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## The Stratton Report

### 1. INTRODUCTION

On December 1, 1994, the former Chief Justice of New Brunswick, The Honourable Stuart G. Stratton, Q.C., was appointed by the Nova Scotia Minister of Justice to lead an investigation into incidents and allegations of sexual and other physical abuse at five provincial institutions: the former Shelburne School for Boys (now the Shelburne Youth Training Centre), the former Nova Scotia School for Girls (now the Nova Scotia Residential Centre), the Nova Scotia Youth Training Centre at Bible Hill, and the Children's Training Centres at Sydney and Dartmouth. He was later asked to expand his investigation to include an examination of how the Ministry of Community Services handled reports that a former employee, Cesar Lalo, had sexually abused children under his care.

Mr. Stratton's Terms of Reference were as follows:

1. Investigate the incidents of sexual and other physical abuse of residents that occurred or are alleged to have occurred at the institutions;
2. Investigate and determine the practices and procedures in place at the institutions that either permitted or hindered the detection of abuse of residents;
3. Investigate and determine whether any employees of the institutions or any public officials were aware of abusive behaviour of staff towards residents; and
4. Investigate and determine what steps, if any, were taken by employees and officials in reference to any such abuse.

The primary focus of the investigation was to be on the years from about 1956 to the mid-1970s (without, however, being restricted to that time frame). In order to avoid re-victimizing the victims, the investigation was not to take place in a public forum and the identities of the victims were to be protected as much as possible. Mr. Stratton was to report his findings to the Minister of Justice by June 30, 1995.

In the end, the Stratton investigation received reports of sexual and/or physical abuse of 89 individuals who, as children, were under the care of the Province in one form or another. Mr.

Stratton came to specific and varying conclusions regarding many of the complaints, but on the whole he believed them to be generally reliable and accurate. However, he acknowledged some limitations of the process which he undertook: the statements taken by the investigation were not sworn or tested by cross-examination; they described events from the distant past based on memories which could have been coloured by the self-interest of those who complained as well as those against whom complaints were made; and some complainants admitted they were looking for financial compensation for what they had experienced. The investigation located very little written material that would have assisted in confirming the truth of what was alleged, either by the complainants or by the alleged perpetrators.

At the end of his Report, Mr. Stratton had this to say:

Having pondered the overall results of the present investigation, I would express the opinion that a public inquiry is not required in the present instance. I believe that we have gathered sufficient information for the Minister of Justice to be able to proceed with the next and final step of the process. I also believe that the picture that emerged from our investigation, although not a pleasant one, is nonetheless, fairly accurate ... I conclude ... that there is a high moral obligation on the Province of Nova Scotia to address the present plight of the complainants.

My description and subsequent analysis of the investigation and its conclusions are based on a detailed review of all of the records of the investigation submitted by Mr. Stratton to the Department of Justice (sometimes referred to as the “Stratton Boxes”), interviews with Mr. Stratton, his investigators and, in some cases, the individuals with whom they spoke and, of course, Mr. Stratton’s Report, dated June 30, 1995.

## **2. CONDUCT OF THE INVESTIGATION**

Mr. Stratton began his work on December 2, 1994. He engaged Harry E. Murphy, President of Facts-Probe Inc., and his son, Duane P. Murphy (collectively “the Murphys”), as investigators. Harry E. Murphy had been an RCMP officer for 33 years. He retired in 1989 with the rank of Superintendent. He had been involved in various kinds of investigative work. Following retirement, he was engaged as an investigator by private industry and Government, most notably as one of the lead investigators in the Department of Labour investigation of the Westray Mine explosion. He was well qualified to carry out and oversee complex investigations. Duane Murphy did not have prior investigative experience. However, most statements were taken in the presence of both Murphys.

Mr. Stratton placed advertisements in newspapers calling upon former residents of the five institutions who had been subjected to sexual or other physical abuse to come forward and meet with the investigators on a confidential basis. Advertisements were placed in *The Chronicle-Herald/Mail Star*, *The Cape Breton Post*, *The Daily News*, *The Truro Daily News*, and the *Shelburne Coast Guard*. A press release, in identical terms, was also sent to all major media outlets in Nova Scotia, which were requested to broadcast the release as a public service announcement. A copy of the advertisement is reproduced in Appendix “D”.

Mr. Stratton and his team visited each of the five residential institutions under review. They also examined files from the Ministries of Justice and Community Services, as well as police files concerning previous related investigations.

In his Report, Mr. Stratton described his approach to interviewing complainants as follows:

In planning on how I could best accomplish the task of investigation assigned to me, I decided that we would first concentrate our efforts on obtaining statements from the victims who came forward. I also decided that the least intimidating approach would be to have the victims tell us something of their personal history and describe in as much detail as possible their experiences at the residential institutions under investigation. Their statements were then written out in long hand, read back to them, signed and witnessed.

Our interview with the Murphys confirmed Mr. Stratton's directions that they were not to take an adversarial approach, but to simply take statements from those who came forward to tell of abuse. Those interviewed were not asked to have their statements tape recorded – statements were taken the old-fashioned way, by long hand. Those who claimed abuse were told that their statements would be kept confidential. Areas canvassed included the length of the individual's stay at the institution, why he or she had been resident there, the type of abuse suffered, the names of the alleged abusers, and whether there were witnesses to the incidents of abuse. Individuals were also asked whether or not they had complained of abuse, to whom they had complained, and what had happened to their complaints, if anything.

The information given in the interviews was written down as close to verbatim as possible. The Murphys told us that, without fail, statements were then read back and the person interviewed was asked to confirm that it was correct.<sup>1</sup> The Murphys acknowledged that early on in the process some leading questions may have been asked, but said that this practice decreased over time.

