

XVI

Events Outside Nova Scotia

1. INTRODUCTION

In the previous chapters, I summarized the deficiencies or problems associated with the Nova Scotia response to reports of institutional abuse. The more challenging task is to make recommendations as to how such reports should be addressed by government in the future. Elsewhere, I described such recommendations as a ‘blueprint for the future.’

What is obvious is that there is a serious need to consider the future of government responses to reports of institutional abuse. The Nova Scotia response represents only one in a series of government programs that have met with varying degrees of success. There is no reason to believe that allegations of institutional abuse elsewhere in Nova Scotia or, indeed, Canada will end here. On the contrary, there are indications that such allegations are continuing to surface.

Having said that, one must recognize that there are significant variables that prevent a government from simply superimposing one program – however successful – upon a different factual situation. These variables include, but are not limited to:

- ! the kind of abuse alleged;
- ! how the alleged abuse came to light;
- ! whether current employees are implicated;
- ! the size of the pool of potential claimants;

- ! the extent to which allegations of abuse have already been tested in criminal or other judicial proceedings;
- ! the existence of parallel investigations;
- ! how recent the alleged abuse is;
- ! the nature of the institutions involved and their residents;
- ! the gender, colour, and cultural or ethnic background of those alleging abuse;
- ! their psychological backgrounds;
- ! whether such individuals are mentally or physically challenged;
- ! the existence of factors affecting their access to legal services; and
- ! the availability of government resources.

The approach, therefore, is to identify those considerations that properly underlie a government response, and to examine the components of both successful as well as unsuccessful approaches to the issues. In that regard, I examine the responses made to reports of institutional abuse in other Canadian jurisdictions, as well as a study of the topic prepared by the Law Commission of Canada. The responses of other jurisdictions are considered here. The Law Commission study is reviewed in the next chapter.

2. ONTARIO - GRANDVIEW TRAINING SCHOOL FOR GIRLS

The Government of Ontario operated a training facility for adolescent girls in Galt (now part of Cambridge) from 1932 to 1976. Originally known as the Ontario Training School for Girls - Galt, the facility was renamed the Grandview Training School for Girls in 1967. It housed girls between the ages of 12 and 18. Under the Ontario *Training Schools Act*,¹ the girls became wards of the Province and the parents of the girls relinquished their rights as guardians. The institution housed an

¹R.S.O. 1980, c. 508.

average of 120 girls annually, with approximately one-quarter of them in a secure facility known as Churchill House. While some girls had committed minor crimes such as shoplifting, many were sent to the school because they had been pronounced “unmanageable” under the *Juvenile Delinquents Act*² for reasons such as truancy, the use of drugs or alcohol, or “sexual immorality.” Many of the young women sent to Grandview had been physically, sexually or emotionally abused by family members; some were orphans, and some were from very poor homes whose families were unable to care for them.

A number of students at the school were abused during their residency there. The most significant period of abuse occurred in the mid-1960s to the early 1970s. The school was closed in 1976 after an investigation into the abuse. Residents alleged that they had been subjected to physical, sexual and psychological abuse at the hands of guards and other staff. Some of the allegations had been made contemporaneous to the abuse, but had not resulted in any legal proceedings at the time.

The abuse came to public light in 1991, when two women who were being treated by the same psychologist told him of very similar experiences of abuse that occurred at Grandview. The psychologist was shocked by the details, introduced the two women to each other and said that he would support them if they went public with their stories. The women subsequently made appearances on television, asking others who had been at Grandview to contact the police or the provincial Government. In the summer of 1991, the Waterloo Regional Police Service and the Ontario Provincial Police began a joint investigation into claims of physical and sexual abuse at the school.

In December 1992, a Victim Witness Program site was established in Kitchener, Ontario, with the express purpose of dealing with Grandview.³ Some women retained lawyers and initiated civil suits. At the same time, a small group of women formed the Grandview Survivor’s Support Group (“GSSG”) to investigate options for seeking compensation on a collective basis. They also hired legal counsel (whose services were ultimately paid for by the Ontario Government). The group later expanded to include more than 300 women.

The Province decided to pursue, through mediation, an out-of-court strategy to settle Grandview claims. In May 1993, negotiations began between the Government and the GSSG. Over

²R.S.C. 1970, c. J-3.

³The Program provided support to the abuse victims, who might become witnesses at criminal trials. Specifically, it offered information about the court process and available community-based support services.

the next 10 months the executive of the GSSG and the group's legal counsel held extensive meetings with counsel from the Ministry of the Attorney General and the Government's Grandview Project Manager in an attempt to draft a compensation agreement. The Government provided funding during the negotiations for a crisis line dedicated to Grandview survivors and for continued participation in the discussions by the GSSG executive.

In early 1994, a Draft Agreement was formulated by the Government and the GSSG executive and put to a vote by the members of the GSSG. Over 127 women participated in the vote, and the Agreement was ratified by over 80%. After Government approval, the program was announced in June 1994.

The Agreement allowed all former residents of Grandview to apply for specified benefits and financial compensation from the Government through an alternative dispute resolution process rather than individually pursuing civil suits. It was a group agreement, but it permitted individual women to choose whether or not to participate in the program. Individuals were required to obtain independent legal advice (for which the Government provided \$1,000 per applicant) before electing to seek compensation under the Agreement. Those who elected to do so had to provide a complete release of any claim they might have had against the Government of Ontario for damages arising out of their mistreatment at Grandview. Participation in the Agreement, however, did not restrict the individual's rights to bring criminal charges or civil claims against individual perpetrators of abuse.

An application cut-off date was set for January 2, 1996. Applications received after that date were not automatically rejected, but were considered on a case by case basis.

The purpose of the Agreement was outlined in its Overview:

The purpose of this Agreement is to engage in a process to afford any eligible person real opportunities to heal and to introduce real hope for a better future ... [It] is designed to address the consequences of "abuse" and "mistreatment" as those terms are defined, of those who were actually resident at Grandview ... It is an objective of the various components of this Agreement to facilitate a path of healing and recognition of self-fulfilment for its beneficiaries. It is hoped that the coordination of the various components, will, as an integrated whole, produce a more accountable and effective response for survivors of institutionalized and sexual abuse.

(a) Details of the Compensation Package

The Agreement provided for three different types of benefits: general benefits (intended to benefit society as a whole), group benefits (for all former residents of the institution), and individual benefits (for those who claimed specific incidents of abuse). An Eligibility and Implementation Committee (“EIC”) was established as an advisory body to oversee and superintend the implementation of the benefits package. This committee was composed of two GSSG-appointed members, one Government-appointed member and a chair jointly appointed by the Government and the GSSG. The Agreement also provided funding for the GSSG to enable it to continue to offer support to its members through meetings, outreach and a newsletter.

