

## IV

# The Samuels-Stewart Audit

### 1. THE AUDIT'S MANDATE

In November 1994, the Government of Nova Scotia directed that an independent audit of provincially operated young offender institutions be undertaken to ascertain whether current practices were adequate to ensure the safe custody of young persons confined within the institutions. Viki Samuels-Stewart was appointed as auditor.

The Terms of Reference for the audit were as follows:

During the period commencing on the 1<sup>st</sup> day of December 1994 and ending on the 28<sup>th</sup> day of February 1995 to inquire into, report and make recommendations to the Minister of Justice in relation to

- (a) whether persons held in custody in the Shelburne Youth Centre and other young offender institutions operated by the Province are adequately protected against sexual and other abusive conduct;
- (b) whether there is an adequate system in place to ensure that, in the event of such improper conduct, complaints may be made, received and acted upon in a timely and effective manner; and
- (c) whether there are in place appropriate mechanisms to ensure proper communication and follow up between responsible departmental authorities and police agencies in the event of allegations of sexual or other abuse of young persons held in custody.

Although the Terms of Reference included all provincially operated young offender institutions, Ms. Samuels-Stewart limited her review to the Shelburne Youth Centre and the Nova Scotia Youth Centre - Waterville, primarily due to the short time frame allotted for the audit. The

Shelburne Youth Centre housed both male and female young offenders.<sup>1</sup> The Waterville Youth Centre housed only male young offenders.

In March 1995, Ms. Samuels-Stewart completed her report, entitled '*In Our Care*' - *Abuse and Young Offenders in Custody: An Audit of the Shelburne Youth Centre and the Nova Scotia Youth Centre - Waterville*. The report was made public by the Government on March 29, 1995.

## **2. CONTENTS OF THE REPORT**

### **(a) Introduction**

What follows is a detailed summary of what the Audit Report says, without editorial comment on my part. An analysis and evaluation of the Report follows.

### **(b) Process and Participation**

The Report indicates that the 'process' format of evaluation was adopted. This type of evaluation was said to involve primarily reviewing program records, interviewing staff and clients, and making qualitative observations. It focuses on the involvement of those most affected by the institutions: in this case, the residents and employees. The Report states that this is a useful approach for evaluating developing programs, such as were those at Waterville and Shelburne, which can be done quickly and with minimal resources. The Report further states that this approach was "deemed to be exploratory in nature to make certain determinations, from which recommendations for future action would follow."<sup>2</sup> The Report also notes that a process evaluation should be seen as an initial evaluation only.

The Report points out that its prime focus was the issue of abuse. Particular attention was paid to how young offenders, employees and others associated with the institutions understood abuse, whether young offenders currently in custody were protected from abuse, and whether those young offenders currently in custody were being abused. In her task, the auditor was aided by two administrative assistants with experience in research, report writing and data analysis.

The Report indicates that information was gathered through:

- !** Review of documents from Waterville and Shelburne. Waterville documents included the four-volume policy and procedure manual and the journal program

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<sup>1</sup>Shelburne also housed young persons who had not committed any offence (but for whom no other home could be found). However, in order to conform to the language of Ms. Samuels-Stewart's Report, I will refer to Shelburne residents in this chapter as "offenders."

<sup>2</sup>This, and other quotations which follow, are taken from the Report.

which young offenders and staff use to communicate their daily individual concerns. Shelburne documents included the programs/operations binder, the November 1994 Manual of Directives issued by Correctional Services, October 1994 memos to staff from the Superintendent respecting procedures for reporting child abuse and abusive or inappropriate behaviour, an October 1994 memo to residents from the Superintendent respecting the reporting of abuse, various forms, program schedules and program manuals for young offenders, program reviews conducted in August 1987 and March 1991, and 16 young offender files. Additional documents are listed at pages 8-10 of the Report.

- ! Review of the *Young Offenders Act* and Regulations (as of 1993), the *Review of Children's Training Centres in Nova Scotia - A Report & Recommendations to the Minister of Community Services* (October 1994), a Report of the Solicitor General's Special Committee on Provincially Incarcerated Women (April 1992), the *Female Young Offender Review*, Department of Community Services (March 1993), and a letter from the Elizabeth Fry Society to Correctional Services expressing concern over the program offered to female offenders (October 1994).
- ! On-site visits and tours. The auditor also asked to be put through the admission procedure. This included a description of pat search and strip search procedures.
- ! Informal discussions with staff and formal discussions with the respective Superintendents and Managers.
- ! Focus groups. Twelve were conducted, involving separate groups of offenders and employees at both centres.
- ! Questionnaires, which were distributed to all employees and residents of the institutions. As reflected below, the number of responses varied as between institutions and were somewhat limited. Some general external questionnaires were also distributed to some parents of current and past young offenders, and individuals, agencies and organizations who were external resources to the institutions.
- ! Interviews with Fred Honsberger, Acting Executive Director, Correctional Services, and Bill Baldwin, Director, Young Offender Institutions, the psychologist and physician at Waterville, and two young offenders at their request. Representatives of the John Howard Society, the Elizabeth Fry Society, the Advisory Council on the Status of Women, an officer with the Shelburne RCMP detachment, and volunteers associated with both centres were also interviewed.

Some elaboration on the process involved for both the focus groups and questionnaires is contained in the Report.

The goal of the focus groups was to receive feedback on the participants' general views, feelings and ideas on the issue of abuse. The participants were chosen by the Superintendents of each centre, and (in the case of residents) divided into groups according to age range. The Report notes that participants in focus groups are usually chosen at random, but here the choice was left in the hands of management in the interest of saving time.

Before each session began, participants were told that their participation was totally voluntary and that no comments would be identified as having come from any particular individual. A total of 47 young offenders and 32 employees agreed to take part.

Participants were asked a series of predesigned questions. Discussion followed their responses. Participants were also shown visual material to stimulate discussion.

Appendix "A" to the Report lists the predesigned questions asked of residents. Under "definition of abuse," they were asked to provide an example of each of mental/emotional, sexual, physical and verbal abuse. Residents were told that "[a]buse is usually someone exerting power over someone else leaving the victim feeling powerless." Appendix "B" to the Report lists the predesigned questions asked of employees. They were told that abuse is "usually someone exerting power over someone else."

The Report states that every participant in the focus groups was very positive about the experience, as evidenced in the anonymous evaluations completed at the end of the sessions. There was a marked difference, however, between the focus groups at each centre. All young offenders at Shelburne were very talkative and energized, particularly the males. Discussion with female offenders was very emotional, as they talked more about their personal experiences with abuse in their lives prior to being incarcerated. The offenders at Waterville, on the other hand, were not as talkative. Their responses were described as very robotic. Of the two groups of employees at Shelburne, one was relaxed, talkative and very interested; the other was tense and almost hostile. The focus groups at Waterville were affected by the fact that they took place after the suicide of a counsellor at Shelburne who had been accused of abuse (William Belliveau). These focus groups became more of a debriefing session for staff.

The written questionnaires were "developed to capture specific information about abuse." Three different forms were used: one for young offenders, one for employees, and one for external respondents. Each employed the same definition of abuse: "Abuse can happen in many different ways. This includes sexual, physical, emotional and verbal abuse." The response rate to the questionnaires was as follows: Shelburne, 68% of young offenders (37 individuals, six of whom were female) and 25% of employees (27); Waterville, 92% of young offenders (108) and 39% of employees (52).

