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Scope and Nature of the Review

Abuse is a terrible thing. It forever alters its victims, particularly when they are children. And even more so where the victims are in the care of their abusers.

It follows that those who abuse children while in their care should be rooted out.

But not at the expense of basic fairness to all concerned.

Reports of abuse at Nova Scotia's youth facilities caused the Government to adopt a response. Central to the response was a Compensation Program for those said to have been abused.

The program was seriously flawed. So flawed that it has left in its wake true victims of abuse who are now assumed by many to have defrauded the Government, innocent employees who have been branded as abusers, and a public confused and unenlightened about the extent to which young people were or were not abused while in the care of the Province of Nova Scotia.

This Report cannot begin to separate out the true and false claims of abuse. One of the byproducts of a flawed Government response has been to now make that determination (in the vast majority of cases) impossible. But this Report can document how the Government's response, however well-intentioned, failed to meet the needs of its citizens, was fundamentally unfair to some of the Province's current and past employees, and did a disservice to true victims of abuse. As one former employee put it to me, "The road to hell is paved with good intentions."

1. THE MANDATE

On November 26, 1999, I was appointed by the Government of Nova Scotia (“the Government”) to conduct an independent review of the Government response to reports of institutional abuse in Nova Scotia. In the public release announcing my appointment, my mandate was defined as follows:

In October 1994 Government responded to reports of physical and sexual abuse by provincial employees against former residents of provincially operated institutions with a three-pronged strategy: an investigation of the alleged abuse; an assessment of the safety of youth currently in custody; and a Compensation Program.

Subsequent to his review of the nature and extent of institutional abuse, former New Brunswick Chief Justice Stuart Stratton recommended the establishment of an alternative dispute resolution process for responding to alleged victims of institutional abuse.¹ The Compensation Program came into effect June 17, 1996.

The Program has been adjusted twice since its inception.

The Department of Justice established an Internal Investigation Unit to investigate the allegations of abuse against current employees for disciplinary purposes. The RCMP established Operation Hope to handle the criminal investigation of alleged perpetrators.

The Program has been criticized by current and former employees who feel that their reputations have been tarnished; by claimants who believe changes made to the Program are too restrictive; and by citizens concerned about the cost and other aspects of the Program.

In response to these criticisms, Government committed to review the Compensation Program for Victims of Institutional Abuse “to ensure the process is fair and upholds the rights of both the victims and the accused”.

Terms of Reference:

The independent review will determine if the Government response to institutional abuse has been appropriate, fair and reasonable. The review will:

- ! document and describe the Governmental response to the allegations of institutional abuse;

¹To be technically correct, Mr. Stratton actually stated that he believed he had gathered “sufficient information for the Minister of Justice to be able to proceed with the next and final step in the process” (which the Minister had previously indicated would be an alternative dispute resolution mechanism – if Mr. Stratton found that abuse had occurred for which the Province was liable).

! assess the appropriateness of the Government response in light of:

the contemporary context and the public interest;
 the interests of claimants, staff and former staff of the
 institutions;
 other available response options; and

! assess the implementation of each element of the Government response.

A report of the review findings will be made to the Minister of Justice and subsequently released to the public.

Activities undertaken during the review must not compromise any police investigation being conducted in relation to the alleged institutional abuse.

Some elaboration of my mandate is necessary.

The preamble to the Terms of Reference first describes the Government’s *three-pronged response* to reports of abuse by provincial employees against former residents of provincially operated institutions: 1. an investigation of the alleged abuse (a reference to the Stratton investigation and Report); 2. an assessment of the safety of youth currently in custody (a reference to the review conducted by Viki Samuels-Stewart); and 3. a Compensation Program for Victims of Institutional Abuse.² However, the preamble then focuses on the Compensation Program, noting the criticisms levelled against it by various parties and the Government commitment, in response to these criticisms, to *a review of the Compensation Program*. Accordingly, a reading of the preamble alone might lead one to conclude that it is only the third prong of the Government response to reports of abuse, namely the Compensation Program, that is the subject of my review.