As stated before, Mr. Stratton was directed to avoid re-victimizing the victims. To carry out this direction, he set up a "Victim Abuse Log." This document contained the names and contact information of all alleged victims, as well as details on how they came to approach the investigation or how they were known to the investigators from other sources (such as court documents, RCMP investigations, or having been named by others as victims of abuse). A code was given to each alleged victim. In addition, codes were assigned to staff members and former staff who were interviewed or who were named by those giving information to the Stratton investigation. This system was used for each of the five institutions that were the subject of the investigation.

Statements were taken from a number of past and present officials of the Ministries of

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<sup>1</sup>Some persons read over their statement themselves.

Justice and Community Services, and from past and present employees of the five residential institutions. Assurances were given by Mr. Stratton that if current staff members were named by former residents as having committed physical or sexual abuse, they would be approached in order to hear their side of the story. In the end, however, statements were not obtained from all the individuals who were the subject of complaints. Many of them had died or could not be located.<sup>2</sup> Some were simply not contacted.

Mr. Stratton advised employees that their statements would be kept confidential, unless the matter ended up as a public inquiry. In early December, the Minister instructed his Deputy to direct Ministry employees to cooperate fully with the investigation. David Peters, president of the Nova Scotia Government Employees Union (“NSGEU”), wrote to Mr. Stratton on December 29, 1994, raising concerns that due process be provided to its members. He submitted that the most appropriate way to investigate the matters within Mr. Stratton’s mandate was by way of a public inquiry, which would safeguard the individual’s right to silence and protection from self-incrimination. He indicated he would be advising the union members that, absent assurances of immunity from criminal prosecution or disciplinary action, they should refuse to be interviewed unless they were provided with independent legal counsel. Mr. Stratton was unable to provide immunity or independent counsel. The Minister of Justice wrote to Peters on January 12, 1995. He stated that he was only asking for voluntary participation by staff, and that no one would face disciplinary action for choosing not to be interviewed. In the end, no current employees declined to be interviewed. One former employee refused to provide a statement.<sup>3</sup>

The interviews of former and current employees, in particular at Shelburne, sought the following information: 1. their length of service and position at the institution; 2. their duties, education and training prior to and at the institution; 3. whether or not there were written or other policies regarding the use of force, and the reporting of either physical or sexual abuse; 4. whether any incidents of abuse had been observed, who the abusers and victims were, whether the abuse was reported and, if so, what occurred as a result; and 5. what knowledge, if any, they had about Patrick MacDougall’s sexual abuse of residents.

If an allegation had been made that the employee had committed abuse, the Murphys protected the confidentiality of the complainant. Sometimes they provided information as to the general type or manner of abuse, but no names, dates, or other identifying information were provided.

Employees generally provided taped statements, although some former employees provided handwritten statements instead. Two declined to sign their written statements. Another discussed his knowledge freely but did not wish to provide a formal statement.

Almost all the statements from former and current employees were taken by the Murphys

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<sup>2</sup>One former employee was not available to be interviewed due to “senility.”

<sup>3</sup>One other former employee who had no known allegations against him declined to be interviewed, citing health reasons (two recent strokes), but offered to be interviewed if there was an overwhelming requirement for it.

alone. However, Mr. Stratton did participate in a lengthy taped interview with former Superintendent Barry Costello on May 3, 1995. He also personally interviewed managerial staff from the Sydney Children's Training Centre as to the circumstances surrounding MacDougall's transfer to that institution, his conduct while there and the safeguards taken to avoid contact with residents.

It is clear from our discussions with Mr. Stratton and the Murphys that, in their opinion, it was not necessary for Mr. Stratton to be involved in interviewing either those who claimed abuse or those who, although accused of abuse, denied it. Mr. Stratton did not see it as his role to resolve issues of credibility. In relation to the Shelburne School for Boys, there are no indications of credibility assessments being made by the Murphys during their interviews of either those who claimed abuse or those who denied it. During their investigation into allegations of abuse at the Nova Scotia School for Girls in Truro, however, the Murphys made specific notations that they believed the seven individuals claiming to have been abused by George Moss. Mr. Stratton also made a note during the one interview of a former resident that he attended (of F.V.Y. on February 21, 1995) that he considered the complainant to be truthful.

In terms of chronology, statements were taken throughout the investigation, the earliest on December 14, 1994, the last on June 21, 1995. The interviews of former and current employees occurred generally in May and June 1995, although two were held in February, three in March and four in April 1995.

At the conclusion of the investigation, eight boxes – the 'Stratton boxes' – were sent to Linda Sawler, Chief Clerk for the Central Registry, Department of Justice. An inventory of the materials was sent to Alison Scott, a lawyer in the Department of Justice, who was designated as the 'custodian' of the Stratton materials.

### **3. SHELburne SCHOOL FOR BOYS**

The former Shelburne School for Boys ("Shelburne") was the focus of much of Mr. Stratton's investigation. Patrick MacDougall, a former counsellor, had already been convicted of 11 counts of sexual misconduct in relation to several former residents, some of whom had commenced lawsuits against the Province.

Shelburne was a government-run institution set up to house boys committed to provincial care under the *Juvenile Delinquents Act*. Residents ranged in age from seven to 16 years, but the majority were teenagers. The nature of the offences for which they were committed varied from theft and related crimes to truancy and unmanageability. However, as Mr. Stratton noted, over the years Shelburne was also used by the province to house children for whom no other home could be found.

A total of 69 former residents of the school provided statements to the Stratton

investigation, detailing 205 incidents of physical abuse and 103 incidents of sexual abuse. The nature of reported abuse was occasionally minor, but often more severe. Allegations were made of punching, kicking, striking, fondling, forced masturbation, and oral and anal sex (among other things). Former residents complained that they suffered short- and long-term physical injuries, as well as lasting emotional and psychological scars, which often led them into future conflict with the law and alcohol and drug abuse. Some stated that when they complained about their mistreatment, they were accused of lying, beaten further, and sometimes thrown into forced isolation for extended periods of time. A number of the former residents not only reported incidents of abuse against themselves, but also said they witnessed the perpetration or aftermath of abuse on others.