(i) General Benefits

General benefits were not necessarily confined to benefits to former residents of Grandview. They were defined in the Agreement as “programs, actions or commitments that the Government may undertake or foster and which may provide benefits to survivors of sexual, physical and institutionalized abuse generally.”

The Agreement included specific provisions for legislative and research initiatives.

The main legislative initiative outlined in the Agreement was a bill to amend various provincial laws to extend or eliminate limitation periods for commencing civil proceedings in relation to sexual abuse. The Government also reviewed its hiring, training and abuse-reporting practices for programs involving youth in institutional settings or under state supervision.

Three research initiatives were contemplated in the Agreement. First, there was a proposal to evaluate the effect and effectiveness of the Agreement itself. This work was later conducted by Deborah Leach.⁴ Results of her study are referred to in the applicable contexts below. Second, a recommendation was made to conduct research to better understand the dynamics of the consequences of abuse and to determine when and how to provide effective intervention. In this regard, the Government supported the production of a video and a booklet entitled “Until Someone Listens.” Third, every applicant was given the choice to tell of her experiences at Grandview and have her history recorded.

The idea of establishing a Healing Centre was also discussed but not acted upon. Instead,

⁴Leach, D., “Evaluation of the Grandview Agreement Process: Final Report” (June 1997).

some money was put aside for a needs assessment. However, these funds eventually went back to the Government's general revenue fund.

(ii) Group Benefits

Group benefits consisted of a dedicated crisis line, money for the removal of self-inflicted tattoos and scars, and a general acknowledgement by the Government recognizing the efforts of the GSSG to bring to the attention of provincial authorities the allegations of abuse and to develop a non court-based process to assist the victims. The crisis line and money for the removal of tattoos and scars were available to all former residents of Grandview. Individuals applying to have a self-inflicted tattoo removed were required to swear a statement declaring when they attended Grandview and that the tattoo was inflicted during that time.⁵

The crisis line which was established by the Government of Ontario during the negotiations leading up to the Agreement was continued pursuant to the terms of the Agreement. Again, it was available to any former resident of Grandview without proof that she had been subjected to conduct at the school that could have caused or contributed to her crisis. The crisis line existed for four years and was closed March 31, 1997. Ms. Leach reported that a large majority of the women who accessed the service felt it made a positive difference in their lives. However, some felt that the counsellors were not always sufficiently knowledgeable about institutional abuse or Grandview.

The Government allocated \$120,000 for a tattoo removal fund and \$50,000 for a scar reduction fund. Fifty-two women had used this benefit as of December 1996, the latest date for which information was available. Ms. Leach found that the impact of tattoo removal was significant in improving self-esteem and the ability to live in the present.

The general acknowledgement referred to above was read out in the provincial legislature by the Attorney General, the Honourable Jim Flaherty, on November 17, 1999. It included an apology to all the Grandview survivors.

(iii) Individual Benefits

⁵The individual also had to have resided at Grandview for at least six months.

A number of individual benefits, including direct financial compensation, were available to former residents of Grandview whose assertions of abuse were accepted. Individuals had to apply for these benefits. Their applications were reviewed by an adjudicator who determined whether the claimant was in fact the victim of abuse and/or mistreatment (as defined in the Agreement) which caused injury or harm and, if so, what financial award was appropriate. An applicant whose claim was validated was also entitled to apply for a variety of additional non-financial benefits that were purchased by the Government from existing service providers on a case-by-case basis. The total Government expenditure on awards and benefits was \$16,400,000.⁶ The various available benefits are described below.

Successful claimants were entitled to a financial award for pain and suffering as a result of abuse and/or mistreatment. “Abuse” and “mistreatment” were defined as follows:

1.1 ABUSE means an injury as a result of the commission of a criminal act or act of gross misconduct by a guard or other official at Grandview or in some circumstances by another ward and includes physical and sexual assault or sexual exploitation. It is acknowledged that sexual abuse includes arbitrary or exploitative internal examinations for which no reasonable medical justification existed and which resulted in demonstrable harm.

Act of abuse is the act that causes injury.

1.2 MISTREATMENT means an injury as a result of a pattern of conduct that was “cruel” and for which no reasonable justification could exist (arbitrary) and includes conduct that was non physical but had as a design the depersonalization and demoralization of the person with the consequent loss in self esteem, and may involve discipline measures unauthorized by any superior authority. This is conduct that is plainly contrary to the policies and procedures governing conduct at Grandview and the purpose of the governing legislation. Proof must establish a pattern of conduct directed towards the individual personally and errors of judgement will not be sufficient. This conduct may include taunts, intimidation, insults, abusive language, the withholding of emotional supports, deprivation of paternal visits, threats of isolation, and psychologically cruel discipline or measures which were not officially permitted in the management and control of the residents of the facility.

The general environment of Grandview, the discipline and regulation of the conduct of the wards in accordance with policies and procedures established for the governance and management of the institution cannot constitute mistreatment.

⁶Some sources put the figure closer to \$12,000,000.

The act of mistreatment is the act or acts that cause the injury.

In order to qualify for a financial award, an applicant had to demonstrate injury or harm which justified compensation beyond a nominal damages award. The range of available awards was from \$3,000 to \$60,000.⁷ The precise amount conferred upon an applicant depended on the nature, severity and impact of the abuse and/or mistreatment. In determining the amount, the adjudicators were directed to use a prescribed matrix as a guide. This matrix set out the minimum and maximum award ranges for various categories of misconduct, and also itemized the type of evidence expected as proof. The adjudicators had the discretion to fix the award within the range prescribed. The matrix is reproduced in full below.

ACTS ALLEGED	HARM/INJURY	EVIDENCE/PROOF	AWARD RANGE
Repeated serious sexual abuse (sexual intercourse anal/oral) & physical beating and threats.	Continued harm resulting in serious dysfunction. Adjudicator applies standards set out in Agreement.	Possible: Medical/psychological/therapist/police reports/direct evidence of victim if credible/witnesses/documentary-conviction of perpetrator.	\$40,000.00 - \$60,000.
Physical abuse involving hospitalization with broken bones or serious internal injuries.	Harm sufficient to justify award must be demonstrated. Adjudicator applies standards set out in the Agreement.	Same as above	\$20,000.00 - 40,000.00 “mid range”
Isolated act of sexual intercourse/oral or anal sex or masturbation with threats or abuse of position of trust.	Harm sufficient to justify award must be demonstrated. Adjudicator applies standards set out in the Agreement.	Same as above	\$20,000.00 - \$40,000.00 “mid range”

⁷The Agreement provided that this money would not be counted in determining eligibility for Family Benefits and General Welfare Assistance.