But the Terms of Reference direct me to determine “if the Government response to institutional abuse has been appropriate, fair and reasonable.” I am further directed to assess the appropriateness of that response in light of other available response options and to assess the implementation of *each element* of the Government response. It follows that the Terms of Reference, crafted in the broadest terms, contemplate an evaluation of the entire Government response to institutional abuse and not only the Compensation Program.

I have endeavoured to interpret the preamble and Terms of Reference in a purposive way. In my view, the prime focus of my review must be directed to the Compensation Program itself. It represents that aspect of the Government response that has been most closely questioned and which, no doubt, now represents the most substantial component of the response. However, its appropriateness cannot be evaluated in a vacuum, but must be seen in the context of the complete Government response. To state the obvious, the appropriateness of the Compensation Program must be assessed, in part, by considering what information, including the Stratton and Samuels-

²For convenience, referred to as “the Compensation Program” or “the Program” in this Report.

Stewart Reports, was available to the Government when the Program was designed and approved. Its continued appropriateness, including revisions made to the Program midstream, can only be evaluated in the context of other ongoing activities, such as the police investigation and the establishment of an Internal Investigation Unit (“IIU”) to investigate the allegations of abuse against current employees for disciplinary purposes. Simply put, other components of the Government response affected the design and subsequent revision of the Compensation Program.

Equally important, it is well recognized that an appropriate Government response to reports of institutional abuse needs to be multi-faceted and contain complementary components. If one component of the response is flawed or inadequate, it will likely affect the overall Government strategy. For example, features of the Compensation Program were based, in part, on the conclusions contained in the Stratton Report. Accordingly, an examination of the mandate conferred upon the Stratton investigation and its conclusions has been necessary. Similarly, if different components of the Government response operated at cross-purposes, or sometimes even duplicated each other, the overall effectiveness of the Government response would have been affected.

In summary, I interpret my mandate to be the documentation and assessment of the full Government response, with particular emphasis on the Compensation Program, and that is what I have done.

2. **“APPROPRIATE, FAIR AND REASONABLE”**

As mentioned above, the Terms of Reference require me “to determine if the Government response to institutional abuse has been appropriate, fair and reasonable.” I am also directed to assess the “appropriateness” of the response in light of “the contemporary context and the public interest; the interest of claimants, staff and former staff of the institutions; [and] other available response options.”

While Terms of Reference in general are not akin to a statute, and need not, therefore, be analysed by application of the strict rules pertaining to statutory interpretation, it may nevertheless be useful to look at three key words – appropriate, fair and reasonable – and determine what they mean in the context of this review.

The Shorter Oxford English Dictionary (3rd edition) defines the terms as follows:

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| <i>Appropriate...</i> | 4. | Specially suitable, proper. |
| <i>Fair...</i> | 3. | Free from bias, fraud or injustice; equitable, legitimate. |
| <i>Reasonable...</i> | 3. | Agreeable to reason; not irrational, absurd or ridiculous; |
| | 4. | Not going beyond the limit assigned by reason; not extravagant or excessive; moderate. |

Black's Law Dictionary (5th edition) gives these definitions:

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| <i>Fair</i> | Having the qualities of impartiality and honesty; free from prejudice, favouritism, and self-interest; just; equitable; even-handed; equal, as between conflicting interests. |
| <i>Reasonable</i> | Fair, proper, just, moderate, suitable under circumstances. Fit and appropriate to the end in view. Having the faculty of reason; rationale; governed by reason; under the influence of reason; agreeable to reason. Thinking, speaking or acting according to the dictates of reason. Not immoderate or excessive, being synonymous with rational, honest, equitable, fair, suitable, moderate, tolerable. |

Clearly, there is a common theme to these terms, and I suggest it is fairness, for if a response is unfair, it is hard to imagine how it would be either appropriate or reasonable. I do not, therefore, intend to embark on a detailed analysis of each of these terms: they have, as I said, a common thread. Giving words their ordinary meaning, both I and the reader will have no difficulty interpreting the phrase, and thus my mandate.