The questionnaires could be answered anonymously, although some respondents chose to sign their names. Some concern was expressed about confidentiality. One employee reflected that life would become unbearable if his comments became public. Another stated that line staff were unwilling to speak out of fear for their positions, suggesting that management only cared about appearances. One offender was afraid that he would be punished because staff would look

at his response.

Many respondents were very positive about the process and the opportunity to provide feedback. Others, however, believed that no one cared about their views, and that the audit would become just another report on the shelf. Ms. Samuels-Stewart concluded that employees and offenders from both institutions were very reluctant or afraid to express their views. She also believed that offenders in Shelburne were not encouraged by staff to participate.

### **(c) The Auditor's Findings**

#### ***(i) An understanding of abuse***

Ms. Samuels-Stewart found that there is a clear understanding among offenders, employees and others associated with the centres of what constitutes abuse. Most respondents were satisfied with the definition given in the questionnaires. Many, however, added to the definition, citing “spiritual abuse, abuse of authority, neglect, bureaucratic abuse, psychological, spousal and cultural abuse.”

#### ***(ii) Whether young offenders currently in custody are protected from abuse***

Ms. Samuels-Stewart concluded that young offenders in the two centres are not protected from abuse. Comprehensive policies and procedures relating to the safety and protection of young offenders are in place but, in practice, some are not followed and others, even when purportedly followed, are not applied consistently.

She concluded from the focus groups that young offenders feel quite vulnerable to abuse. In addition, she noted that 24% of offender respondents to questionnaires from Shelburne and 18% of offender respondents from Waterville, all of whom said they were not abused, stated they did not feel safe from abuse.

Staff and others were asked about the opportunity for abuse of offenders to occur. A large percentage from both centres said that the opportunity existed. Many said that the opportunity generally existed anywhere and especially in an institution, but others gave specific examples. Some suggested that pat and strip searches are, at times, unnecessary and degrading, and that, for youth who have been sexually abused prior to being incarcerated, they might be considered abusive and compound the young person's problems in dealing with their past abuse. One professional associated with Shelburne stated that “[t]hese excessively frequent searches set up the opportunity for the possibility of actual sexual abuse, and perceived sexual abuse (particularly by those sensitized by prior abuse).” Two young offenders, who had not been abused, also referred to pat and strip searches as things they did not like.

A number of respondents, mostly employees from Waterville, reported that the night shift offers too much of an opportunity to abuse young offenders, as this was the time when staff were alone with them.<sup>3</sup> Many of these respondents reported that abuse is *not* occurring, but felt that the potential existed in light of the limited number of staff during the night shifts.

Ms. Samuels-Stewart concluded that offenders and employees do not report abuse. She stated:

As can be noted in the numerical results from the questionnaires, **if abuse is occurring, nobody is talking about it.** A large percentage of offender and employee respondents did not answer the questions: *If they were aware of or victims of abuse, did they report it?* In addition, a large percentage indicated that they **did not report abuse**, when they were victims or aware of it. (Emphasis in the original.)

The questionnaires reflected that young offenders do not report abuse for many reasons: out of fear, because their feelings are disregarded, because staff are believed over young offenders, and because young offenders who report abuse would be “locked down.”<sup>4</sup>

Employees indicated that they do not report abuse for similar reasons: out of fear of being fired, uncertainty as to employee rights, and concern over the effect on one’s career from speaking out. Employees also listed several other reasons for not speaking out:

- ! A lack of training in security practices, use of force, non-violent crisis-intervention tactics and counselling;
- ! Poor staff morale;
- ! A lack of support from management. One employee wrote that “there is way too much buddy/buddy here[, m]eaning friends/relatives and one is not going to cross the other.” Another wrote that “management has no idea what goes on in the unit and chooses not to.” Yet another reflected that in one prominent case, a manager punched a young person in the back of the head, was charged, and was told he was losing his job, but then returned a short time later as if nothing happened.

The Report states that a large percentage of employees reported that incidents of abuse are either covered up or are not handled properly. Employees variously wrote:

- ! “I was told to keep quiet about it.”
- ! “The only real incident was hushed up and management seemed to cover it up.”

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<sup>3</sup>Ms. Samuels-Stewart noted that Shelburne had the same shift schedule as Waterville.

<sup>4</sup>Distinctions are not always drawn in the Report between explanations, for example, of why abuse which occurred was not reported, and why abuse would not be reported, if it occurred. This is discussed later in this chapter.

- ! “Abuse has occurred in the past with no consequences and with the present leadership will likely continue.”

*(iii) Whether young offenders currently in custody are being abused*

Ms. Samuels-Stewart found that young offenders are victims of abuse while in custody at both Waterville and Shelburne.

Male offenders in focus groups at Shelburne complained in general terms of physical, verbal, emotional and sexual abuse suffered at the hands of the staff. Emotional and verbal abuse were complained about the most. Offenders were very reluctant to talk about specific incidents of abuse, but as soon as one person began to talk about a specific incident, others followed suit.

Ms. Samuels-Stewart said “it was during these focus groups that the first allegations of sexual abuse surfaced.” Allegations were made by more than one offender. Offenders spoke of an incident where a male employee needlessly entered a shower when an offender was in it. Sexual abuse was said to have taken place during pat searches. Residents maintained that not all such searches were conducted with two staff present and that some staff went too far. All offenders were uncomfortable with, or hated, such searches. Offenders understood why they were conducted, but did not understand why they had to be done so often. The Report states that “[v]ery few, if any, complained about strip searches.”

Offenders stated that staff often verbally abused them. Physical abuse was described as often occurring between offenders, but also as occurring between offenders and staff.

At their request, two offenders spoke to the auditor in private. One believed that he had been abused during a pat search. The allegation was reported to the Department of Justice and became a matter of public record. The other offender said he was aware of abuse, but would provide no details.

Seven of the nine female offenders in focus groups said they had been sexually abused by persons they knew in the past. Female offenders indicated that if they were being abused they would not tell anyone. However, some specific incidents of sexual abuse came out, including staff going too far in pat searches and a female offender trading sexual favours for cigarettes with an employee. Female offenders also talked about a program which involved field trips to do manual labour. They said that some men who drove the trucks would touch them on their knees when travelling off-site. Complaints were also made of verbal and emotional abuse: name-calling, put-downs, swearing and threats.

On the questionnaires, many offenders indicated that they had been abused, but would not give details as to the type of abuse or the perpetrator. Employee and external respondents followed the same pattern. Eleven percent of employee respondents from Shelburne, and 40% of

employee respondents from Waterville, said they were aware of offenders who were victims of abuse while in custody, but most did not answer the questions on the type of abuse or who the abuser was. Sixty percent of external respondents did not answer the questions of who abused whom and how. From each centre, however, most offenders, staff and external respondents said they had either not experienced abuse or were not aware of incidents of abuse.<sup>5</sup>

All offenders from Waterville indicated on the questionnaires that they had not experienced any sexual abuse.<sup>6</sup> One Waterville employee said he was aware of an offender being the victim of such abuse, but would not give details. Four offenders at Shelburne said they had experienced sexual abuse, and in every instance it was related to pat searches. One offender said “during pat searches I was sort of touched too much in a certain place. On another occasion my pants came unbuttoned.” All employee respondents from Shelburne said they were not aware of any offender being sexually abused. External respondents reported not having observed or heard of any offender experiencing sexual abuse at either centre.