No physical interference- forms of “mistreatment” i.e. cruel conduct that was prolonged and persistent. Confinement in segregation alone will not attract an award. Segregation may be justified in accordance with administrative authority. Abusive segregation cannot be.	Long term detrimental impact - conduct must not have been lawful or condoned. The nature of the harm will determine once proof of the acts are accepted whether a minimal recovery or a higher award.	Same as above	\$3000.00 on proof of acts of abuse or mistreatment. \$10,000.00 - \$20,000.00 where serious harm found by the adjudicator.
--	---	---------------	---

The Government of Ontario was responsible for 100% of the financial award. The average award conferred was a little under \$40,000. In general, financial benefits were awarded for physical and sexual abuse and mistreatment. In certain cases, psychological abuse and mistreatment were compensated, but few awards were granted as a result of psychological abuse only.

Ms. Leach’s study found that the vast majority of recipients thought the financial award helped them make a positive change in their lives. Most importantly, it contributed to a sense of validation, gave them some security and independence, improved their ability to take better care of their children and other important people in their lives, and helped them plan for their future with more skills. For a small number of recipients, the award caused difficulties in such matters as money management and demands from others for assistance.

In addition to any direct financial award, an adjudicator was also able to direct the Government to pay service providers additional sums up to \$10,000 to cover exceptional medical or dental costs related to the consequences of the abuse and/or mistreatment where no insurance coverage was available.

The Government had established an interim therapy protocol to provide counselling and therapy, pending completion of the Agreement. Former wards were then entitled to apply under the Agreement for access to longer-term counselling and therapy. In order to qualify for such services, the applicant had to submit an application for individual benefits within six months of the ratification date of the Agreement. The application had to be accompanied by a treatment plan prepared by a

therapist experienced in treating cases of abuse, and the therapist had to support the claimant's position that her experiences at Grandview likely caused or contributed to her present circumstances and that counselling was required. Alternatively, an applicant could request an assessment by a Government-approved counsellor.

All applications for counselling were reviewed by the Eligibility and Implementation Committee. Interim counselling services remained in effect pending the review. If a majority of the members of the EIC was satisfied that the requested counselling was appropriate, such services of a value not exceeding \$5,000 for a period of one year could be approved. This could occur in advance of validation of the claim, but was subject to confirmation by the adjudicator. Provision was also made for additional funding in appropriate situations. Disputes between the EIC and the applicant (or her treating therapist) were to be resolved by designated independent experts.

In exceptional circumstances, applicants could also obtain up to \$5,000 in funding for short-term residential treatment programs. Appropriate evidence of need was required, as well as evidence of the unavailability of alternative private or public funding. Applicants could access individual counselling services following completion of the residential program.

The vast majority of women interviewed by Ms. Leach indicated that the therapy and counselling benefit made a significant difference to them. It helped them with improving their self-esteem, going through the Agreement process, coping with their tragedy, and moving on in life. At the same time, many women were concerned about the limits to the funding. Many were unaware of the limits, and said they would have used the funding differently if they had been aware. Some recommended that the cap on this benefit be eliminated.

The Agreement provided for access to educational or vocational training or upgrading. The Government agreed to pay the "basic costs" of education or vocation programs approved by the EIC. Basic costs were defined to include tuition, books, course materials, a transportation allowance and, where need was established, child care and computer costs. The Government also agreed to pay for psycho-educational assessments to assist applicants in determining a suitable program of study or training. The only conditions of the benefit were that the applicant attend all classes, fulfill all course requirements and successfully complete the course of study. Ms. Leach reported that many applicants thought this benefit was extremely important, especially since education was something stolen from them at Grandview.

Successful applicants could obtain free debt counselling and debt consolidation and budget

assistance. Ms. Leach reported that the reactions of those who availed themselves of this benefit were mixed, some finding it helpful and others finding it shameful.

A contingency fund of \$3,000 per validated claim was set up. It was intended to cover expenses for the following matters not covered, or not covered sufficiently, by other benefits: medical and dental needs, child care and travel expenses incurred in relation to attending counselling sessions, books and other materials required for a course of study or therapy, and fees for attending workshops. Applications for specific expenses had to be submitted to and approved by the EIC, and need had to be established. Multiple applications could be submitted, but the money had to be used within two years of the date the Agreement was ratified. This was the most widely-used benefit. Most applicants used it for medical or dental purposes. All said it made at least some positive difference in their lives.

Finally, the Agreement provided that each successful claimant was entitled to receive an individual acknowledgement from the Government of the abuse or mistreatment, recognizing that each of the women was harmed and there could be no justification for the abuse. Delivery of these acknowledgements was delayed until the completion of all related criminal proceedings.

Reproduced below is a chart prepared by Goldie Shea for the Law Commission of Canada detailing the number of applicants who took advantage of the various available benefits as of October 1999.⁸

Grandview - Usage of Benefits

BENEFIT	NUMBER OF WOMEN WHO HAVE USED BENEFITS	PERCENTAGE OF WOMEN WHO HAVE USED BENEFITS
Therapy/counselling	123	91.8
Tattoo/Scar Removal	52	38.8
Contingency Fund	132	98.5
Educational/Vocational Assistance	46	34.3
Financial/Budget counselling	6	4.5

⁸Shea, Goldie, "Redress Programs Relating to Institutional Child Abuse in Canada" (October 1999), p. 33.

Total number of women who used at least one of the Agreement benefits	134	100
---	-----	-----

(b) The Process

As stated in the Report of the Grandview Adjudicators,⁹ the adjudication process had multiple goals. First, it was a forum for the review and assessment of evidence relating to validation of claims and the assessment of damages. To this extent, the hearings were similar to other, more traditional, legal proceedings where judges review exhibits, listen to evidence, and make findings of fact based on legal standards and principles, including the onus of proof. Second, the Grandview hearings were intended to offer the applicants an opportunity to describe their experiences in their own words to someone with authority. Adjudication was to empower the survivors of institutional abuse to define the wrong that was done to them, to explain the repercussions on their lives, to demand accountability and the restitution of their dignity, and to claim official recognition of the injustice.

The procedure for validation of a claim was as follows. Applicants were restricted to former residents of Grandview or its predecessor, the Ontario School for Girls. Each applicant was required to complete an application outlining the abuse and consequent injuries she allegedly suffered. This had to be accompanied by a sworn statement as to the truth of the information given in the application, a statement releasing the Government from any further liability, and a declaration of having received independent legal advice.¹⁰ The application could also be accompanied by supporting documentation gathered by the applicant.

Two investigators appointed by the Government reviewed the information and determined if and when the applicant had been a resident at Grandview. They also reviewed the Crown ward files of the applicants to determine whether there was evidence of corroboration, inconsistency or other information relevant to the application. The application and all related documentation were then submitted to an independent adjudicator for review, assessment and validation.

The adjudicators were all female professionals in the law jointly chosen by the GSSG and the

⁹*Report of the Grandview Adjudicators* (May 13, 1998), p. 10.