3. LIMITATIONS OF MANDATE

Some important limitations on this review must be articulated at this point.

I was to conduct a *review*, not a *public inquiry*. The distinction is an important one. During a review, witnesses cannot be compelled to testify under oath or, indeed, to assist the review at all. The production of documents may be requested but cannot be compelled. Persons providing relevant information or documents may be consulted in private. This is often preferable, particularly where the legitimate privacy interests and personal dignity of those persons may otherwise be compromised. There is no opportunity for interested parties to test, through cross-examination, the accuracy or veracity of statements made by other parties. Given these limitations, it is obvious that neither findings of credibility nor disputed findings of misconduct can fairly be made against anyone.

The law is also clear that, whether I am conducting a review or a public inquiry, I am precluded from expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization. This means, for example, that I am precluded from determining whether any specific allegation of abuse is well-founded or not. Similarly, I am precluded from determining whether any specific allegation of public mischief or fraud made against a claimant seeking or obtaining compensation is well-founded or not. Indeed, I am not only precluded from doing so, but it would represent the ultimate unfairness for me to do so, given the limitations upon my powers.

As well, I am specifically directed not to compromise any police investigation in relation

to the alleged institutional abuse. I am aware that the RCMP has been conducting a lengthy investigation into the allegations of institutional abuse which directly relate to my mandate. I am also aware that certain allegations of public mischief or fraud against claimants for compensation have been referred to the authorities for investigation. My staff and I have met with the RCMP on several occasions to ensure that our activities do not compromise in any way the ongoing police investigation. This approach is intended to ensure fairness to *all* parties potentially affected by that or any other investigation.

Not only do fairness and legal constraints prevent me from evaluating the merits of each allegation of abuse that has been made, it is quite unnecessary to do so in order to accomplish the objectives of this review. As I said when my appointment was announced, “the challenge of this assignment will be to learn lessons from the past ... and hopefully bring forward a blueprint for the future.” I have identified failings associated with the Government response to institutional abuse and made recommendations for the future, should similar situations develop. These recommendations are not dependent in any way upon the merits of individual allegations of abuse, but reveal systemic problems with the way in which reports of abuse were investigated and addressed. For example, a Government response which failed to adequately accommodate fairness concerns of suspected employees is flawed, regardless of whether those employees, or any one of them, did or did not abuse children. *A Government response that fails to appropriately balance the interests of complainants and suspects is flawed, regardless of whether individual complainants or suspects are in the right or in the wrong.*

A related limitation upon my mandate also requires elaboration here. Certain current employees have received letters of exoneration from the Government, following internal disciplinary investigations conducted into allegations made against them. Further letters of exoneration are likely to follow.³ Employees, and counsel on their behalf, have submitted that the Government response to reports of institutional abuse was seriously flawed and has resulted in irreparable damage to innocent employees and their families. They have asked that I recommend how, and to what extent, exonerated employees should be compensated by the Government.

My Terms of Reference, even giving them the broadest possible interpretation, do not permit me to make such recommendations. However, I do expect that the conclusions that I am permitted, indeed required, to arrive at, may have implications for some of the broader issues that are beyond the scope of my mandate and that arise in the aftermath of the Government’s response to reports of abuse.

4. USE OF TERMINOLOGY

³Issues pertaining to when and how employees are exonerated, as well as the interplay between disciplinary exoneration, the outstanding criminal investigation, and compensation being awarded respecting claims involving the same employees, are dealt with later.

A word must be said at the outset as to how interested parties are “labelled.” Former and present employees of institutions where abuse has been alleged have been described in various documents and media accounts as “the accused” or as “the abusers.” Apart from references to employees who were formally charged or convicted in criminal proceedings, I have avoided describing any employees in this way. For convenience, former and present employees are generally described as “employees,” unless the context otherwise requires.