A small number of offender respondents reported being physically abused: seven from Waterville and three from Shelburne. Only one offender at Shelburne would give details. He said that an employee had dug a pair of keys into the back of his head, and then grabbed him by the neck and shoved him roughly back into a chair when he tried to leave. One offender from Waterville said he had seen people “thrown around, pushed, shoved.”

Interestingly, more employees than offenders reported the physical abuse of offenders by staff. No reports came from Shelburne, but 31% of Waterville employees said they were aware of offenders being physically abused by staff. In fact, there were more reports from staff about physical abuse than any other type of abuse. Examples of such abuse included offenders being grabbed by the genitals (in the presence of several staff witnesses), slapped in the face, shaken “like a rag doll” and thrown against a wall. One external respondent reported being told about young offenders being physically abused by “management.”

As was the case in focus groups, offenders overall reported experiencing more emotional and verbal abuse from staff than any other type of abuse. Twenty-six percent of offender respondents from Shelburne and 15% from Waterville indicated they had experienced emotional abuse from staff. Verbal abuse was reported by 24% of offender respondents at both institutions. Examples of such abuse included staff insulting offenders, putting them down, calling them names, and swearing and yelling at them. Offenders also reported being abused, primarily verbally, by other offenders.

Employees from both institutions, on the other hand, reported that offenders experience very little emotional or verbal abuse. One employee from Shelburne and three from Waterville said offenders experience verbal abuse from staff. One employee from Waterville reported that

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<sup>5</sup>Many of these respondents said they had not been associated with the centre for very long, or had not spent a lot of time at the centre or with the offenders.

<sup>6</sup>One said that when he was at Shelburne he saw someone else “get felt by staff.”

offenders experience emotional abuse. Employees also reported being emotionally and verbally abused by each other, particularly by management and supervisors.

One external respondent reported being aware of both verbal and emotional abuse of offenders. Another reported being aware of emotional abuse.

#### **(d) Conclusions and Recommendations of the Report**

The auditor found as follows:

- ! Persons held in custody at Shelburne and Waterville are not adequately protected against sexual and other abusive conduct (given the reported instances of sexual, physical, emotional and verbal abuse).
- ! There is not an adequate system in place to ensure that complaints can be made, received and acted upon in a timely and effective manner. Young offenders and employees often do not report abuse, and when they do, the incidents are handled internally, which (in the words of the Report) “is not seen to be adequate.”
- ! There are not appropriate mechanisms in place to ensure proper communication and follow-up between responsible departmental authorities and police agencies in the event of allegations of sexual or other abuse of young persons held in custody. Ms. Samuels-Stewart reasoned that because incidents of abuse are either not reported or, if reported, handled internally, it follows that there is not proper communication and follow-up between responsible departmental authorities and police agencies. She also noted that the RCMP officer with whom she spoke said that, to his knowledge, his detachment had never received a complaint from the Shelburne Youth Centre.

The Report contains 23 recommendations. A number refer to the procedures regarding pat searches (how they should occur, how often, and in whose presence) and requirements for recording them. Other recommendations relate to matters such as staff training, termination of employees who physically abuse residents or who do not adhere to policies concerning verbal or emotional abuse of residents, and procedures for lodging complaints and regularly educating offenders as to these procedures. Recommendations more indirectly related to abuse were also made which need not be elaborated upon here.

The Report notes that 27% of the employees at Shelburne were related to one another either by birth or through marriage. Many people who work at Waterville were also related to each other, though percentages there were not as high. Ms. Samuels-Stewart recommended that the Department of Justice implement a policy preventing employees from being supervised by persons related to them by birth or marriage.

Ms. Samuels-Stewart recommended that her exploratory audit be followed up by another, more in-depth audit in 12 months and annual audits thereafter. In making this recommendation, she noted that many dedicated employees work at the centres, and many offenders benefit from being there. Many respondents spoke of the benefit and need for an audit such as hers to ensure positive changes. She also recommended that an external, independent body review the additional information received from the questionnaires and that the Correctional Services Division of the Department of Justice follow up on the other problems, concerns and recommendations put forward by respondents.

### **3. THE ACCOMPANYING LETTER**

On March 17, 1995, Ms. Samuels-Stewart provided her Report and an accompanying letter to the Minister of Justice. In the letter, she summarized her Report in these terms:

The audit reveals that young offenders are victims of abuse at both Centres. Sexual abuse, while not the main type of abuse reported, is said to have occurred primarily during pat searches. Offenders report that they suffer the most from emotional and verbal abuse from employees; on the other hand, employees report that offenders are victims of physical abuse from staff, the most. Employees, particularly from Waterville, report suffering a lot of emotional and verbal abuse from Officers-In-Charge, and management.

She also believed it important to highlight and comment on certain areas, noting that the names of staff and other similar information are not in the Report itself.

She wrote that the return rate of questionnaires from employees and offenders at Shelburne was very low, indicating that “employees just could not be bothered or many of them won’t talk; and that offenders were not encouraged to participate, and/or they did not out of fear or intimidation.” The return rate from Waterville for offenders was “excellent,” but “not great” for employees. She strongly recommended that certain officials at Shelburne be removed from their positions, saying “[t]here is every indication that they do not have the ability or will to manage properly.”

As reflected in the Report itself, she noted that participants in the focus groups were, for the most part, very eager to talk and needful of the opportunity to do so. But the process was virtually shut down by a counsellor’s suicide, and focus groups held afterwards at Waterville resulted in more of a debriefing session. She stated that staff were very concerned about policies and procedures surrounding pat searches, and how to protect themselves from “allegations.” They also talked a lot about inconsistencies in overall policies and procedures. She reflected that something needed to be done immediately with the Waterville employees, since “morale is very low, and they made serious allegations about the abuse of offenders by management and the cover-up of these incidents.”

She noted that the questionnaires contained serious allegations against certain employees at both centres, some of whom are still working there. She reproduced some of the allegations.

Ms. Samuels-Stewart indicated that when she spoke to Bill Baldwin, Director, Young Offender Institutions, he said that many of the alleged incidents had occurred in the past and had been dealt with. He also felt that he knew who made the allegations and that this person had a hidden agenda involving a “union v. management” issue. Ms. Samuels-Stewart commented that even if that was true, these incidents were reported by more than one employee. She expressed her concerns as follows:

My concerns are that these incidents, in the minds of employees, were covered up; and that if all of them are true, - and I believe they are -, the perpetrators are still working there. Furthermore, if they were handled internally, how?? - who outside of the institution was informed, and when - how soon after the fact?

Her audit of Waterville found “signs of serious mismanagement,” but, in contrast to Shelburne, she did not make any recommendations in regards to management. She conceded that may have been because she personally liked a certain senior manager “and personality counts for a lot in my judgment of character.”

Ms. Samuels-Stewart concluded by pointing out that there are very dedicated and caring employees at both centres. She added that those employees and offenders who spoke up about abuse were very brave and did so because they sincerely wanted a change.