¹⁰The legal advice was to ensure that the applicant understood the terms of the Agreement and the legal implications of signing a release.

Government. Six in total were appointed. As a group, they had expertise in human rights, feminist legal theory, tort law, criminal law, family law, constitutional law, property law, access to justice, health law, aboriginal legal rights, minority language rights and adjudication within administrative tribunals. Feedback from the applicants suggested that it was very important that the adjudicators were female, with many indicating that they would have been uncomfortable discussing the intimate details of their claims with a man. In addition, the fact that one of the adjudicators was a native woman who could appreciate the unique experiences of aboriginal claimants was noted as being very important.¹¹

Each applicant was entitled to an oral hearing before an adjudicator. The hearing was held in private and no transcript was maintained. The Government, the applicant and the GSSG were all parties to the proceeding and entitled to submit information to the adjudicator. The Government was entitled to attend the hearings and make representations, although no adverse inferences were to be drawn from the fact that the Government chose not to do so. The applicant was entitled to be represented by counsel. In practice, most hearings occurred without lawyers present.

The burden of proving the claim was on the applicant on a standard of a balance of probabilities. The applicant had to satisfy the adjudicator that the conduct complained of occurred, was not minor, and the injury sustained was substantial and prolonged. The decision of the adjudicator was final and not subject to appeal or other form of judicial review.

Hearings were held in various locations across the country. Efforts were made to select a venue that would accommodate the particular applicant's needs, and to provide as comfortable a setting as possible. As a result, hearings were sometimes held in an applicant's home or in an institution where an applicant was detained.

The hearings were designed to be informal and non-confrontational. Applicants were advised at the start how the hearing would proceed, and were given the opportunity to ask any questions they might have. Applicants were also informed that any notes taken during the proceeding would be private and confidential, and destroyed after a decision was rendered.

Applicants were asked at the outset to promise to tell the truth. The adjudicator then asked to hear about the applicant's experiences at Grandview, and any impact those experiences may have had. The adjudicators sought to give each applicant the chance to tell her own story. Follow-up

¹¹Report of the Grandview Adjudicators (May 13, 1998), pp. 5-6.

questions were then asked to clarify confusing points and ensure that all the relevant issues were canvassed. Applicants were always given the opportunity to explain apparent inconsistencies.

According to section 4.2.5 of the Grandview Agreement, in assessing a claim, the adjudicator was obliged to consider the following:

- (A) How long was the claimant in residence?
- (B) What was the age of the applicant?
- (C) Were complaints made and if so when?
- (D) By whom were the acts committed? What was the relationship of the claimant to the person?
- (E) What was the frequency of the abuse and mistreatment? Was it an isolated act or a series of acts?
- (F) What was the nature and severity of the abuse and mistreatment?
- (G) What was the impact on the claimant? What was/is the consequence of the abuse? What treatment has been received for the injuries identified?
- (H) Were criminal charges laid; was there a conviction; was conduct criminal in nature? (It is understood that many of the hearings may be concluded before the on-going criminal investigations are concluded, and accordingly, no adverse inference should be made with respect to beneficiaries whose alleged perpetrators have not yet been charged or convicted. Furthermore, neither the laying of criminal charges nor a conviction are preconditions for certification and relief under this agreement.)
- (I) Was the claimant a resident of Churchill House?

As suggested above, the types of material reviewed by the adjudicators included the following:

- 1) the applicant's written application outlining the abuse which she alleged that she experienced and describing the injuries suffered;
- 2) the applicant's sworn statement as to the truth of her application;

- 3) a certificate demonstrating that the applicant received independent legal advice regarding her options;
- 4) a statement releasing the Government from further liability, signed by the applicant;
- 5) documentation from the applicant's Crown ward file relevant to her claim, such as medical and dental records, reports of discipline, reports from the staff regarding the applicant's behaviour and progress (collected and compiled by the investigator);
- 6) transcripts from interviews conducted with the applicant by police officers investigating criminal charges, if any existed; and
- 7) supporting documentation, such as therapists' reports or other medical reports submitted by the applicant.

In practice, the primary focus of the fact finding exercise rested upon the oral evidence given by the applicant herself. The adjudicator assessed the applicant's credibility by observing her demeanour and considering the content of her evidence and any previous statements she had made on the issues.¹² The adjudicators found that the Crown ward files sometimes provided useful information, but were concerned that these records were primarily compiled by the staff of the institution, and therefore might have been coloured by self-interest. As such, they did not always represent reliable accounts of what transpired. Supporting written materials submitted by the applicant (usually reports of therapists, psychiatrists and other medical personnel) were also of some use, but these documents were created long after the applicant's time at Grandview, and thus were not always cogent evidence about what actually happened to the applicant at the school.

Once an application had been validated, the applicant received a decision prepared by the adjudicator.¹³ The Agreement stated that the reasons for the decisions were confidential and were not to be published by the parties. At the outset, the four original adjudicators deliberated as a group to establish a template that would be used to structure the reasons for the decisions. This template was developed after consultation with counsel from the Ministry of the Attorney General and counsel for the GSSG. The actual decisions generally conformed to the template, but adjudicators departed

¹²The adjudicators sought to account for factors which might affect an applicant's style of communication, such as culture, race, personality, and emotional and psychological state.

¹³The applicant was also sent a package of information describing the benefits for which she could apply.

from the standard format where particular cases so warranted. Most decisions were, therefore, uniform in structure, but unique in their description of the facts proven in the individual case.

The decisions included both a narrative account of the incidents of abuse and a description of the consequences of the abuse – the harm or injury experienced by the applicant and the effect of the abuse on her life. At the outset, the adjudicators agreed that the account of the incidents should be quite detailed so as to capture the extent and range of abuse and mistreatment that occurred at Grandview, using the applicant's own words to the greatest extent possible. In this way, each decision would create a detailed historical record of what transpired at the training school. By contrast, references in the decision to the detrimental effect of the abuse on the applicant's lives were deliberately left brief to avoid freezing the applicant's life in relation to the damage done, or labelling an applicant in stereotypical terminology. These practices were adopted in light of the goal of the Agreement to make the process one in which healing could take place.

The reasons for the decision were written primarily for the applicant, not for the other parties to the proceeding or as a precedent for other cases. The narrative was designed to recount what the adjudicator concluded had been proven on a balance of probabilities. In addition, the narrative sometimes mentioned an incident which was not compensable, but was a source of pain and frustration for the applicant. The decision thereby sought to provide justification for the adjudicator's findings and also served as a record of the applicant's perspective of wrongs suffered. Feedback from the applicants after receiving their decisions suggested that this aspect of the decisions was very important to them.