Former residents of institutions where abuse has been reported have been described in various documents and media accounts as “victims,” “claimants,” “complainants” or “survivors.” Individuals who have been physically or sexually abused are entitled to be described in a way that shows sensitivity to their ordeal and does not perpetuate their victimization. Indeed, the literature reflects that the use of the term “victim” to describe these individuals creates the danger that they will be defined by their victimization, rather than by their affirmative steps to overcome their ordeals. Accordingly, the term “survivor” has been utilized in the literature to sensitively describe them. As the Honourable Sydney L. Robins said in his recent Report, “those who have truly been subjected to physical and sexual abuse and who have strived to overcome their ordeal are ‘survivors’ in the fullest and most positive sense of that word.”⁴ However, where, as is the case here, issues remain as to who was truly subjected to abuse and by whom, and where allegations of abuse and of public mischief are the subject of current investigations, the most sensitive and least presumptuous way to describe these individuals is as “claimants,” unless the context otherwise requires.

5. PRIVACY ISSUES

Although, as I have said, this review was not designed to evaluate which claims of abuse do or do not have merit, an assessment of the Government response to reports of institutional abuse required that I hear both from individuals who claimed to have been abused and from institutional employees who have been accused of, and deny, abuse. Their perspectives enabled me to put a ‘human face’ to the conflicting positions advanced by interested parties and better appreciate the systemic concerns being expressed about the way in which both claimants and employees were treated. I have no doubt that many more individuals than I heard from would have liked to meet with me or my staff. Sheer logistics dictated an approach that enabled me to hear from representative individuals, selected in consultation with interested parties and their counsel.

Those individual claimants and employees with whom I met were encouraged to focus on the process and the effect of the Government response upon their lives and the lives of their families, rather than discussing in detail any specific allegations of abuse or their responses to such allegations. This approach was also consistent with the desire not to gratuitously re-victimize

⁴The Honourable Sydney L. Robins, *Protecting Our Students: A Review to Identify and Prevent Sexual Misconduct in Ontario Schools* (Toronto: Ontario Ministry of the Attorney General, 2000) at p.13.

anyone who might be psychologically or emotionally affected by a recital of either allegations of abuse or their responses to such allegations.

Though the specific allegations of abuse and responses to such allegations were generally not discussed, individuals described for me matters sometimes involving intimate, personal and painful experiences. These matters are summarized in my Report and are of importance to the systemic issues addressed here. However, I have respected the dignity and legitimate privacy interests of those individuals with whom I met, as well as others whose names were raised during the review. Accordingly, this Report generally does not contain the names of either claimants or employees against whom allegations of abuse have been made. However, names have been used where they are now in the public domain, it is essential to the unfolding of the narrative, and it could be done without causing the persons unnecessary embarrassment or prejudice. Persons convicted of offences are named, since their identification does not generally raise the same privacy concerns and is frequently essential to the unfolding of the narrative.

6. LEGAL PRIVILEGE

I earlier noted that a review of this nature cannot compel the production of documents. That being said, interested parties cooperated fully in permitting me and my staff to access relevant documents. In particular, Government officials were instructed to cooperate fully with the review, which they invariably did. Some of the documentation which we examined within Government files may well be subject to privilege. Memoranda presenting recommendations to Cabinet, records of Cabinet deliberations or of discussions between Ministers relating to the formulation of Government policy are examples of documents that are commonly immune from public disclosure. Similarly, communications involving Government counsel may involve solicitor-client or litigation privilege. The Chambers-Baker (IIU) Report is another example of a document which has been released to the public in edited form, but which I have reviewed in its entirety. Since I was conducting a review on behalf of the Minister of Justice, I stood in the shoes of the Minister and accordingly was given full access to documents, whether or not these documents could be obtained by members of the public.

7. EFFECTS OF ABUSE

In order to evaluate the Government response and make recommendations for the future, it was important that I understand and appreciate the impact that this response (and, in particular, the Compensation Program) had upon those most directly affected by it – claimants, past and present employees, and their families.