#### **4. GOVERNMENT RESPONSE TO AUDIT REPORT**

The Minister of Justice accepted many of the Audit Report’s recommendations. In particular, he indicated that:

- ! a review of the frequency of pat searches had already commenced, and policies and procedures regarding pat searches would be reviewed;
- ! all pat searches would be done in the presence of two staff members, save in exceptional or emergency circumstances;
- ! retraining for all staff about pat searches would be undertaken;
- ! employees found to physically, verbally or emotionally mistreat young offenders would be disciplined, up to and including termination of employment;
- ! an external agency currently involved with the provision of services to young offenders would be nominated to receive their complaints;
- ! the process for laying complaints would be reviewed with each young offender on a monthly basis; and

- ! all current employees would be screened through the provincial Child Abuse Registry.

The Minister did not adopt recommendations pertaining to the relocation of female young offenders or the building of a young offender facility in Cape Breton.

On the same date, the Department of Justice released a report by Waterville Superintendent William Lonar into an allegation of sexual abuse by former counsellor William Belliveau.<sup>7</sup> Based upon the available evidence, he found it impossible to determine whether the alleged abuse took place. The Department indicated that five recommendations made by the Superintendent would be implemented.<sup>8</sup>

Various Government officials, including senior management and staff within the institutions, considered the Report's methodology to be seriously flawed, the findings to be inflammatory and unfair, and the anecdotal and other information to be, at times, inaccurate, misleading or incomplete. Some of these concerns are further elaborated upon later in this chapter.

## **5. THE OMBUDSMAN'S OFFICE**

As noted above, the Government accepted Ms. Samuel-Stewart's recommendation that an external agency be nominated to receive young offender complaints. The specific recommendation was number 12, which reads as follows:

12. It is recommended that an external body/committee be appointed to act as a registry for complaints. In addition, an ombudsman/advocate for employees and offenders be appointed. This person or committee must be very visible at the institutions and must also be seen to be impartial.

The rationale for this recommendation was that "[e]mployees and offenders need somewhere to take their concerns."

On December 20, 1995, Fred W. Honsberger, Executive Director of Correctional Services in the Department of Justice, wrote to Douglas R. Ruck, the Province's Ombudsman. Honsberger proposed that the Ombudsman take on the function of receiving complaints made by residents as well as employees. Ruck replied on December 28<sup>th</sup>, expressing his agreement. He indicated the new task would be assigned to Linda Arthur, who would commence monthly visits

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<sup>7</sup>Mr. Belliveau was the Shelburne counselor accused of abuse who committed suicide.

<sup>8</sup>The recommendations addressed the maintenance of complaint reports, staff training and professionalism, and existing search procedures.

to the institutions involved in January 1996. (In fact, the first visit took place in March.)

On January 22, 1996, Honsberger again wrote to Ruck, outlining the mutual understanding of the role to be played by the Ombudsman's Office. In summary, he indicated it was to:

- ! Create a visible and impartial presence in all Nova Scotia youth offenders institutions;
- ! Serve as a registry of complaints to provide support for staff and youth;
- ! Ensure a fair and consistent administration of policies and procedures by dealing with complaints and identifying related concerns to the Department of Justice;
- ! Ensure that staff are adequately trained in relevant areas of responsibilities by identifying training deficiencies to the Department of Justice;
- ! Ensure that present policies and procedures work to prevent the occurrence of abuse and identify areas of needed improvement to the Department of Justice;
- ! Distribute to all youth and staff an outline of the Ombudsman's role and visit with all staff within six months.

The letter noted that it would not be the Ombudsman's role to investigate allegations of abuse arising from incidents at any of the young offender institutions; these would be referred to the police or to child welfare authorities.

On March 28, 1996, the Ombudsman submitted to the Minister of Justice a document entitled *Registry for Complaints by Offenders and Employees of the Young Offender Institutions in the Province of Nova Scotia*. In an accompanying letter, Rusk stated that he was pleased to endorse the creation and implementation of a Registry of Complaints – a result of the Department of Justice's commitment to implement Recommendation 12 of the Samuels-Stewart audit. He added that this Registry would foster and promote the importance of early, appropriate and fair intervention.

The complaints subsequently received by the Ombudsman's Office from residents ranged

from relatively minor matters, such as the loss of a privilege, the quality of food, and rooms being too hot or too cold, to more serious matters, such as denial of telephone or other contact with family, denial of a visit to the psychologist, and concerns with Nova Scotia Legal Aid. There were also complaints of physical, sexual and racial abuse. Complaints from employees touched on the internal investigations associated with the Compensation Program and the behaviour by residents which, according to staff, was the result of these investigations and of media attention labelling staff as child abusers. The Ombudsman also investigated concerns expressed by outside agencies such as the RCMP, the regional police and the Sheriff's office, including two complaints (one in 1999, the other in 2000) stemming from alleged improper treatment of female youth by officers and staff of a municipal police force.

On January 21, 1998, Mr. Ruck gave a report to the Minister of Community Services, noting, among other things, that "clearly, youth in care of the Province of Nova Scotia need a voice. One of the most fundamental elements of administrative fairness is the right to be heard." This led to the establishment, in 1999, of the Children's Ombudsman, created under section 8(1) of the *Ombudsman Act*. This office now oversees all areas dealing with children. Ruck pointed out in a letter dated March 8, 2000, to the Minister of Justice, the Honourable Michael Baker, that "the presence of the Office has fostered and promoted fairness, equity, and respect." He added that, "[a]s sadly demonstrated by past events, and as declared in numerous reports and studies, there has existed in this province the need for an independent and impartial body to oversee, monitor and make recommendations with respect to services provided to children and youth."

The involvement of the Ombudsman's Office has been a positive development which followed Ms. Samuels-Stewart's recommendation outlined above.

## **6. INTERVIEW WITH MS. SAMUELS-STEWART**

Ms. Samuels-Stewart (now Ms. Samuels) was interviewed by my senior staff. She provided helpful information, some of which was confidential and has been treated as such. Indeed, she was careful to preserve the confidences of the employees and residents with whom she had met.

Ms. Samuels-Stewart was trained as a social worker, and was a director of a women's shelter and a half-way house for adults. She then worked with the federal government on issues of employment equity, focussing on systemic discrimination issues. At one point, she was seconded to the Canadian Human Rights Commission, where she was trained as an investigator,

although her work was largely in communications. She later worked at the Bank of Nova Scotia to address employment equity issues. She is now Coordinator of Race Relations and Affirmative Action with the Nova Scotia Human Rights Commission. Her experience with abused women and adolescents derived from her work at shelters.

She told us that the allotted time for her audit was very short and there was pressure not to exceed that time. She felt that this constraint prevented her from doing a complete audit. As reflected in her Report and the accompanying letter, she had deep concerns about a number of issues. She expressed some scepticism about the Government's interest in addressing those concerns.

She thought that the Superintendent at Shelburne had been largely uncooperative and uncommunicative during her audit. The Superintendent felt differently: he thought Ms. Samuels-Stewart did not make time to meet formally with the superintendents and managers of each institution, and that, had she done so, serious factual errors in her Report might have been avoided. Ms. Samuels-Stewart conceded that her experience with the officials at Shelburne was largely adversarial. As I later note, her suggestion (to the Minister) that certain officials should be terminated was, in my view, not only inconsistent with basic fairness, but well outside her mandate and, in any event, not adequately supported, if at all, by the available evidence.