Although adjudicators sat individually, each decision was informally reviewed by a second adjudicator before release. Two adjudicators were responsible for reviewing each other's decisions for a defined period of time, with the pairs being changed every few months to ensure overall consistency. The review adjudicator made suggestions regarding changes to the draft decision, but the final determination remained with the adjudicator assigned to the case. Where a particular decision required special or difficult interpretation of the Agreement, drafts were circulated to all adjudicators for comment. The goal of this review process was consistency in the quantum of compensation and the interpretation of the language of the Agreement. In addition, it provided adjudicators with much wider knowledge and exposure to evidence being adduced during the hearings. Adjudicators also held group meetings regularly to review the procedures being used in the hearings and the decisions being rendered. The adjudicators found these meetings extremely useful and recommended that they be incorporated as an on-going and integral part of adjudicators' workload in future adjudicative processes.

In the end, 329 claims were resolved within two-and-a-half years. Most were validated. The adjudicators determined, on a balance of probabilities, that some former residents had been sexually, physically and/or psychologically abused and mistreated at Grandview. They also determined that the abusive treatment contributed to serious, prolonged and substantial harm.

In their Report on the process, the adjudicators suggested that the Agreement process allowed them to make reliable findings of fact, and that it may be preferable to evaluate evidence of institutional abuse without requiring all the elements of the adversarial model of litigation. In her evaluation, Ms. Leach found that applicants also viewed the adjudication process positively. In particular, they liked that the process offered the opportunity, in a relatively safe context, for women to tell their stories and have their experiences acknowledged. One notable area cited for improvement related to the use of more understandable (i.e., less legalistic and complex) literature for use by applicants to assess their rights and access benefits.

3. ONTARIO - ST. JOHN'S AND ST. JOSEPH'S TRAINING SCHOOLS

St. John's Training School was a training school for boys, located in Uxbridge. St. Joseph's Training School was another training school for boys, located in Alfred. Both were operated by the lay order of the Brothers of the Christian Schools under the supervision of the Government of Ontario. Residents at the schools included orphans, truants, Children's Aid Society referrals, juvenile delinquents (as they were then known), physically and perceptually challenged children, "incorrigibles" from reservation schools, and children of broken or poor homes which could not adequately support them. St. Joseph's was closed in the 1970s. St. John's continues to operate as a youth detention centre, under a different name, but it no longer has any association with the Brothers of the Christian Schools.

Allegations of abuse at St. John's and St. Joseph's surfaced publicly in 1990. Following the Winter Commission's inquiry into sexual abuse at church-run institutions in Newfoundland,¹⁴ former residents of both schools came forward with allegations of physical and sexual abuse at the two Ontario schools. This abuse had occurred mainly between 1930 and 1974, with some isolated cases in the 1980s. The Ontario Provincial Police began an extensive investigation in the early 1990s and eventually laid charges against 28 Christian Brothers from both Schools and one employee from St.

¹⁴Winter, G.A., *Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy*, Submitted to the Most Reverend A. L. Penney, D.D., Archbishop of the Archdiocese of St. John's (St. John's, Nfld.: Archdiocese of St. John's, June 1990).

Joseph's. The charges covered almost 200 counts of abuse, ranging from assault causing bodily harm to indecent assault and sodomy. Some of the accused were ultimately convicted.

Recognizing a commonality of interest, the former residents who had come forward in 1990 decided to form an unincorporated association in order to seek some kind of redress. They named the association Helpline. By December 1990, Helpline had about 300 members.

Helpline proposed that an alternative dispute resolution model be negotiated amongst the Toronto District of the Brothers of the Christian Schools (which ran St. John's), the Ottawa District of the Brothers of the Christian Schools (which ran St. Joseph's), the Government of Ontario and the Roman Catholic Archdioceses of Toronto and Ottawa (the two Archdioceses in which the Schools were located). All parties except the Toronto Brothers agreed to participate, and negotiations began in early 1991. The Toronto Brothers occasionally sat in on the negotiations, but never became an active participant. They also never joined the redress program that was ultimately negotiated.¹⁵

The negotiation process involved the use of a Convenor acceptable to all parties, as well as the assistance of an expert in alternative dispute resolution. Funding for Helpline was paid by the other negotiating parties (except the Toronto Brothers) on the basis of a cost-sharing agreement arrived at in June 1991. Interim counselling services were offered to Helpline members.

After more than one and a half years of intense negotiations, an Agreement was reached in August 1992. Helpline, the Ottawa Brothers, the Archdioceses of Ottawa and Toronto and the Ontario Government were all "participants" in the Agreement. This Agreement was later ratified by 95.3% of the membership of Helpline,¹⁶ each of whom signed a release waiving any right to sue the participants in civil proceedings. (The waivers did not prevent them from suing the actual perpetrators.) Implementation of the Agreement began in January 1993.

The Agreement entitled former residents of the schools who had been abused to financial compensation as well as access to various other benefits. Specifically, the Agreement stated that the

¹⁵Legal action was later commenced against the Toronto Brothers by several Helpline members. The Toronto Brothers began making financial offers to the former students, some of whom accepted and some of whom did not. Details of the settlement agreements are not available because they are considered private agreements between the former students and the Catholic Church.

¹⁶For purposes of the vote, the membership of Helpline was defined as the members of Helpline "with whom it was in active contact, which in the opinion of the Chair [were] representative of the overall profile of Helpline members."

objective of the package was to meet the participants' "collective moral responsibility to work to heal the impact of abuse in those cases validated through access to the opportunities contained in [the] Agreement and to help restore lost trust in the spiritual and secular institutions of ... society." A commitment to help eradicate abuse generally and its underlying causes was said to transcend the Agreement.

In the end, the total number of Helpline claimants was 1,025. All the claims have now been resolved. The costs of the Agreement, including the implementation costs and the operating expenses of Helpline,¹⁷ were borne by the Government, the Ottawa Brothers and the two Archdioceses.

(a) The Process

All former students of St. John's and St. Joseph's were eligible to apply for benefits. Claimants were processed in three groups. Group I consisted of 354 former students who were members of Helpline or who had made a statement to the police as of June 24, 1992.¹⁸ Group II consisted of 241 former students who had joined Helpline or made a statement to the police after June 24, 1992, but before April 1, 1993.¹⁹ A third group, known as post-Group II, consisted of both former students on a list submitted by Helpline on March 3, 1995, and any individuals who came forward after that date. As explained below, the process and available benefits for claimants from post-Group II varied somewhat from that for claimants from the first two groups.²⁰

Each claimant had to fill out a sworn Application for Compensation detailing, among other things, the nature of the abuse experienced, the injuries suffered, any treatment received, and the particulars of any report made to the police about the abuse.²¹ The claimant was also required to sign an Authorization for Release of Information, consenting to the release of information from treating doctors, employers, insurance and pension companies, and various public bodies. Supporting

¹⁷A maximum of \$120,000 was designated for Helpline's operating expenses.