The design and implementation of a Government program intended to benefit those who have truly been abused must recognize and consider the effects, both short- and long-term, of sexual and physical abuse on their victims.

The impact of sexual victimization on young people was well-documented in the Honourable Sydney L. Robins' recent Report *Protecting our Students: A Review to Identify and Prevent Sexual Misconduct in Ontario Schools*.⁵ Drawing upon an extensive body of mental health research and literature, Mr. Robins noted that, while the impact of sexual abuse will vary considerably from person to person, the abuse of young people during the critical period of their development can lead to psychological and social dysfunction, as well as compromised physical health. Negative consequences may be greater where offenders target, as they often do, vulnerable children. Of course, that observation may have particular relevance to young offenders, many already with dysfunctional, if not abusive, histories, who are abused within a custodial setting.

Contrary to some conventional beliefs, the impact is often less correlated with the severity or intrusiveness of the abuse than with the pre-existing relationship with the abuser and the vulnerability of the victim. As Mr. Robins observed, "a seemingly minor incident of sexual touching by a close and trusted adult can have a profound and lasting impact." Children who delayed disclosure, who were exposed to prolonged abuse, or whose disclosures were followed by punishment, disbelief, anger, or rejection by family and friends, were shown in one study to have the most troubling outcomes several years after the abuse. The fact that an unsupportive response to a young person's disclosure of abuse (such as others failing to believe the child, blaming the child or supporting the abuser) may increase the effects of abuse, represents a strong argument advanced in favour of a compensation program as an alternative to conventional litigation.

Sexually abused children can re-experience symptoms at various stages in life: when the person first attempts to become sexually active; when entering marriage; when he or she has a child, or when that child reaches the age at which the person was abused. Young people may not manifest contemporaneous ill effects, but may show increased symptoms over time.

The victims who spoke to Mr. Robins reported a "range of effects including low self-esteem, depression, emotional and mental distress, nightmares, difficulty in developing meaningful and healthy relationships, inability to trust other individuals, flashbacks, alienation from parents and other family members and an inability to concentrate."

The claimants who spoke with me reported similar effects.

Mr. Robins elaborated on the general symptoms of trauma experienced by sexual abuse victims as their lives progressed. The stigma of sexual victimization explains why victims may be reluctant to disclose their abuse and why they sometimes carry feelings of shame and embarrassment for years. Abuse by persons in positions of trust may induce distrust of authority figures generally. Some individuals continue to feel vulnerable to further abuse, particularly where the adults upon whom they relied for protection from harm failed to protect them. Many

⁵*Ibid.* at p.13. All quotations which follow are taken from this Report.

acute symptoms of sexual abuse are similar to children's reactions to stress: "fear, increased anger, anxiety, fatigue, depression, passivity, difficulties focussing and sustaining attention and withdrawal from participation and interest in usual activities." In later childhood and early adolescence, these reactions may be manifested by "delinquency, drug use, promiscuity, or self-destructive behaviour." Sexual abuse may adversely affect a victim's ability to enjoy sexual intimacy in later relationships.

Of particular relevance here, Mr. Robins documented the trauma associated with testifying about abuse. He described not only the ordeal for young children and adolescents, but also for adults asked to relive their experiences as children. This can bring back active memories of the abuse and trigger feelings of outrage, powerlessness, depression and anxiety. Testimony may be preceded by extended anxiety, increasing as the date for testifying draws nearer. During this time frame, individuals may be subject to angry outbursts, have disturbed sleep patterns, may isolate themselves or find themselves easily distracted. In high profile cases, the abused individual's identity may become known to the entire community. Further, that individual may be deeply disheartened by the case mounted by his or her abuser. For example, a victim of abuse would find it demoralizing not only to be doubted, but to hear the abuser's reputation and good character cited in the latter's defence, and contrasted with the victim's possibly unsavoury history.