A total of 19 counsellors were named as sexual abusers. Two were named by more than one complainant. By far the largest number of complainants alleged that they had been physically abused by counsellors.

As a result of his investigation, Mr. Stratton concluded that sexual and physical abuse had taken place at the school. He did not specifically find how many of the 308 reported incidents occurred, but commented that, “leaving aside some exaggeration, ... my investigators were satisfied that in all cases, save perhaps three, the complainants were attempting to recall from their memories and truthfully report events and circumstances that had occurred some 20-40 years ago.”<sup>4</sup> The investigators believed that one of the complainants may have embellished his story somewhat, another did not display the usual indications of trauma, and a third gave his statement in a highly emotional state and was, perhaps, for that reason unable to name any of his abusers.

In respect of physical abuse, Mr. Stratton found that it could be “safely concluded” that counsellors resorted to physical force to control residents, and that they had received direction from their superiors to do so. It was not until 1978 that there was an express prohibition against the use of physical force. Mr. Stratton concluded that the use of physical force was an accepted method of maintaining discipline and, as a result, it was sometimes “open season” on the boys at Shelburne.

Mr. Stratton further concluded that staff at the school and officials in the Department of Community and Social Services had been aware that abuse was taking place, but took no positive steps to end it at least until the mid-1970s. Several former residents said they believed that senior staff at the school had been aware of the abuse and either did nothing or sought to cover it up. As noted above, some also said they complained about the abuse to the staff.

Some residents acknowledged that they never reported the abuse. Mr. Stratton found that it was not difficult to understand why so few of the residents complained. The boys were committed to Shelburne for indefinite terms, the length of which depended on how their conduct at the school was perceived by the staff. The residents were cut off from family and home. They were subject to peer pressure to conform and not be a “rat.” The more experienced boys also

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<sup>4</sup>All quotations, unless otherwise noted, are taken from the Stratton Report.

understood that complaints were seldom believed.<sup>5</sup>

Mr. Stratton attributed partial responsibility for the problems at the school to “a serious lack of funding.” This lack of funding led to four inadequacies. First, salaries were too low to attract professionally trained employees, and only insignificant resources were allocated to on-the-job training. As a result, residents were often supervised by inadequately trained staff who had sometimes been “hired off the street” possessing only a high school education. Second, the staff-to-resident ratio was historically too high. In the 1970s, in fact, a study concluded that the school was the poorest staffed facility in the country. Third, for most of the period under review there were no written protocols or guidelines regarding the use of physical force and physical punishment. He also concluded that it was not until 1970 that the use of force, except in self-defence or defence of another, was prohibited. There were also no established practices and procedures for the reporting of physical and sexual abuse. Fourth, the physical design of the facility was inadequate. The school was initially housed in two refurbished Second World War Navy barracks, and it was only in the late 1960s that construction began on new permanent quarters.<sup>6</sup>

Mr. Stratton also found that the communal living arrangements offered by the dormitory facilities of the barracks were unsuitable for a school housing children who often suffered from significant behavioural disorders. He also noted that the town of Shelburne was not centrally located so as to be easily accessible from all parts of the province. This created problems for visits by parents of the residents, communications with department officials in Halifax, and transporting residents to and from the school.

Our examination of the available records shows that 58 former residents were interviewed by the Murphys. Mr. Stratton attended one of these interviews. Eleven others supplied information either by way of letter or by statements submitted by their litigation lawyers. Nine of the 69 individuals referred to by Mr. Stratton as claiming physical and/or sexual abuse were complainants in the criminal process involving Patrick MacDougall.<sup>7</sup> In other words, there were 60 additional individuals who came forward claiming abuse by MacDougall or other former or current staff.

All 69 former residents who claimed to have been subject to physical and/or sexual abuse were included in Mr. Stratton’s Report. Yet the coding system employed in the investigation demonstrates that there were far more than 69 individuals who were either spoken to or available

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<sup>5</sup>Mr. Stratton noted that it was not surprising that complaints were seldom believed, given that many staff members were related by blood or marriage.

<sup>6</sup>The last of this construction was completed in 1979.

<sup>7</sup>Patrick MacDougall’s convictions related to 10 complainants. Only one of them was not identified in the Stratton investigation as an individual who had been abused while a resident at Shelburne. This individual did not come forward to the Stratton investigators, but did ultimately make a claim in the compensation program.

to be interviewed. An examination of the Victim Abuse Log demonstrates that there were 193 names entered.

Forty-nine of the 193 persons listed in the Log denied being a victim of, or witness to, any physical or sexual abuse.<sup>8</sup> As reflected in the investigators' notes, some of these individuals indicated they had received very good care and that their stay in the institution was a positive experience. In addition, there are 60 additional names of individuals listed as potential further victims of Patrick MacDougall, but they do not appear to have been contacted. Of the sixty, 35 went on to be claimants in the Compensation Program. Of the 49 who denied being the victim of any physical or sexual abuse, 24 went on to be claimants in the Program.

Harry Murphy also prepared a summary for Mr. Stratton of statements made by 84 former residents of Shelburne who had been contacted by the RCMP. Many denied any knowledge of sexual abuse, being a victim, or having witnessed sexual or physical abuse of any nature.

There is no record in the materials of any attempt by the Murphys to compare the statements given to the investigation by persons claiming to be abused with their prior statements to the RCMP. They did not attempt to obtain medical records from the Roseway Hospital in Shelburne. They did not carry out any examination as to whether or not the employees who were named as being abusers were present at the institution at the same time as the persons claiming to have been abused.<sup>9</sup> They did not search for institutional records pertaining to residents alleging abuse or obtain employment records of employees named as perpetrators.