Ms. Samuels-Stewart was asked whether, in hindsight, she would have done anything differently in conducting the audit. She acknowledged that her audit was not as scientific as it could have been. She recognized that she was not conducting an audit in the true sense of the word. It would have been preferable to interview management staff, child welfare authorities, parents or guardians of young offenders and former residents and staff. However, time constraints prevented this, although some questionnaires were sent to such people. She would have liked to have had someone within government to liaise with, and debrief, on an ongoing basis. She thought that the Stratton investigation and her own audit should have been merged to avoid repetitive and sensitive inquiries directed to the same issues. She recognized that she had been criticized (in her view, unfairly) for reporting an allegation of abuse which some believed contributed to a counsellor's suicide. However, she insisted she had a moral and legal obligation to report the allegation.

## 7. ANALYSIS

*It was entirely appropriate that an audit of current policies and procedures form part of the Government's response to reports of institutional abuse. As well, it should be acknowledged that Ms. Samuels-Stewart's Audit Report contains a number of useful recommendations. However, that being said, in my opinion the Audit Report is significantly flawed, and these flaws may have contributed, albeit inadvertently, to the overall unsatisfactory nature of the Government's response.*

*As I earlier noted, when the Audit Report was released, its findings (as opposed to its systemic recommendations) were strongly contested by voices within Government, including the Superintendent at the Shelburne Youth Centre, Heikki Muinonen. Mr. Muinonen prepared a detailed, critical analysis of the Report which my staff and I have reviewed. However, to ensure independence and objectivity, I retained Ross Dawson to provide me with his own review of the audit.*

*Mr. Dawson's credentials as an internationally recognized expert in the development and provision of child abuse services are impressive. Indeed, it will be recalled that in November 1994 the Minister of Community Services retained Mr. Dawson to conduct a full operational review of the Nova Scotia Residential Centre.<sup>9</sup> Since the most contentious part of Ms. Samuels-Stewart's Report had to do with her findings that young offenders were still being abused and that appropriate practices and procedures were not in place to ensure that complaints could be made and appropriately responded to, it was important that the independent review of her work be conducted by an expert properly regarded as a child's advocate. Although I do not agree with every criticism contained in Mr. Dawson's report, I adopt many of them.*

*Ms. Samuels-Stewart was engaged to perform an audit into current policies and procedures. Her Terms of Reference mandated that she inquire into whether residents of Shelburne and other young offender institutions were adequately protected against sexual and other abusive conduct; whether the systems in place adequately ensured that, in the event of such improper conduct, complaints were made, received and acted upon in a timely and effective manner, and whether there were appropriate mechanisms in place to ensure proper communication and follow-up between responsible departmental authorities and the police in the event of allegations of such improper conduct. She was not mandated to investigate and determine the extent to which sexual and other abusive conduct was occurring or by whom.*

*Nonetheless, in framing her task, she identified the following as the "areas of concern:"*

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<sup>9</sup>He was also to examine the policies and procedures of the Nova Scotia Youth Training Centre, with particular emphasis on the safety and security of the residents.

1. *Understanding of what constitutes abuse, by young offenders, employees, and others associated with the centres.*
2. *Are young offenders currently in custody protected from abuse?*
3. ***Are young offenders currently in custody being abused?** (Emphasis added.)*

*A significant portion of the Audit Report is devoted to the third area of concern: whether offenders currently in custody are being abused. Much of the audit's methodology (the questions asked in focus groups, questionnaires and interviews) was directed to determining whether current offenders were being abused, the nature of that abuse and by whom it was being perpetrated.*

*The issues for the auditor were to be systemic. She was to determine whether the practices in place adequately protected against abuse, and not if it was currently occurring. She was to determine whether, in the event of abuse, practices were adequate to ensure complaints were made and acted upon and that the appropriate communications and follow-up with police could be made. Although it would be expected that answering these questions would invite some revelations as to abuse, current or historical, this did not provide a license for yet another investigation into the extent of abuse at the institutions.*

*Having said that, I do recognize that, arguably, if it could be shown that significant abuse was continuing to occur, it would support a finding (properly within the audit's mandate) that existing protection for residents was inadequate. But even assuming that the Terms of Reference invited such inquiries, in my opinion the investigation was flawed. Abuse was defined so broadly as to be misleading. The focus groups were told that "abuse is usually someone exerting power over someone else leaving the victim feeling powerless." Ms. Samuels-Stewart advised my review that this definition appropriately recognized the subjectivity of abuse and showed sensitivity to the needs and concerns of young people. No doubt there is much truth in those comments, but that does not mean that the definition is appropriate to every context. Here, the residents' answers were used to support a conclusion that they were currently being abused.*

*In the context of a closed facility for offenders, such a definition makes inevitable a determination that the residents were being abused. It would be the exception rather than the rule that a resident of a custodial setting would not feel powerless by reason of the exertion of power by another. Indeed, it is the responsibility of employees, at times, to exert such power*

*within an institution. More important, in the context of a Government response to reports of serious sexual and physical abuse, an audit that finds abuse based upon a purely subjective, overly broad definition is likely to be misinterpreted and unfairly stigmatize the employees. It may also distract the reader from the systemic issues of concern.*

*Apart from these concerns, the methodology employed in the audit was deficient in a number of other respects.*

*The Report draws conclusions as to the absence of policies and protocols despite the existence of such policies, particularly at the Shelburne institution. Ms. Samuels-Stewart suggested, in meeting with the review staff, that the Shelburne Superintendent was the author of any deficiencies in this regard, given his failure to fully cooperate with the work of the audit. The Superintendent, on the other hand, indicated that he was never given the opportunity, which he desired, to address a number of issues, resulting in inaccuracies in the Audit Report. It is unnecessary to resolve the competing views as to why the Superintendent's position was not available. Ms. Samuels-Stewart was acting at the direction of Government, which could have been approached to address any perceived lack of cooperation, had it existed. I emphasize the term "perceived" lack of cooperation, since I had available to me no other evidence suggesting that the Superintendent was uncooperative in dealing with Ms. Samuels-Stewart, Mr. Stratton or other Government officials on these issues.*

*Mr. Dawson was of the view that the auditor should have reviewed the reporting and complaints policies and procedures for both centres and a sample of documentation such as case files and reports pertaining to the use of force, serious occurrences or complaints of abuse. Although there is little reflection of it in the Audit Report, Ms. Samuels-Stewart advised my staff that some of this documentation was indeed reviewed. She failed to more fully review it because of the lack of cooperation she perceived at Shelburne and the severe time limitations imposed by her mandate. With respect, I consider it surprising that the Report made 'findings' and recommendations absent any detailed analysis of existing policies and procedures.*

*Focus groups were conducted with groups of staff and residents from both centres. Focus groups can be an appropriate means of gathering certain kinds of information, depending upon the nature of the information sought, the selection of participants, the preparation of the participants for the process, and the use of a structured interview guide. Mr. Dawson notes, and I agree, that focus groups are not considered an appropriate forum for investigating whether or not participants have experienced abuse.*

*Ms. Samuels-Stewart told us that she prepared the participants at the commencement of*

*the focus groups. She acknowledged that this is generally not the most appropriate time or way to prepare them for the process. She felt that Shelburne staff should have prepared them before. She also stated that the Superintendents selected participants.<sup>10</sup> An auditor must assume control over the selection process and personally ensure that the participants are fully and properly prepared for the sessions. If participants are truly to be regarded as voluntary, it is insufficient to indicate to them, only after they attend for the focus group, that the process is voluntary. Their continued presence may represent reticence about getting up and leaving, rather than their free and voluntary participation in the process.*