Mr. Robins also noted that, in the context of sexual abuse by teachers upon students, students might be called upon to describe their abuse at a preliminary inquiry, at a criminal trial and at disciplinary proceedings: "the multiplicity of proceedings (and the delays associated with these proceedings) contributes to their emotional distress, interferes with counselling, diminishes any sense of well-being, and prevents closure." Of course, these comments can be applied with equal force to institutional residents who might be required to testify at such proceedings, as well as at a civil trial, should compensation be sought in the conventional way.

Mr. Robins concluded that "[t]he nature and extent of emotional impact or trauma suffered by witnesses, whether children or adults, varies in each case. There are witnesses who may regard the testimonial experience as cathartic. However, the potential for significant emotional distress or trauma in cases involving sexual misconduct is clear and incontrovertible."

As I have earlier noted, Mr. Robins' findings mirror the feelings described by a number of claimants with whom I spoke, in relation to both sexual and physical abuse.

What all of this means is that governments may legitimately consider the impact that abuse has upon true victims in designing responses to reports of abuse. Similarly, governments may legitimately seek to avoid the emotional distress to those individuals sometimes associated with formal testimony: hence, one of the rationales for a compensation program. However, this recognition does not mean that any verification of complaints should be dispensed with in the interests of abuse victims, no matter the costs to the administration of justice and the rights of the accused. Witnesses can be accommodated, even in testimonial settings, in ways that avoid or reduce distress or trauma and which remain consistent with the interests of the public and the

accused. Elsewhere, I address how this can be done within a model that provides scope for an appropriate verification process.

8. THE PROCESS

The process that I followed in conducting this review was developed in consultation with interested parties and my staff. (A memorandum from my staff to all interested parties respecting this process is reproduced in Appendix “A”.)

This review has both factual and analytical components. A description of the Government response to reports of institutional abuse may be regarded as the factual component of the review. This required me and my staff to accumulate documentation from a variety of sources, to organize and assimilate these materials and question many individuals who had knowledge of various elements of the Government response or who were affected by it.

The breadth of the Terms of Reference, as well as fairness to affected parties, required that I or my staff interview over 100 individuals. These interviews included persons involved in the design or implementation of the Government’s response, Ministers and Deputy Ministers, internal investigators, police officers, claimants, current and past employees, therapists, Dr. Elsie Blake of the Family Services Association, file assessors, counsel involved in the process, administrators, former Chief Justice Stratton and his investigators, and Ms. Viki Samuels-Stewart. Written feedback was also received from a number of file reviewers.

My mandate also compelled an exhaustive review of available documentation, much of which remains with the Government. To this end, my staff first determined, through the central registry and other sources, what materials were available. Much of this material was then examined, including files at the Department of Justice relating to the design and creation of the Government response to reports of institutional abuse, the Compensation Program, the Samuels-Stewart audit and the investigation of current employees. We also examined the files at the Compensation Program’s offices pertaining to the negotiations that led to the finalization of the program and the administrative files regarding how the program was run.

There were 1,235 files processed in the Compensation Program. My staff has reviewed 90, or roughly 7.5%. The 90 files were selected randomly from an alphabetical listing. All available material with respect to each file was reviewed to ascertain the following types of information:

- ! Claim start date and settlement date (i.e., the time frame of the claim);
- ! The amount claimed and the basis for the claim;
- ! The amount offered and reasons for the response;

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- ! The settlement amount (if a settlement was reached);
- ! The amount of the counselling award;
- ! The existence of interim counselling;
- ! Whether the claimant was a Stratton interviewee or a victim in a completed criminal case;
- ! The content of a report (if any) from the IIU, and the name of the IIU investigator;
- ! The identities of all employees that were named in the allegation, the type of allegation made, and the response from the employees, if any;
- ! If the matter went to file review, the amount awarded and the reasons given, the name of the file reviewer and the method of his or her selection;
- ! Whether the claim was withdrawn and, if so, whether litigation ensued;
- ! Whether or not the file was the subject of a fraud investigation; and
- ! Any letter in the file expressing concern over the process.