In our discussions with the Murphys, they acknowledged that these are steps that would ordinarily be undertaken in an investigation. However, they did not have the time to do so. The Murphys viewed their goal to be the gathering of sufficient information to make a sound assessment of whether or not sexual and physical abuse had gone on at the institutions. They believed this had been accomplished.

The records available to us show that 26 former and seven current employees of Shelburne were interviewed by the Stratton team, including the Superintendent and Assistant Superintendent (neither of whom were the subject of any allegations of misconduct). There is no record of any attempt to contact 10 former employees who were named as having committed some act of physical or sexual abuse.

Many employees expressed their view that sexual and physical abuse was not tolerated by any of the staff and that there was a 'no physical force' policy in place. They were indignant at the suggestion that counsellors would back each other up or would turn a blind eye to physical or sexual abuse. A number indicated that they had reported the use of inappropriate force by other

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<sup>8</sup>Some claimed to have witnessed an assault by MacDougall in 1975. Information pertaining to these 49 individuals was usually gathered, not from direct interviews, but from secondary sources such as RCMP reports.

<sup>9</sup>As it turned out, three individuals who claimed to have been physically and sexually abused by Patrick MacDougall were not at Shelburne when he was an employee.



counsellors. Former Superintendents recounted examples of staff being disciplined or fired over their use of force. One stated that it became known that a counsellor who struck a child was subject to dismissal.

Some employees admitted to slapping some of the boys with an open hand, grabbing residents by the arm or scruff of the neck to compel obedience, or to other acts which Mr. Stratton concluded would be considered abusive by modern standards. One staff member, George Allen Guye (also known as Mickey), expressed the view that physical abuse of residents was an accepted way of life at Shelburne during the 1960s, and that boys would be hit if a counsellor lost his temper or honestly believed that force could properly be used. He stated that new counsellors were told by older ones to hit residents in order to keep control, and that staff members would falsify reports on the use of force. He added that things began to change for the better when Barry Costello arrived as Superintendent in 1970.

#### **4. SYDNEY CHILDREN'S TRAINING CENTRE**

The Sydney Children's Training Centre was established in 1969 to provide care for severely mentally challenged children from Cape Breton Island. It also provided medical and nursing care and supervision.

The Stratton investigation did not receive any complaints of abuse in connection with this facility. On the contrary, the individuals who spoke to the investigation described the centre and its employees as first rate. The centre was also of interest to the investigation because it is where Patrick MacDougall was transferred after he was dismissed from his duties at the Shelburne School for Boys in 1975.

MacDougall was dismissed from Shelburne after he was confronted with an allegation that he had sexually abused one of the residents, an allegation which he did not deny. The Superintendent of Shelburne purported to fire MacDougall, but officials in the Ministry of Community Services (then the Department of Social Services) transferred him to the Sydney Children's Training Centre instead to work as a night watchman. Mr. Stratton concluded that the transfer had to have been approved by the Minister of Social Services, and that it occurred as a result of concerns that MacDougall might commit suicide if discharged. The investigation was told that MacDougall's wife had written a letter alleging that MacDougall would take his own life if he lost his job.

The Superintendent of the Sydney centre was specifically directed to ensure that MacDougall was kept away from the children. However, neither he nor his assistant was advised of the reasons why, beyond the fact that MacDougall had had some problems with the children at Shelburne.

Mr. Stratton noted that MacDougall proved to be a satisfactory employee at the centre.

No complaints were registered against him, and he received a favourable work performance report. Nonetheless, Mr. Stratton concluded that MacDougall's transfer to the centre appeared to be inexplicable.

## 5. NOVA SCOTIA SCHOOL FOR GIRLS

The Nova Scotia School for Girls was originally established by the major Protestant churches of the Maritimes as a home and training school for homeless girls. It was taken over by the Department of Public Welfare (now the Department of Community Services) in 1967, and offered care for girls from Nova Scotia, New Brunswick and Prince Edward Island.

As Mr. Stratton noted in his Report, girls were only admitted to the School if they had been found guilty of an offence under the *Juvenile Delinquents Act* or were committed to the School under the *Child Welfare Act*. A large number of the girls were committed for truancy. Others were committed for unmanageability or for having committed theft-related offences.

A riot occurred at the school in 1975. Management subsequently hired male counsellors for the first time to assist the female staff. Four men were hired, including a person named George Moss.

A total of nine former residents came forward and gave statements alleging that they suffered sexual and physical abuse at the school.<sup>10</sup> A tenth former resident communicated her allegations in writing. A former counsellor also came forward and alleged that she had witnessed and reported incidents of physical and sexual abuse at the school.<sup>11</sup> The Murphys reviewed the investigation. Another former counsellor, however, indicated that in her long term at the school she never saw nor heard of counsellors using unnecessary or excessive force on the residents.

Most of the allegations related to activities by George Moss, although four other staff members were also implicated. Among other things, Moss was reported to have repeatedly kissed, hugged, fondled and digitally penetrated residents, once even going so far as to attempt forced intercourse. Other staff members were accused of physical and sexual abuse. Many of the former residents stated that they suffered long-term harm as a result. Some attempted suicide, abused alcohol and drugs, and had difficulties trusting others. They also often ended up in abusive relationships.

Mr. Stratton made no explicit finding as to whether the reported abuse had actually occurred, but he did note at one point that "we found no reason to doubt what [the complainants]

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<sup>10</sup>Another individual came forward and complained about incidents which took place prior to 1967, when the school was known as the Maritime Home for Girls. This facility was not operated by the Province. The complaint was that a doctor had committed a serious sexual assault during an examination in his office.

