury. His preliminary inquiry was to commence on July 23, 1992. Following media stories about Moss' arraignment, former casual employees at NSSG contacted the RCMP with offers to be witnesses as to the inappropriate nature of Moss' behaviour towards residents. Moss was immediately suspended without pay pending a review of the charges. Ultimately, a plea agreement was struck, and Moss pleaded guilty to four out of the seven counts on October 9, 1992. He was sentenced to imprisonment for one year.

In 1995 and 1996, the Department of Community Services received complaints from seven former residents that Roy Mintus had improperly touched and kissed them and provided them with alcohol. Mintus was suspended with pay on July 26, 1995, and dismissed on December 13, 1996. Mintus filed a complaint with the Labour Standards Tribunal, claiming that his dismissal was without proper cause. His complaint was heard over 13 days from May 1998 to March 1999. On July 2, 1999, the Tribunal found that the conduct complained of had in fact occurred and that it was just cause for dismissal. Mintus appealed, but later abandoned the appeal.

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<sup>14</sup>*R. v. Hollett*, [1993] N.S.J. No. 76.

In the end, MacDougall was convicted of 11 charges of sexual misconduct involving 10 complainants. Moss was convicted of four charges involving seven complainants. Hollett was convicted of one charge. No charges were laid against Mintus or M.G.