The file review was done to ensure that I obtained an accurate picture of the day-to-day workings of the Compensation Program. An examination was done of the way in which claims were processed, the difficulties encountered, and the reasons for the difficulties. As well, although efforts were made to ensure that the claimants and employees whom I interviewed were representative of the process, the review of the files was intended to complement that interview process and ensure representativeness. Additional claimant files were examined as issues arose during the interview process.

In reviewing these and other files, steps were taken to maintain the confidentiality of both claimants and employees mentioned in those files. Indeed, information that could lead to their identification is omitted from my Report, unless consent has been obtained or, as earlier noted, the information is already in the public domain and necessary for a better understanding of the narrative. Throughout, my staff remained mindful of issues of privacy raised by Government and other interested parties.

Other files examined were these:

- ! Claims submitted to the Compensation Program which were later withdrawn or deemed ineligible;

- ! Files pertaining to civil litigation commenced against the province both before and after the Government's response was implemented;
- ! Files at the Correctional Services Division pertaining to the Government's response, including the Memorandum of Agreement (see Chapter XIV);
- ! Administrative files at the Internal Investigations Unit;
- ! Materials collected or emanating from the work conducted by former Chief Justice Stratton and his staff;
- ! Materials collected from counsel for claimants and from counsel for current and former employees.

Much of the history (though not the appropriateness) of the Government response to reports of institutional abuse is uncontested. Some of it is less settled and admits of differing interpretations which could not always be reconciled. These differing interpretations are sometimes reflected in my Report. By and large, however, I was able to discern and describe what the Government response to institutional abuse was and the thought processes that caused the Government, rightly or wrongly, to act in the way that it did.

The factual component of the review included an examination of the impact that the Government response had upon those who were affected by it – particularly the claimants and the employees. As I earlier noted, to understand this impact, I personally met with a number of claimants and employees. Again, the objective here was not to probe their individual accounts or defences but, instead, to learn how the Government response, most particularly the Compensation Program, affected their lives and the lives of their families. These meetings were facilitated by counsel for interested parties, whose involvement was very much appreciated, and who also assisted the review in bringing forward individuals who could enlighten me as to a wide range of experiences. Put simply, the experiences of those individuals I heard from were both unique and, in some respects, likely representative of the experiences of others with whom I was unable to meet. I am grateful to them all for their important contribution to this Report.

Every effort was made to make the interviewing process as non-intrusive and non-traumatic for everyone as possible. As well, we endeavoured to accommodate individuals to the extent possible. To this end, some interviews were conducted privately, others in group sessions, some in Halifax and others in locations elsewhere in Nova Scotia. Some interviews with individuals incarcerated or located outside of Nova Scotia were conducted by telephone. Several individuals also wrote to me.

The second component of this review was to *evaluate* whether the Government response was fair, appropriate and reasonable and make recommendations for the future. This may be characterized as the analytical (and systemic) component of the review. It represents, I believe,

its most important function.

To this end, my staff accumulated materials from various jurisdictions that address how reports of institutional abuse have been or should be addressed by governments. These include law commission reports, studies, discussion papers, alternative programs, models, articles, and internal evaluations of existing programs. Interviews of individuals involved in the design or implementation of alternative programs elsewhere in Canada were also conducted. They were able to provide the review with real insights into the lessons learned in other jurisdictions which have relevance to Nova Scotia. This Report contains extensive references to such programs developed or contemplated in other jurisdictions.

At the outset of the review, a detailed list of systemic issues to be potentially addressed in my Report was prepared. This list was finalized only after the input of interested parties, including the Department of Justice, and modified to reflect concerns or additional issues raised in the course of these consultations. Various parties have utilized this list of systemic issues to guide their submissions to the review. An examination of these questions reinforces the interplay between the factual and systemic issues to be addressed in this Report.⁶

Once a number of interviews were conducted and voluminous documentation reviewed, interested parties were invited to make written and oral submissions to me. I received written and oral submissions on behalf of claimants, past and present employees, the Nova Scotia Government Employees' Union ("NSGEU") and the Department of Justice. The Department of Justice's submissions were intended only to clarify factual issues and invited me to consider certain contextual facts in making my findings and recommendations. The Department expressly refrained from urging specific recommendations upon me. The written submissions were exchanged before oral submissions were made, permitting the fullest discussion of the issues.