<sup>11</sup>These allegations and others were the subject of a comprehensive investigation by the RCMP in 1991-1992. Early on, the Murphys reviewed the results of that investigation and advised Mr. Stratton of what the RCMP had found.

told us.” As noted in Chapter III, George Moss was charged in 1992 with having sexually abused former residents. He ultimately pleaded guilty to four counts of indecent assault. Another former counsellor, Douglas Hollett, was convicted by a jury in 1992 of having had sexual intercourse with a former resident. He was sued by that resident in 1993. The Stratton team did not interview her.

Some of the former residents told the investigators that they had reported the abuse to staff at the school, but often received no positive response. Mr. Stratton concluded that the staff had to have known what Moss was doing because they would have noticed him hugging and kissing the girls at every opportunity. Furthermore, Mr. Stratton noted that in 1982 the Superintendent and Assistant Superintendent had written to the Administrator of Family and Children’s Services reporting that Moss “freely hugged [the residents], kissed them good night, set them on his lap and put his arms around them when walking with them.”

The investigation also learned that in 1977 one of the former residents complained about Moss to the Assistant Superintendent (alleging kissing and fondling), and in 1979 the mother of another resident complained about Moss to the Superintendent (alleging sexual touching). Moss was never confronted with the first complaint. When asked about the second complaint he did not deny it, and eventually resigned. Mr. Stratton concluded that the school authorities were remiss in failing to respond in some positive way to the 1977 complaint, and that they ought to have acted “more promptly and decisively to investigate the [1979] matter or to refer it to the police for investigation rather than merely accepting Moss’s resignation and closing the file.”

Mr. Stratton also raised the issue of whether Moss should have been hired in the first place. His work experience consisted largely of sales positions, and his education consisted of a “government high school equivalent course, Grade XII.” The personnel committee recommended his employment nonetheless, feeling that his confidence and outgoing personality would be an asset to the school. Mr. Stratton questioned whether Moss actually had the necessary qualifications to be employed to counsel young, impressionable girls with various kinds of problems. He also commented that many of the other counsellors at the school similarly lacked the necessary training for dealing with the girls in their care.

After his resignation, Moss was rehired by the Department of Community Services in 1985 as a casual social worker in the Family Benefits section. Mr. Stratton expressed the concern that either Moss’ employment record at the school was not checked before he was rehired, or it was checked and Moss was rehired as a result of his “influence at some higher level.”

## **6. DARTMOUTH CHILDREN’S TRAINING CENTRE**

The Dartmouth Children’s Training Centre was a centre for the care of severely mentally challenged children. In the spring of 1993, an allegation of sexual abuse and several allegations of physical abuse were made against some of the staff and residents. The parents of three residents

withdrew their children from the centre as a result. The allegations were investigated by the police and child welfare authorities, and an operations review was conducted to determine whether safeguards were in place to minimize the likelihood of abuse. However, parents involved in a group advocating de-institutionalization of handicapped children remained dissatisfied and wanted to pursue the matter further. Mr. Stratton wrote to the chair of the group. He was later advised that persons interested in having him investigate their concerns would contact him. In the end, only three individuals from two families came forward: Lorraine B., the mother of Tracey B., and Richard and Barbara H., the parents of Mallory H. Mr. Stratton conducted an investigation into each of their complaints.

Tracy B. ("Tracy") is a severely mentally and physically challenged young woman. She is totally blind, has limited verbal and cognitive skills, and a number of chronic medical problems.

On April 30, 1993, Tracy was removed from the centre. Her mother feared for her safety. Throughout the fall of 1992 and winter of 1993, Mrs. B. had noted significant changes in Tracy's mood and behaviour: she had become unusually self-abusive, was clearly agitated and would wake up in terror at night; she kept repeating the words "Tracy don't tell" and "Tracy not tell." Furthermore, a medical examination had disclosed that she was no longer a virgin.

Mrs. B. reported to the centre her concern that Tracy had been sexually abused, but senior management did not believe any abuse had occurred. Unsatisfied, Mrs. B. contacted officials at the Adult Protection Service. Eventually the police were called in and an independent investigator, Dr. John Anderson, was appointed.

Neither the police nor Dr. Anderson was able to conclude with any certainty that Tracy had been sexually abused. Tracy was physically incapable of assisting the investigation, and the police were unable to find any corroborating evidence sufficient to identify a perpetrator. Dr. Anderson felt that Tracy's behavioural changes and repetition of the phrases "Tracy don't tell" and "Tracy not tell" were suggestive of abuse, but neither a perpetrator nor a locale for the crime could be established. Further, he believed that there were possible innocent explanations for the physical evidence.

Mr. Stratton ultimately determined that he was also unable to conclude whether or not Tracy was sexually abused or explain the changes in her behaviour.

Mallory H. is a severely challenged young woman. She is visually, intellectually and physically challenged. She does not speak. She requires total care and is dependent on others for all her daily activities.

On April 15, 1993, Mallory's teaching assistant noted that the right side of her cheek and neck was red. Mallory was immediately taken for a medical examination. Dr. Kim McBride, a general practitioner, thought the injury looked like a burn. The area was very red and there were blisters on Mallory's skin.

Senior staff at the centre spoke to Mallory's care givers. The employee who had readied

Mallory for school that morning reported that she had used a hair dryer on Mallory's collar in order to dry some drool. The experts were divided as to whether this was a possible cause. A plastic surgeon who examined the relevant information thought that the burn could have been caused by a steady stream of hot air from a hair dryer. But a pediatrician who examined Mallory was of the view that the injury was inconsistent with a burn from a hair dryer, and more likely the result of the splashing of a hot liquid.