*The Audit Report reflects that the purpose of the focus groups “was to receive feedback from both young offenders and employees on their general views, feelings and ideas on the issue of abuse.” Mr. Dawson suggests that this purpose did not specifically align with the Terms of Reference for the audit. He also thought that the predetermined questions for the focus group were not specifically related to the Terms of Reference.*

*The questions for the young offender focus groups included only three questions with a somewhat narrow focus. One question related to what is abuse, one to what a person should do if abused, and one to how abuse is handled at the centre. The last question appears to presuppose the existence of abuse and, for that reason, is not appropriate. As Mr. Dawson noted, “this is especially important in group settings where contamination of information is highly possible as participants may copy or reinforce each other’s perceptions and experiences both with and without a factual base.” No doubt, these questions were intended to seek, in simple understandable terms, what residents had to say generally about issues of abuse. However, it would have been preferable had questions been carefully crafted to address specifically what residents view as current safeguards, their opinions of the current complaints process, and their suggestions for improving safeguards and the complaints process.*

*The five predetermined questions for the employee focus group were also somewhat limited and problematic. Ms. Samuels-Stewart recognized herself that the validity of conducting focus groups at Waterville after the suicide of a Shelburne counsellor following an allegation of abuse was questionable.*

*It is Mr. Dawson’s opinion, with which I agree, that the focus group methodology was*

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<sup>10</sup>It is the position of the Superintendents that they did not select the participants. It is unnecessary for me to determine precisely how the participants were selected.

*not appropriately applied and, indeed, was contra-indicated in Waterville. The reliability and validity of the information obtained through the focus groups is questionable and should not have been used to make 'findings.'*

*The interviews conducted by the auditor were quite limited. Mr. Dawson suggests that it would have been essential to conduct interviews with management and staff at both centres. It would also have been appropriate to interview child welfare authorities who are required to receive and investigate reports of child abuse and neglect in the regions where the centres are located, some parents or social workers assigned to provide guardianship services, and a sample of former residents and employees. Ms. Samuels-Stewart agreed that more extensive interviewing would have been an appropriate component of the audit methodology. However the time constraints imposed upon her prevented such an approach. I understand her position on this point.*

*The questionnaires were a central component of the audit methodology. Mr. Dawson reflected that, apart from four introductory questions, the young offender questionnaire was composed of 17 questions, 10 of which were directed to whether the resident has been abused, details of the abuse and whether or not he or she had reported the abuse. Only three questions were directed to the resident's overall view of the centres and things he or she would like to see changed. The questionnaire would appear to have been primarily directed to the issue of whether abuse was occurring.*

*Mr. Dawson also articulated the significant design difficulties in the questionnaire. These included:*

- ! Some questions are leading in nature and suggest abuse;*
- ! Respondents self-declare that they have been abused without preparation and other means of ensuring that they understand and can apply the types of abuse which are listed in the questionnaire;*
- ! The types of abuse listed are not defined or described;*
- ! Some questions are overly general (such as "are you satisfied with what happened?");*
- ! Some questions require a "yes" or "no" without any explanation;*

! *Many important questions related to the Terms of Reference are not asked.*

*My own review of the questionnaires supports many of these concerns. For example, respondents are asked “if you have not been abused, do you feel that you are safe from being abused at the Youth Centre?” without any invitation to explain their answers. They are asked “have you ever seen anyone else at the Youth Centre suffer from abuse of any kind?” without any invitation to elaborate.*

*I have serious concerns as to whether any young person should be invited, through a questionnaire process, to describe their own abuse and the abuse they witnessed on others. Respondents who have experienced abuse, outside or inside the institution, are being asked for disclosures, without any support mechanisms in place either before or after these questionnaires are filled out. This is a singularly inappropriate way to invite disclosures about abuse. Where questionnaires may result in disclosures of child abuse, there are traditional mechanisms to address these concerns. These are elaborated upon below.*

*Despite these concerns, it is true that personal accounts or other information yielded as a result of these questionnaires could potentially enlighten the reader and advance an understanding of how the respondents are feeling. However, that is a very different matter than collating the responses and utilizing the numbers derived from them to make affirmative findings as to abuse. With respect, it would be impossible to obtain consistent and reliable information from many of the questions, given their construction and lack of definition. I agree with Mr. Dawson that the questionnaire does not lend itself to a reliable tabulation of data due to its design problems and limitations:*

*It is the reviewer’s opinion that the young offender questionnaire was poorly designed, was not reflective of the terms of reference, and unlikely to yield adequate, consistent, reliable or valid data. Any audit findings resulting from aggregate questionnaire data would likely be speculative or at best very tentative.*

*The questionnaire directed to employees suffers from some of the same flaws. Many questions invite speculation. Many important questions related to the Terms of Reference are not asked. Employees who may have no knowledge of abuse and have never been called upon to report abuse are invited nonetheless to express their beliefs as to whether there are young offenders who have been or are being abused (and how often), and as to whether abuse complaints are being handled properly or are being covered up. No distinction is drawn between historical and current abuse. Many of the employees had been at the institutions for*

years. The questionnaire does not lend itself to a reliable tabulation of data due to these design problems and limitations.

The Audit Report found that residents, employees and others associated with both centres had a clear understanding of what constitutes abuse. It was noted that most respondents to the questionnaires were satisfied with the definition given and that many added to the definition, citing spiritual abuse, abuse of authority, neglect, bureaucratic abuse, psychological, spousal and cultural abuse. In the absence of any meaningful definitions of these types of abuse or any questions directed to what the respondents understand them to consist of, it is impossible to infer that all of the respondents truly understood what constitutes abuse. On the contrary, the ways in which abuse is described or defined in the questionnaires invite misunderstanding.

The same difficulty arises in relation to the focus groups. The Audit Report noted that all offenders in the focus groups could provide examples of physical, verbal, emotional and sexual abuse. Of course, appropriate examples of abuse may well indicate some understanding of abuse. However, it does not ensure that the participants understand distinctions between abuse and inappropriate conduct. Indeed, the descriptions and definitions given invite participants to describe as abuse any exertion of power over a resident which leaves the resident feeling powerless. Abuse is an inflammatory term which, in my view, should not be utilized to describe every inappropriate comment or action by staff that leaves a resident feeling vulnerable. As I earlier noted, this is particularly so in the context of a Government response to reports of serious sexual and physical abuse. In summary, there is insufficient support for the finding that all participants understood the meaning of abuse.

The Audit Report found that residents in both centres are not protected from abuse. It also found that, whereas there are comprehensive policies and procedures in place, they are not all followed in practice or applied consistently. This 'finding' is made without any analysis whatsoever of what these comprehensive policies and procedures are, and in what circumstances they are not followed or applied consistently, and without any detailed analysis of how these policies and procedures could be improved. (The recommendations which later follow are very general in nature.) The cited support for this finding is that the young offenders in focus groups felt vulnerable. Also cited in support were the offenders' responses in questionnaires indicating that, although they were not abused, they did not feel safe from abuse. It is noted as well that a large percentage of respondents said that the opportunity for abuse did exist, although many said it generally existed anywhere. A few individuals are quoted as expressing concern over the frequency of degrading pat searches. Put simply, the evidence was wholly inadequate to support a finding that policies and procedures were not being followed at the institutions.