¹⁸Spouses of these individuals who had become widowed after January 1, 1990, were also eligible to apply.

¹⁹Again, spouses of these individuals who had become widowed after January 1, 1990, were also eligible to apply.

²⁰The dates defining the various groups were of no particular significance. Cut-off dates were simply required for budgeting purposes, and to allow the participants to decide whether to continue the program.

²¹If the claimant had not made a report to the police, he was asked to explain why he had not.

documentation could be given along with the application. Collectively, all this information was called the Claim Form.

A Reconciliation Process Implementation Committee (“RPIC”) was established to help implement the Agreement. RPIC was composed of two representatives of Helpline, one representative of each of the other participants, and an independent third party who sat as Chair.²²

Within two weeks of receipt, RPIC would review each Claim Form and make any comments it considered appropriate.²³ It would then forward the materials to a member of the Ontario Criminal Injuries Compensation Board who had been designated to hear claims under the Agreement (“CICB-designate”). RPIC would also forward any records that it thought might support or undermine any part of the claim.

RPIC had the right not to forward claims that it deemed to be unfounded. These claims were rejected, without prejudice to the claimant’s right to reapply. A claim could only be rejected if all the members of RPIC agreed that it was unfounded. In the absence of consensus, the Chair determined whether the claim would be forwarded to the CICB-designate without qualification or with the recommendation that it be closely scrutinized. In practice, some claims were returned to the claimants, together with the releases they had signed. They were told that they were free to pursue civil actions, if they saw fit.

The CICB-designate determined whether the claimant was entitled to an award for pain and suffering from abuse suffered at one of the schools. Abuse was defined as an injury (as defined in the *Compensation for Victims of Crime Act*)²⁴ resulting from a criminal act. In making the determination, the CICB-designate was directed to consider the Claim Form, the comments of RPIC, and any evidence and information from the claimant. The burden to prove the abuse rested with the claimant on a balance of probabilities.

Each claimant was entitled to a hearing before the CICB-designate. The hearings were private

²²Douglas Roche, now Senator Roche, who had acted as Convenor during the negotiations, was named in the Agreement as Chair. There is no doubt that Mr. Roche, a prominent Catholic and former ambassador, brought a great deal of credibility to the process; his involvement greatly facilitated the negotiations that led to agreement.

²³If the claim was not complete, RPIC would assist the claimant in perfecting it.

²⁴R.S.O 1990, c. C-24.

and claimants were directed not to discuss evidence revealed at the hearing with anyone until all the hearings had been completed. The claimant, his family, legal or other advisor, and counsellor were entitled to attend the hearing, as were RPIC and the Recorder (a person designated to make a record of the events which occurred at the schools). The claimant was also entitled to request the assistance of legal counsel. If RPIC considered the request reasonable, it would make efforts to ensure that counsel was made available through (what was then called) the Ontario Legal Aid Plan.

At the hearing, the claimant would tell the CICB-designate his story of what happened. The evidence was given under oath, and the claimant was advised of the seriousness of not telling the truth. The CICB-designate evaluated the credibility of the claimant's evidence.

A claimant could waive an oral hearing if RPIC determined that the claim was complete and supportable without a hearing, and the CICB-designate concurred that the determination may be made without a hearing.

For claimants in Group II, a provision was added that allowed participants not satisfied with an application to subject the claimant to videotaped testimony prior to the hearing. This option was exercised for 15 claimants, none of whose claims were denied by the CICB-designate. Later on, a system of documentary hearings was initiated for Group II claimants, for which a personal appearance by the claimant was not required,²⁵ although claimants retained the right to a second, personal appearance if they so desired.

Once a determination was made that the claimant suffered abuse, the CICB-designate would make an award for pain and suffering. In making the award, the CICB-designate was directed to consider the Claim Form, any information from the claimant, as well as "such materials as it (sic) deems appropriate." For claimants resident in Ontario, the CICB-designate would also make a determination, based on "appropriate material," of the counselling costs for the benefit of the claimant and his or her family. No appeal was available from any of the CICB-designate's decisions.

The total number of Group I and II claims considered was 595. Of these, 580 (97.5%) were validated. Only 15 were denied. Douglas Roche, the former Convenor and Chair of RPIC, said later that the process proved to be victim-friendly.²⁶

²⁵This could only occur with the consent of all the participants to the Agreement.

²⁶Roche, Douglas, *Reconciliation: An Ongoing Process. RPIC Chairman's Personal Report*, p.7.

For post-Group II claimants, a new Memorandum of Understanding was signed by the Government of Ontario, the Ottawa Brothers of the Christian Schools and the Archdioceses of Toronto and Ottawa. The Memorandum indicated that the participants wished to conduct the process in an accelerated manner. The RPIC administrative process was abandoned, and claims were sent directly to the Abuse in Provincial Institution Office of Ontario. The participants wrote to each claimant by March 31, 1996, and provided them with background information, a release form, an application and other pertinent information. A claimant had until July 1, 1996, to send in his application.

Each application was processed by a CICB-designate by either a documentary or oral hearing, although any of the participants or the claimant could insist upon an oral hearing. A participant was entitled to submit comments on the application. Any such comments were sent to all the other participants and the claimant. To enable the claimant to respond to comments of a legal nature, legal services up to a maximum of \$450 were provided.

After reviewing all the information, the CICB-designate decided whether abuse took place and harm resulted. If so, an appropriate award for pain and suffering was granted. No appeal was available.

(b) Details of the Compensation Package

Both financial and non-financial benefits were available under the Agreement to validated claimants. The details of the various benefits available to Group I and II claimants are outlined below. The available benefits differed slightly for post-Group II claimants. Details of those benefits are outlined at the end of this section.

As indicated above, each claimant whose claim of abuse was validated was entitled to an award for pain and suffering. The Agreement contemplated that an average award would be \$10,000.00. As it turned out, the average award was \$10,258 for Group I claimants and \$8,129 for Group II claimants.

The Government of Ontario was responsible for covering the cost of the awards. The Agreement stipulated that the Government was to pay the award to RPIC within 30 days of validation or eight months of ratification of the Agreement, whichever was later. RPIC was then responsible for disbursing the funds to the claimant. A claimant could receive the award as a lump-sum payment

or request that all or a portion of the award be paid as a structured settlement over a number of years. A claimant could also request investment counselling advice.

For each validated claimant from St. Joseph's, Additional Compensation for Pain and Suffering equal to 1.6 times the CICB-designate award was made by the Ottawa Brothers of the Christian Schools. Where a claimant was abused at both St. John's and St. Joseph's, the Ottawa Brothers contributed according to the proportion of time the claimant spent at St. Joseph's. The funds were disbursed through RPIC, and were to be paid within 30 days of the award or 18 months of ratification. A total of \$5,708,000 was disbursed to Group I and II claimants under this heading.