Mr. Stratton felt it was more reasonable that Mallory was scalded with a splash of hot liquid than burned with a hair dryer. However, he felt this splash was most likely accidental, and he was unable to conclude who caused it.

## 7. NOVA SCOTIA YOUTH TRAINING CENTRE

The Nova Scotia Youth Training Centre was a residential school in Bible Hill, a town in central Nova Scotia. It was operated for the education and training of the mildly and moderately intellectually challenged.

One former resident came forward and gave a statement to the Stratton investigation alleging sexual abuse at the centre. She claimed that she was fondled and digitally penetrated by a counsellor, and fondled by another employee. Four other former residents came forward and alleged varying types of physical abuse, including kicking, striking, and (sometimes severe) strapping. Three of the former residents stated that they observed physical abuse perpetrated on other residents. One alleged that the residents had been treated like slaves and often left hungry. Four complained that they suffered long-term psychological and physical injuries as a result of the abuse.

Mr. Stratton determined that it was difficult to arrive at any conclusions regarding the five complaints. However, he noted that his investigators were satisfied that the complainants were truthfully reporting their recollection of past events.

No current employees were interviewed by the Stratton team. Three former employees provided handwritten statements. The Murphys also reviewed 10 reports of abuse that had been received by the RCMP from 1987 onward. They discovered that eight had been deemed unfounded, one had resulted in a conviction for sexual assault, and the last had led to a criminal charge which was still outstanding.<sup>12</sup>

As was the case with the other institutions, only some of the complainants said they reported the abuse to staff. Responses from staff were mixed. The Stratton team failed to find reports of two of the complaints. Further, two employees who were supposed have received a complaint could not recall receiving it (although one admitted he could have). One, however,

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<sup>12</sup>The accused in this case was subsequently acquitted.

suggested that he had heard about the complaint and it had been “hushed up.”

As was the case with other institutions, Mr. Stratton concluded that counsellors employed at the centre often had neither the training nor the experience to equip them for their duties. Three former counsellors at the centre acknowledged that they had essentially no relevant training before commencing work supervising residents. Mr. Stratton concluded the “lack of qualification and training on the part of the counsellors must surely account to a certain extent for some of the many complaints that have been brought to our attention in respect of four of the five institutions we have investigated.” At the same time, he acknowledged that likely no amount of training would stop sexual predators or persons bent on inflicting violence on children in their care.

Mr. Stratton noted that a failure to complain was another common theme running through many of the statements he received from former residents of all the institutions, as was the failure of staff to believe the complaints that were made or to take any positive action in response. He stated he could “only infer that there was what I shall call a ‘conspiracy of silence and inaction’ probably inspired by a fear on the part of both residents and staff to ‘rock the boat’ or to draw unfavourable attention to themselves or to the institutions in which they were employed or resident.” However, he also noted that it often might have been natural to disbelieve complaints of abuse made by children who, for varying reasons, might have had problems telling only the truth.

## **8. THE LALO CASE**

Cesar Lalo was an employee of the Department of Community Services from 1971 to 1989. He began as a case worker responsible for, *inter alia*, supervising several young wards of the Department. He later became a youth court worker responsible for the supervision of young persons who had been placed on probation by the Family Court.

In early 1989, a former ward (whom Mr. Stratton referred to as C.L.1) disclosed to some friends that he had been sexually abused by Lalo while under Lalo’s supervision. One of those friends reported the matter to the police. The police investigated and took a statement from C.L.1. An official from the Department of Community Services also conducted an investigation. He ultimately concluded that Lalo had taken advantage of C.L.1 and abused his position of trust. He recommended that Lalo be fired. His recommendation was accepted, and Lalo’s employment was terminated on October 30, 1989. Lalo subsequently grieved his dismissal, but finally resigned on April 11, 1990, on condition that his dismissal be withdrawn and the Department agree to provide him with an employment reference. Lalo agreed not to seek a reference for any position which required him to work on a regular basis with children or young adults.

The Stratton team spoke to C.L.1. He recounted that Lalo had begun to abuse him when he was 12 or 13. The abuse initially consisted of Lalo grabbing him between his legs and asking for sexual favours. It later progressed to masturbation and oral sex. The abuse lasted for several years.

The police never laid charges in connection with C.L.1's complaint. Mr. Stratton was not certain whether this was because the authorities were unsure of a conviction or because of a reluctance on the part of C.L.1 to go to court. Mr. Stratton noted that those who interviewed C.L.1 believed he was telling the truth.

In response to Mr. Stratton's advertisements, four other individuals came forward to complain about Lalo. They reported varying degrees of improper behaviour, from an incident of sexually suggestive questioning to incidents of forced mutual masturbation and oral sex. One complainant indicated that Lalo introduced him to prostitution. In 1993 and 1994, Lalo was convicted of a total of four counts of indecent assault and one count of touching for a sexual purpose.

In response to the specific questions about the Department of Community Services' response to the reports of Lalo's behaviour, Mr. Stratton found generally that the case was handled with thoroughness and dispatch. There was no unreasonable delay by senior officials in investigating C.L.1's complaint, no quiet dismissal of Lalo, and complete cooperation between Department officials and the police. Mr. Stratton's main criticism concerned a decision by the Halifax Regional Administrator of the Department in early 1989 not to inform her superiors of the police investigation into C.L.1's complaint. The investigating officer had asked her to keep the matter confidential while his investigation proceeded. When the administrator failed to hear back from the officer she assumed that the police had decided not to lay charges and she decided not to share her information with her superiors. The matter only came to the attention of her superiors when Lalo himself informed a co-worker that he was under investigation. Mr. Stratton concluded that the administrator ought to have at least informed her superiors of the existence of the complaint. Mr. Stratton also commented that the terms of the agreement for accepting Lalo's resignation were inappropriate. "To require the department to respond in a positive fashion to any request by Lalo for a letter of reference, even excluding positions requiring him to work with children or young adults, would, in my opinion, have amounted to misleading a subsequent employer and could have led to unfortunate results."