9. FUNDING

From the earliest stages of this review, it was clear to me that I needed to understand and consider the perspectives of various interested parties, most particularly those who reported institutional abuse, those who were employed at the various institutions and were sometimes suspected of perpetrating such abuse, and those within Government or retained by Government who were involved in either formulating or implementing the Government response. Some of those parties did not have easy access to funding to enable them to be assisted by legal counsel. It was obvious to me that these parties – particularly claimants and employees – could only fully assist the work of the review if represented by counsel. Some had suspicions or concerns about this review and its potential impact upon them, particularly given ongoing investigations taking place, which necessitated, in fairness, the intervention of counsel. The counsel who represented these parties also often had longstanding prior involvement in the issues addressed by me and, as

⁶The list of systemic issues is reproduced in its entirety as Appendix "B".

such, were helpful resource persons in their own right. Each counsel was able to assist me in piecing together a chronology of relevant events, the impact of the Government response upon their clients and the lessons to be learned from any inadequacies in that Government response.

It would have been unreasonable to expect that those counsel could provide a meaningful contribution to the work of this review without any remuneration whatsoever. On the other hand, I was mindful of concerns that financial expenditures of this review not become another source of contention. I therefore recommended to the Government that a limited number of counsel be remunerated for their representation at a rate previously established by Government for such work and with a predetermined maximum amount that would be compensated. The maximum amounts were to be fixed to ensure that parties of similar interest would work together and not duplicate efforts and to ensure that all parties would be dealt with equitably. The Government accepted this recommendation. I am mindful that the time commitments of some counsel considerably exceeded their allowable maximum remuneration. Their contribution, and that of all counsel, was greatly appreciated and was of substantial assistance to me. The funding mechanisms in place have worked well, and have shown fiscal restraint consistent with the need for meaningful involvement of interested parties in the process.

10. STRUCTURE OF THE REPORT

Chapter I is designed to introduce the reader to the scope and nature of my mandate. Chapter II provides a historical overview of the institutions where abuse was alleged. Prior to the Government's response commencing in 1994, allegations of abuse at these institutions had already surfaced and, indeed, been the subject of police investigations and court proceedings. A brief history of these proceedings prior to 1994 is also contained in this chapter.

Chapters III to XII describe the Government response to reports of institutional abuse from its early formulation to the various modifications throughout.

The impact of the Government response on both claimants and employees and their families is discussed in Chapter XIII. Ultimately, negotiations between the Nova Scotia Government Employees Union and Government led to a Memorandum of Agreement defining options available to certain employees against whom abuse allegations had been made. This Memorandum of Agreement is addressed in Chapter XIV.

The Internal Investigations Unit was formed to investigate allegations made against current employees for disciplinary purposes. Its role was later expanded. A report was prepared by the IIU (the Chambers-Baker Report) which has acquired prominence in ongoing court proceedings and which contains an implicit evaluation of the Compensation Program. It is addressed in Chapter XV.

My evaluation of the Government response is contained in italicized sections entitled

Analysis in Chapters III to XV.

Having described and evaluated the Nova Scotia Government's response, the Report then describes in Chapter XVI the responses in other jurisdictions to reports of institutional abuse. Chapter XVII discusses the recent study by the Law Commission of Canada entitled *Restoring Dignity: Responding to Child Abuse in Canadian Institutions*. Drawing upon the lessons learned from the Nova Scotia experience and from the systemic materials from other jurisdictions, Chapter XVIII contains my recommendations – the 'Blueprint for the Future' – and the Conclusion.