*The Audit Report found that offenders and employees do not report abuse. Anecdotal comments in support of this conclusion are often speculative (e.g., “If I was abused here, we both know that it’s their word against ours”) or not necessarily supportive of the conclusion (e.g., “There is no support from any management positions and everyone tries to step on someone else to get ahead.”)*

*The Report also reflected that the questionnaire results showed that “if abuse is occurring nobody is talking about it.” However, a careful review of the questionnaires themselves shows, at best, that the responses from residents are difficult to interpret. At Shelburne, although 12 residents said they had experienced some form of abuse, 16 residents answered the question whether or not they had reported it. Three Shelburne employees indicated that they knew of a young offender who had been abused at the institution, but nine answered the question whether they reported the abuse they witnessed. Twenty-one Waterville employees said they knew of abuse, but only 14 indicated whether they did or did not report abuse. Forty-three percent of the residents who said they had been abused at Waterville said they did report it. Put simply, even apart from the flaws in methodology earlier identified, the data does not support the ‘finding’ reached. At most, it supports the view that some ‘abuse’ is not reported. However, it is not helpful in correlating the type of abuse to the level of reporting.*

*The Audit Report further indicated that a large percentage of employees report that incidents of abuse are either covered up or not handled properly. Some anecdotal information is provided to support this finding. The questionnaires reflect that at Shelburne three staff members felt that abuse was not handled properly and four indicated that abuse is covered up. At Waterville, 15 staff felt that abuse was not handled properly and the same number felt it was covered up. Presumably, the close correlation between the numbers of respondents reflects that the same staff members are answering both questions. However, 10 staff in total reported that they witnessed and reported abuse to management, counsellors or to the authorities, and only five indicated that they were aware of the outcome. Mr. Dawson concluded as follows:*

*While only 5 staff members indicated they were aware of the outcome of the report of abuse many more staff responded to the questions of appropriate handling of reports and cover up. This would suggest that staff responses to these questions are opinions or biases and not based on direct knowledge ... The reliability of the data regarding the handling of abuse reports and possible cover up is very questionable. This combined with the problems identified related to the questionnaire itself suggest that no valid finding should be made respecting these matters.*

*I agree.*

*The Audit Report found that offenders currently in custody in both centres were being abused. The anecdotal information from the focus groups contained few examples of clearly abusive behaviour. There appears to be an assumption that pat searches should be characterized as abusive if subjectively regarded as such by the offenders. As well, the Audit Report noted that offenders were reluctant or afraid to talk about specific incidents of abuse, but followed suit once one offender disclosed. It is difficult to determine if the reliability of these disclosures was compromised by group dynamics. Given the flawed methodology earlier described, it is difficult to place reliance upon the questionnaires to conclude that abuse was occurring at the institution to a significant degree. However, the responses, together with some anecdotal information, certainly invited concern that some improper behaviour by staff occurred, the nature and quantity of which was uncertain. That could properly be the subject of recommendations. Mr. Dawson concluded as follows:*

*In the reviewer's opinion there are too many problems associated with the questionnaire methodology and the interpretation of the resultant data to conclude with certainty that residents in both centres are currently being abused. At best, the results indicate that there is a strong possibility that some abusive behaviour is taking place, and that the differential in staff reported knowledge of abusive knowledge suggests that response of one staff group is highly suspect in terms of its accuracy.*

*Mr. Dawson also took issue with the contents of Ms. Samuels-Stewart's letter to the Minister of Justice which accompanied the Audit Report. He regarded, as do I, her recommendation to remove two senior officials from their positions at Shelburne to be inappropriate. Her conclusion that there are signs of serious mismanagement at Waterville was equally inappropriate: the issue of performance appraisal was not included in the audit's Terms of Reference, nor was the audit methodology designed to evaluate management's performance. But in any event, management's performance is not even discussed in the Audit Report. No foundation or justification for the auditor's recommendations or conclusions is contained in it. Her comments appear to indict public officials without evidence or administrative fairness, and appear to be highly subjective and personal. Indeed, Ms. Samuels-Stewart acknowledges, somewhat surprisingly, that the fact that she personally likes a senior manager at Waterville may explain why she did not make a recommendation regarding his continued employment.*

*As earlier noted, Ms. Samuels-Stewart reflected that the return rate of questionnaires from employees and offenders was very low, indicating to her that "employees just could not be bothered or many of them won't talk; and that offenders were not encouraged to participate, and/or they did not out of fear or intimidation." Mr. Dawson concluded, as do I, that these comments are highly judgmental and pejorative and do not appear to be based on objective data and findings. Unfortunately, this letter undermines the credibility of the Audit Report.*

*Questions were raised during the review concerning Ms. Samuels-Stewart's qualifications to conduct the audit. Ms. Samuels-Stewart is an extremely capable individual with experience in human rights and systemic discrimination issues. She was a director of a half-way house for adults, had training in the investigation of complaints with the Canadian Human Rights Commission, and had experience as a liaison officer for the John Howard Society. Her work history for the five years prior to her audit was primarily related to human resources work.*

*In my view, fulfilment of this mandate required 1. knowledge and experience regarding child abuse, its causative and contributing factors, and factors which contribute to abuse in residential care settings; 2. knowledge of and experience in techniques for interviewing potentially abused young people in a way that enhances reliability and minimizes the possibility of contamination; 3. familiarity with the governing legislation; 4. knowledge and expertise relating to best practices in residential care, with an emphasis on young offender institutions, and policies and procedures, staffing, training and supervision existing elsewhere that prevents abuse or protects youth in residential care settings; 5. knowledge of and expertise in audit methodologies, data collection techniques to ensure validity and reliability, and the analysis of data; 6. knowledge of existing protocols relating to communication between police, social agencies and young offender institutions; and 7. knowledge of existing complaint processes relating to young persons in residential settings.*

*Ms. Samuels-Stewart had no prior experience in conducting research or evaluations of young offender institutions, or in designing or conducting institutional audits. She had little or no specialized training in child abuse, existing policies and protocols designed to address the potential for abuse in residential settings, and the complaint or investigative processes relating to young people. She appeared to have little or no prior knowledge of the protocols between police agencies, child welfare agencies and young offender institutions. None of this is intended to involve any criticism of Ms. Samuels-Stewart, but rather is a recognition that there were significant deficiencies in her knowledge and experience that inhibited an ideal fulfilment of the audit's mandate.*

*I earlier made reference to the analysis of the Audit Report prepared by Mr. Muinonen, then Superintendent at Shelburne. It was obvious from interviews conducted during my review with Mr. Muinonen and Ms. Samuels-Stewart, as well as from their writings, that they held very different perspectives on the auditor's approach to her task. Mr. Muinonen identified numerous factual errors in the Audit Report which, in his view, were attributable to the auditor's failure to formally meet with him and others, despite requests to do so. Ms. Samuels-Stewart perceived*

*Mr. Muinonen to be uncooperative and reluctant to assist her. As I said before, it is unnecessary for me to resolve the conflicting views on why the auditor did not obtain full explanations from the Superintendent and others about existing practices and procedures. With respect, it was the auditor's duty to ensure that senior management's perspective was fully articulated, even if, as I also noted before, their participation was compelled through the intervention of the Department of Justice. It is also unnecessary for me to address each of the alleged factual errors contained in the Audit Report. However, existing documentation does permit me to conclude, apart from the flaws in methodology and 'findings' earlier identified, that the Report contains some significant factual errors and omissions. It is only necessary to refer to some by way of illustration.*