## 9. ANALYSIS

*The Honourable Stewart Stratton, Q.C., is a jurist of impeccable credentials and reputation. The Government can only be commended for his selection. But what did the Government ask him to do? Mr. Stratton was given only six months and very limited financial resources to 1. investigate alleged sexual and physical abuse of residents at five separate institutions; 2. investigate and determine the practices and procedures in place at the institutions that either permitted or hindered the detection of abuse of residents; 3. investigate and determine whether any employees of the institutions or any public officials were aware of abusive behaviour of staff towards residents; and 4. investigate and determine what steps, if any, were taken by employees and officials in reference to any such abuse. He was later asked to expand his investigation to include an examination of how the Ministry of Community Services*

*handled reports that a former employee, Cesar Lalo, had sexually abused children under his care.*

*It is unclear what the Government reasonably expected to obtain from this investigation, particularly as to alleged sexual and physical abuse of residents at the institutions. If Mr. Stratton was only to determine whether there were a sufficient number of complaints of abuse to warrant a public inquiry or an ADR compensation process which, itself, would evaluate the merits of individual claims, then perhaps Mr. Stratton's investigation could have served this end. If, on the other hand, Mr. Stratton's investigation was to determine, among other things, how prevalent sexual and physical abuse actually was at these institutions, such that his 'findings' could be used to support compensation for claimants without further verification of their individual claims, then it was inappropriate and doomed to fail. Yet the Government ultimately used Mr. Stratton's conclusions, time and time again, to confirm that widespread abuse had occurred, and to support the uncritical acceptance of claims of abuse, even those which were not brought forward to Mr. Stratton.*

*Why do I say that Mr. Stratton's investigation, if it was to determine the prevalence of sexual and physical abuse, was inappropriate and doomed to fail?*

*Apart from some admissions that some physical force (slapping, grabbing of arms, etc.) occurred that would now constitute abuse, and apart from conduct that had resulted in criminal convictions against MacDougall and others, the most serious sexual and physical abuse alleged to have occurred was challenged by the employees and former employees who spoke with the Stratton investigators. Assessments of credibility were therefore central to any determination of how prevalent such abuse was.*

*However, Mr. Stratton was not in any position to make assessments of credibility. Sixty-nine claimants alleged they had been abused. Eleven of them supplied their accounts in writing only. They were never seen by the Murphys or Mr. Stratton. Only one of the 58 other claimants was actually seen by Mr. Stratton personally. No one provided accounts under oath. No comparisons were made between accounts given to the Stratton investigation and to the RCMP, where applicable. In light of the time constraints, no effort was made to obtain relevant medical records from Roseway Hospital, or to search for institutional records of the residents or for employment records of the employees. At least three of the former residents who made serious abuse allegations against MacDougall were not at Shelburne when he was. This is an example of information which could have been, but was not, obtained by the Stratton investigation.*

*An additional 60 former residents were listed as possible victims in the Victim Abuse Log set up by the Stratton team. They were not contacted. There is no recorded effort to contact 10 former employees who were identified as abusers. They were never heard from. Subject only to very limited exceptions, Mr. Stratton did not attend employee interviews personally. The Murphys honoured confidentiality undertakings given to individuals alleging abuse. That meant that employees were invited to comment on whether they had abused anyone without any information as to who made the allegations, when the abuse allegedly occurred or the details of what allegedly occurred. To state the obvious, this made it virtually impossible for alleged*



*abusers to have a meaningful opportunity to refute, or otherwise respond to, the allegations. The assurances of confidentiality also meant that accusers knew that they would not be required to confront their alleged abusers.*

*This is not to say that all the allegations made to the Stratton investigation were false. Indeed, it says nothing about the truth or falsehood of these allegations. But it does demonstrate that neither the Murphys nor Mr. Stratton were well situated to make findings of credibility or evaluate the merits of disputed claims or the prevalence of abuse generally.*

*Mr. Stratton recognized many of these limitations in his Report. He explained that he continued to refer to the former residents as “complainants” to maintain a proper balance. He acknowledged that the statements taken by his investigators were not sworn or tested by cross-examination; they described events from the distant past based on memories which could have been coloured by the self-interest of those who complained as well as those against whom complaints were made; and some complainants admitted they were looking for financial compensation for what they had experienced. The investigation located very little written material that would have assisted in confirming the truth of what was alleged, either by the complainants or by the alleged perpetrators.*

*It was appropriate that Mr. Stratton recognize these limitations in his Report, although, as I later note, these warnings went unheeded when the Government moved to the third prong of its response – the Compensation Program.*

*It was also appropriate that Mr. Stratton state, as he did, that there was physical and sexual abuse at some of the institutions examined. After all, convictions against MacDougall and others had already demonstrated that. Similarly, there was general agreement among former residents and employees that physical force had been used in the past by employees to control residents – force which might now be regarded as unacceptable, although the nature and extent of that force remained in dispute.*

*Beyond those conclusions – which were already known to the Government – Mr. Stratton could not find abuse, unless he resolved issues of credibility. He could only collect and document abuse allegations and report back to the Government as to what was and was not contested.*

*Mr. Stratton and the Murphys, in their frank discussions with my review, made it clear that they understood at the time that they could not make findings of credibility, based upon the manner in which the investigation was conducted. Nonetheless, Mr. Stratton’s Report appears to do precisely that – draw conclusions that can only be regarded as credibility assessments. At the same time as he noted the limitations on his ability to evaluate the complainants’ accounts, he concluded that on the whole he believed them to be generally reliable and accurate. Having noted again that the statements from Shelburne residents were unsworn and untested by cross-examination, he added that,*