The Ottawa Brothers also contributed as Discretionary Compensation a further 25% of the award they granted as Additional Compensation for Pain and Suffering. These funds were distributed as directed by the CICB-designate on a pro rata basis. A total of \$1,427,000 was disbursed to Group I and II claimants under this heading. The money was distributed after all the Group I and II claims had been considered.

During negotiations leading to the Agreement, it was always hoped that the Toronto Brothers of the Christian Schools would sign on to the Agreement. Mr. Roche has indicated that when that did not occur, Helpline found itself in a dilemma. The organization wanted to maintain solidarity among its members, irrespective of which school they attended, but the former St. John's students could not expect to receive the Additional and Discretionary Compensation that would have come from the Toronto Brothers. In order to resolve this situation, and to raise funds to launch legal action against the Toronto Brothers, Helpline devised an Internal Sharing Agreement, whereby former St. Joseph's students would share their extra compensation with their St. John's colleagues, with a certain amount dedicated for anticipated legal expenses. Additional and Discretionary Compensation funds were thereafter paid not to individual claimants, but to a holding company that allocated the funds accordingly. Mr. Roche has noted further that when the Toronto Brothers managed to settle claims with some former students of St. John's, difficulties arose when the St. Joseph's members did not receive back the monies advanced under the Sharing Agreement.²⁷

Each of the participants other than Helpline jointly contributed \$3,000 per successful claimant to an Opportunity Fund. This was a fund intended to assist claimants with medical and dental needs, vocational rehabilitation, educational upgrading, and literacy training. A validated claimant (or a member of his family) was eligible for such assistance when the claimant expressed such a need, it

²⁷*Ibid.*, pp. 9-10.

appeared that the need was realistic and that the claimant might be expected to benefit, and the need could not readily be met by other private or public programs. The assistance was available as of 12 months after the date of ratification. The amount of assistance was determined by RPIC, but could not exceed \$3,000 per claimant until 12 months had passed since the last claim was dealt with by RPIC. After that date, the funds were disbursed until exhausted on a first come first served basis. As of June 30, 1996, 547 validated claimants had been paid a total of \$643,271 out of the fund.

A concern was expressed during the negotiations by some members of Helpline that they had not been paid for menial and farm labour performed during their stays at St. John's and/or St. Joseph's. The Ottawa Brothers denied owing any such wages, but as a gesture of good faith contributed money towards wage loss. The money was paid six months after ratification and distributed according to a formula worked out by Helpline. The total funds disbursed for Groups I and II amounted to \$283,500.

Successful claimants were entitled to assistance with counselling costs for both themselves and their families. As noted above, for residents of Ontario the CICB-designate would make a determination of counselling costs at the same time as making an award for pain and suffering. These counselling costs were borne by the Ontario Government, which entered into an agreement with the Family Service Centre of Ottawa-Carleton. The Centre determined the needs of claimants and approved service providers. Once a treatment plan was in place, the Government disbursed the funds. Counselling requests were only entertained for a maximum of five years, unless the Government authorized an extension.

The counselling costs of those claimants and claimants' families who resided outside of Ontario were paid by the Ottawa Brothers and the Archdioceses of Toronto and Ontario. Each participant contributed \$250,000 to a fund administered by RPIC.

Four hundred and sixty-eight individuals in Groups I and II took advantage of the counselling assistance, for a total cost of \$1,570,561. In-province counselling paid for by the Ontario Government accounted for approximately 80% of these costs. Out-of-province counselling covered by the other parties accounted for the rest.

The importance of collective and individual apologies was recognized in the Agreement. However, there was no specific provision for the giving of apologies; the participants simply agreed to develop criteria to address the issues of entitlement, content and timing of apologies. This was done so as not to prejudice any related criminal proceedings. The participants later signed a

confidential Companion Agreement. That Agreement entitled all validated claimants to request a personal apology “by a particular individual or representative of the participant making the apology.” One hundred and nineteen claimants requested such apologies. The Government of Ontario and the Archdioceses of Toronto and Ottawa also delivered separate public apologies.

The participants to the Agreement stipulated that they were committed to ongoing research and public education with respect to the prevention of child abuse. In that regard, the Agreement spelled out measures already taken by the Ottawa Brothers and the Archdioceses of Toronto and Ottawa in response to the St. John’s and St. Joseph’s experience. Among other things, the groups had adopted new policies on how to respond to allegations of child abuse, and had funded educational programs about such abuse. The Government of Ontario also committed itself to developing and improving policies and strategies directed at the prevention and early identification of child abuse. The Ministry of the Solicitor General and Correctional Services subsequently adopted several different initiatives in pursuit of those goals.

The last element of the Agreement was provision for a Recorder. The Recorder’s task was to record the experiences of each person who attended or worked at either school and who wished to be heard. The participants believed that the abuse should be memorialized so that lessons could be learned and similar events prevented through public education. The Recorder was also required to prepare a report containing an outline of the relevant history of the schools and recommendations designed to assist in the prevention of abuse in institutional settings. This Report was submitted to RPIC on September 30, 1995.

A total of \$14,500,000 in cash benefits was awarded to validated claimants in Groups I and II. The highest amount paid to one claimant was \$107,944, the lowest \$2,500. An average of \$33,700 per claimant was paid out in awards, benefits and support costs.

As noted above, a separate Memorandum of Understanding was signed to deal with post-Group II claims. In many respects, the benefits available under the Memorandum were the same as under the earlier Agreement. However, there were some differences. Discretionary Compensation was no longer available. Money for lost wages was no longer given to claimants. Instead, the Ottawa Brothers agreed to donate \$200 in the name of each validated claimant to the Family Service Centre of Ottawa-Carleton to further public education in societal response to child abuse. Counselling both in and out of Ontario was still available, but only for one year (absent demonstrated need for an extension). The maximum amount available for counselling was \$10,000 per validated claimant. The claimant’s immediate family was only entitled to short-term counselling based on

clinical need. Finally, money was no longer contributed to an Opportunity Fund. Instead, the Archdiocese of Ottawa and the Ontario Government agreed to pay each St. Joseph's validated claimant \$3,000 to use for educational and medical purposes. The Archdiocese of Toronto agreed to pay the same amount to St. John's validated claimants.

4. ADDITIONAL OBSERVATIONS ON ONTARIO INSTITUTIONS

There are differences between the approaches agreed upon by the Ontario Government for responding to the Grandview claimants as opposed to the St. John's and St. Joseph's claimants. Although this is explained, in part, by distinctions between the two situations and the negotiations that accompanied each, it also reflects the fact that the Helpline agreement predated Grandview. Lessons learned were incorporated into the more detailed Grandview agreement.