*The Audit Report leaves the impression that serious allegations of abuse were only handled internally, usually in an unsatisfactory manner, and that these allegations may have been covered up or otherwise improperly dealt with. There is little or no reflection that the RCMP or the Children's Aid Society ("CAS") was advised of abuse complaints.*

*Mr. Muinonen suggests that this is seriously misleading. Procedures for reporting child abuse go back to at least 1991 and were accompanied by significant training by child abuse specialists and by a reporting form developed in consultation with the Shelburne County CAS. Children's Aid Society and Shelburne records reflect that the CAS office at Barrington was contacted respecting abuse allegations on at least 12 occasions prior to the audit. Shelburne has been criticized in the past by the Children's Aid Society of Shelburne and the Shelburne RCMP detachment for over reporting possible abuse cases.<sup>11</sup> This matter was the subject of discussion between senior RCMP officials in Halifax, representatives from detachments at Barrington and Shelburne, and senior administrative staff with the Department of Community Services.*

*It is not my role here to now assess the adequacy of policies and procedures to address complaints of abuse in place during the audit. However, I have reviewed independent documentation that does support some of Mr. Muinonen's contentions and which would have been available during the audit. Ms. Samuels-Stewart did not interview CAS employees. Her Report reflects that **one** RCMP officer said that, to his knowledge, they had never received a complaint from the Shelburne Youth Centre. With respect, Ms. Samuels-Stewart's limited review of existing practices and limited interviews with senior management, the RCMP and Children's Aid did not permit her to indict the two young offender institutions for a failure to follow policies*

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<sup>11</sup>The RCMP has a protocol through which complaints made to the Children's Aid Society are also routed to them.

*and procedures.*

*The Audit Report details some serious allegations of abuse. Mr. Muinonen indicated that he was aware of most, if not all, of these allegations. For example, the Report refers to a serious allegation of trading cigarettes for sexual favours. Mr. Muinonen indicated that this matter was referred to the Shelburne detachment of the RCMP for investigation. They found no basis for the allegation. Reference is made to two residents who spoke to the auditor privately. As the auditor noted, one of the allegations was known to the RCMP and later became public after the employee committed suicide. Mr. Muinonen has indicated that the other was reported (prior to the auditor's encounter) to the CAS. That resident chose not to press charges with the RCMP. An incident involving the abusive use of keys was reported to the RCMP and to the Children's Aid Society. An anecdotal reference to a punching in the head was noted without reference to the disciplinary action that followed. No reference was made to the termination of two casual staff members for inappropriate use of force. As well, Mr. Muinonen noted that some of the anecdotal information related to historical matters, but were not identified as such in the Report. In his view, institutional memories are long-lasting. Therefore, some precision is required to extract meaningful information.*

*Again, it is not my role here to evaluate the appropriateness of the institution's response to allegations of abuse. Nor is it necessary to independently evaluate Mr. Muinonen's assertions. If the auditor felt compelled to devote her attention, in large measure, to specific allegations of abuse, she had some obligation to investigate how the institutions responded to those allegations. It is clear that undue emphasis is placed by the auditor on anecdotal information, speculation and impressions of respondents. Unfortunately, despite the best intentions, the Report does not represent a balanced and informed evaluation.*

*Mr. Muinonen articulated safeguards which existed to address abuse that were not recognized by the auditor. For example, offenders were informed during orientation of their recourse if abused. They signed forms acknowledging they had received this information. Additional information was provided following placement in the unit. Recourse for young offenders was posted in all units, and telephone numbers for the Children's Aid Society, the RCMP and the Superintendent were provided. The offenders were aware of access to the chaplain and a psychologist, and had unlimited access to lawyers, if requested. They each had youth workers assigned to them. Request boxes were provided throughout the institution. The Superintendent had an open door policy.*

*Again, I am unable now to evaluate the existence or adequacy of these safeguards. But these were issues which Ms. Samuels-Stewart should have specifically addressed.*

*Two additional problems with the questionnaires were noted by Mr. Muinonen. First, reliance is placed upon the respondents' views as to whether appropriate action was taken in response to complaints. He noted that some employees do not have complete information and are not always aware of the actions of management respecting individual employees. They will often not know the results of the investigation. Hence, they frequently make assumptions based upon limited knowledge. Second, the methodology was so imprecise that a number of respondents expressing awareness of abuse may all have been referring to a single incident, rather than a series of incidents. The distinction is, to state the obvious, of importance. I agree with much of what Mr. Muinonen has said in this regard.*

*It is unnecessary to further elaborate upon Mr. Muinonen's concerns. A number are well founded and conform to Mr. Dawson's independent evaluation of the Report.*

*In summary, it is my view that:*

- ! The definition or description of abuse contained in the Audit Report was unhelpful in ensuring an accurate appreciation of the issues. In the context of a custodial setting, and in the context of the Government's response to serious allegations of physical and sexual abuse, the definition was potentially misleading.*
- ! The audit's Terms of Reference were not fulfilled. The existing policies, procedures, systems and mechanisms in place to ensure that complaints of abuse are made, received and acted upon appropriately and to ensure proper communication and follow-up between departmental authorities and police agencies, were inadequately audited and were not specifically addressed. Undue focus was placed on trying to investigate the nature and extent of abuse within the institutions, matters outside the Terms of Reference.*
- ! The methodology used to fulfill the mandate was significantly flawed.*
- ! As a result, the conclusions were not always supported by the evidence.*
- ! Available evidence which could have qualified or altered those conclusions was not obtained by the auditor. Ultimately, the auditor bears the responsibility of*

*ensuring that she has accessed the relevant evidence. She did not do so, although I recognize the time constraints placed upon her.*

- ! *The audit was not truly an audit. Instead, it was a collection of anecdotes and information, sometimes speculative or secured through processes that did not enhance the ultimate reliability or accuracy of the information.*
  
- ! *Many of the Audit Report's recommendations were not dependent upon the flawed findings and methodology and were deserving of consideration. However, a proper methodology and approach would have permitted detailed, precise recommendations directed to modifying existing policies, procedures and practices.*

*In fairness to Ms. Samuels-Stewart, I must point out that many of the participants in focus groups spoke positively about her approach and found the sessions beneficial. Some of the responses to questionnaires and information communicated in focus groups invited concern and deserved follow-up and investigation. Further, Ms. Samuels-Stewart did recognize that the Report was to be regarded as exploratory and an initial evaluation only. She recommended that it be followed by a more in-depth audit in 12 months and annual audits thereafter. She also recommended that an external, independent body review the additional information received from the questionnaires and that the Correctional Services Division of the Department of Justice follow up on the other problems, concerns and recommendations put forward by respondents.*

*The point here is not that no abuse was occurring at the institutions or that no improvements were warranted. It is, rather, that Ms. Samuels-Stewart's conclusions were inconsistent with an exploratory audit and detracted from the important systemic work she was engaged to perform. Further, her Audit Report was likely taken as confirmation by some that serious, widespread systemic abuse had occurred at the institutions. This likely contributed, as we know the Stratton Report did, to a failure by the Government to ensure that allegations of abuse were appropriately validated before compensation was paid out.*