*... leaving aside some exaggeration, I would note that my investigators are satisfied that in all cases, save perhaps 3, the complainants were attempting to recall from their memories and truthfully report events and circumstances that occurred some 20 to 40 years ago. With respect to the other three, I would report that my investigators believed that SSB1, who was taking medication for emotional problems at the time of his interview, may have embellished his story somewhat; that SSB76 did not display the usual indications of trauma as a result of his experiences at the school and that SSB109, who also suffers from severe emotional problems, gave his statement when he was in a highly emotional state and was perhaps for that reasons unable to name any of his abusers.*

*Later on he concluded, generally, that he*

*... could only infer that there was what I shall call a “conspiracy of silence and inaction” probably inspired by a fear on the part of both residents and staff to “rock the boat” or to draw unfavourable attention to themselves or to the institutions in which they were employed or resident.*

*He expressed his belief that his investigation had gathered sufficient information for the Minister of Justice to be able to proceed with the next and final step of the process, without a public inquiry. In his view, the picture that emerged from his investigation, although unpleasant, was “nonetheless, fairly accurate.”*

*With great respect to a learned jurist, the limitations upon his investigation were so fundamental and of such magnitude that no general conclusions as to the residents’ allegations should have been stated, particularly publicly. It was no answer to say that the conclusions were qualified, any more than it would be fitting for a trial judge to state that an accused is probably guilty, although he or she has not yet heard all the evidence. The fact that a jurist of Mr. Stratton’s stature found the abuse claims to be generally reliable and accurate could only contribute to the perception of the public and the Government that an objective, detailed investigation had confirmed the existence of widespread systemic abuse, perpetuated through a “conspiracy of silence and inaction.” And that is exactly how the Report was received and acted upon.*

*Similarly, as elaborated upon in discussions with my staff, the Murphys viewed their goal to be the gathering of sufficient information to make a sound assessment of whether or not sexual and physical abuse had gone on at the institutions. They believed that this had been accomplished. They pointed out that certainly, on the face of the statements, abuse had occurred. Again, with all due respect, their perspective confuses two issues. There was no doubt – before the Stratton investigation even commenced – that physical and sexual abuse had occurred within some of the institutions. There was also no doubt – after the investigation was concluded – that, if one accepted the residents’ statements at face value, many instances of abuse had occurred. The difficulty comes when Mr. Stratton and his investigators are called upon to determine something more about the existence, nature and breadth of that abuse.*

*As is implicit in my earlier comments, I am convinced that the Stratton investigation*

*might have been better served if additional witnesses, institutional and medical records, and prior statements of complainants had been pursued. The investigation might have reflected greater balance if former residents who denied being victimized or having observed abuse had been interviewed, or if implicated employees had been able to respond to specific allegations. In fairness, such an approach was incompatible with Mr. Stratton's time constraints and limited resources. But even such an investigation – absent any real opportunity to meaningfully test the evidence proffered – could not have provided the Government with sufficient assurances that the residents who complained to Mr. Stratton (apart from those whose veracity had already been established in the criminal process) could be compensated without further verification. So I return to my introductory remarks: if that was the purpose of the Stratton investigation, it was inappropriate and doomed to fail.*

*Mr. Stratton clearly felt that his investigation provided a sufficient basis to enable the Government to bypass a public inquiry and move directly to the ADR process. However, I readily accept his explanation to me that he never contemplated that his Report would be used to justify an ADR process that required little or no verification of individual claims.*

*The Government appears to have been largely committed to an ADR process before Mr. Stratton even began his work. Continuing on with that process seemed only to be contingent upon a finding by Mr. Stratton that physical and sexual abuse had occurred. Of course Mr. Stratton would find physical and sexual abuse – such findings had already been made at MacDougall's criminal trial. It is, therefore, difficult to see what Mr. Stratton could have found that would have reversed the direction of the Government's response. Indeed, it can be argued that Mr. Stratton's mandate was framed in a way that made it virtually inevitable that the Government would be proceeding with its ADR program after his work was completed.*

*In summary, I found the Stratton investigation to be well intentioned and executed with the utmost good faith. It did collect evidence of abuse that deserved the fullest consideration, through a true investigative process. However, I cannot help but conclude, for the reasons indicated above, that Mr. Stratton's conclusions went beyond the scope of what fairly could be said.*

*Mr. Stratton's mandate was ill advised and contributed to the unsatisfactory character of what followed. If the Government merely wanted confirmation of what was already known – namely that some abuse existed – the Stratton investigation was unnecessary and duplicated work that would have to be done by others, most particularly the police. If the Government wanted an accurate picture of the extent of sexual and physical abuse at the various institutions and of who had permitted the abuse to go on, Mr. Stratton should have been given the time, the resources and the powers to do that job properly.*

*I have said that Mr. Stratton's conclusions went beyond the scope of what fairly could be said. Perhaps the Government should have been more mindful of the limitations which he expressed upon his conclusions. However, given his well deserved stature, it is difficult to fault*

*the Government for accepting his findings or for concluding that widespread abuse had occurred at the institutions. Given his findings that the complainants who came forward were generally reliable and accurate, it might even be argued that the Government could not be faulted for awarding compensation to Stratton complainants without extensive verification of their claims. (I do not agree with this position, but I recognize that it has some force of logic.) However, based in part upon the results of the Stratton investigation, the Government created a Compensation Program with little or no verification of individual claims. No distinctions were drawn based upon whether the claims had been evaluated by, or even known to, Mr. Stratton, or when those claims were generated.*

*This is not to say that only Stratton claimants could make valid claims of abuse. However, even the most generous interpretation of the Stratton Report could hardly justify the uncritical acceptance of unverified claims which were never made to Mr. Stratton.*