As described earlier in this Report, the Nova Scotia Government invited Tom Marshall, Q.C., one of the architects of both Ontario programs and a senior official with the Ontario Ministry of the Attorney General, to explain the Ontario approach to Cabinet and other officials. Mr. Marshall also met with my staff on several occasions, for which I am grateful, to outline some of the nuances of the Ontario programs not necessarily captured in the documents. I wish to highlight several here.

In both Ontario programs, the formation of a claimant or survivor advocacy group was regarded as fundamental to the creation and implementation of the agreements. These groups provided a single point of access to claimants. They gave those claimants ownership of the programs in a way that multiple lawyers, each representing one or more claimants at a negotiating table, might not. The direct involvement of the advocacy groups with the Government promoted a degree of trust, and facilitated reconciliation, healing and a sense of empowerment on the part of claimants. Marshall was also of the view that the advocacy groups recognized the detrimental effect that false claims would have on the overall credibility and success of the program and, as a result, engaged in some self-regulation or screening of claims brought forward, as did counsel on their behalf. Indeed, he felt that the legal profession must assume some ethical responsibility in this regard, and not just take a story and put it forward without any scrutiny or introspection as to its truth.

Although the lawyers for each of the advocacy groups played an important role in the development of the agreements, they ultimately had a much diminished part in the implementation of the agreements. Most claimants chose to be unrepresented by counsel during the fact finding process.

Like the Nova Scotia Compensation Program, both Ontario programs ran concurrently with extensive police investigations. Indeed, a number of criminal prosecutions also took place. Mr. Marshall advised that the programs recognized the importance of not interfering with or harming ongoing criminal investigations or prosecutions. Claimants were not assured that their claims for compensation would be kept confidential. On the contrary, they had to be prepared to disclose to the police. Indeed, many claimants who alleged serious abuse were directed to the police who took their formal statements.

The programs recognized that compensation could be awarded prior to the conclusion of any related criminal proceedings. Nonetheless, in practice, a number of claims were deferred until the completion of the criminal process. As well, the police shared information with the programs as to the product of their investigations and the veracity of individual claimants. This information was utilized in evaluating the merits of the claims.

Neither Ontario program had to contend with multiple claims of abuse directed against current staff members. Mr. Marshall recognized that this represents a significant distinction between the Ontario and Nova Scotia situations. In his view, this factor might well compel a redress program to defer processing an application for compensation until any existing criminal proceedings against a current employee are completed. (Indeed, this is generally the way in which this issue was dealt with when it arose in connection with alleged abuse at the Sir James Whitney School for the Deaf in Belleville, Ontario.) As well, Mr. Marshall felt that a mechanism would have to exist to permit such employees to be heard before the completion of the criminal process.

5. ONTARIO - GEORGE EPOCH

Father George Epoch was a Roman Catholic priest and a member of the brotherhood of Jesuit Fathers of Upper Canada (“the Jesuits”). He served the native communities on the Saugeen and Cape Croker reserves between 1969 and 1983. He was then transferred to Holy Cross Mission in Wikwemikong, where he stayed until his death in 1986.

Father Epoch sexually abused a number of the male and female residents of the reserves during his tenure. After his death, the community of Cape Crocker began to demand that the Jesuits acknowledge the abuse and compensate the victims. Twenty-two lawsuits were also filed by residents of the Cape Crocker reserve.

The Jesuits responded to the claims by conducting an investigation into Father Epoch’s actions. It uncovered an extensive history of sexual abuse by the late priest. The Jesuits accepted moral but not legal responsibility for the abuse, and attempted to help the victims by providing financial assistance through an informal program known as “Appropriate Assistance.” The program was not a success. Funds were distributed somewhat arbitrarily – some victims obtained compensation while others did not – and no provision was made for counselling or other benefits. In 1993, after spending approximately \$2,000,000, the Jesuits abandoned the program, believing that few concrete results had been achieved.

On August 30, 1992, the Ontario Jesuit community issued a public apology for the abuse. Some informal meetings followed between a small group of victims and the Jesuits. Both parties wanted to achieve reconciliation, and formal negotiations began in 1993 towards an alternative to traditional civil litigation. Legal counsel on behalf of the victims and the Jesuits conducted the negotiations, assisted and advised by a neutral third party who had experience in such matters. Funding for the negotiations was provided by the Jesuits.

The negotiations were ultimately successful. On October 31, 1994, the Reconciliation Agreement between the Primary Victims of George Epoch and the Jesuit Fathers of Upper Canada was ratified. The “primary victims” were a number of women and men who alleged that they had been abused by Father Epoch on the reserves. Additional primary victims ratified the Agreement over time. In the end, a total of 97 ratified the Agreement.²⁸

²⁸Eleven individuals who claimed they were abused but did not ratify the Agreement instituted civil proceedings against the Jesuits and the Diocese of Hamilton for the abuse. As of July 24, 2001, the Jesuits had settled with each of the litigants. Proceedings against the Diocese of Hamilton were still ongoing.

The spirit and objective of the Agreement were reflected in its Overview:

The Participants have agreed that the healing of all those who were abused by George Epoch is most likely to occur through a process of reconciliation. Thus this Agreement represents the best alternative for those who were abused. The Jesuits wish to provide benefits that are accessible, fair and just, to those victims whose claims of abuse are validated. Moreover, the reconciliation process also benefits the Jesuit community. For the Jesuit Order recognizes that it has a moral responsibility to work to heal the impact of abuse on the victims, and to help restore lost trust in the spiritual and secular institutions of our society.

Applications for benefits under the Agreement were accepted until May 1, 1995. The program closed at the end of 1998.²⁹

(a) The Process

All persons who had been subject to “physical sexual abuse” were entitled to apply for benefits under the Agreement. The Agreement did not provide a definition of physical sexual abuse. A condition of every application was that the claimant release the Jesuits, the estate of Father Epoch and the Diocese of Hamilton from any further claims for compensation arising out of the abuse.

A claimant began an application for benefits by completing a Claimant Information Form and Request for Apology. The Form sought information as to the particulars of the claimant, as well as the details of the claimant’s past and present medical treatment. The claimant was also required to complete a Story of Abuse, outlining the details of the abuse committed by Father Epoch, the psychological injuries suffered as a result, and the particulars of any previous reports of the abuse made by the claimant to any person in authority. If the claimant had not reported the abuse, he or she was asked to explain why. Claimants were assisted in completing these forms by the Assessor, the person responsible for deciding whether to validate the claim.

The application forms were received by the Reconciliation Implementation Committee (“the Committee”). The Committee was composed of one representative of the primary victims, one representative of the Jesuits, and an “independent and impartial” Chair. It was responsible for

²⁹Some primary victims who ratified the Agreement subsequently instituted civil proceedings against the Jesuits and the Diocese of Hamilton, claiming that they did not agree to the compensation program with full knowledge and awareness of the consequences. As of July 24, 2001, the Jesuits had settled with all the litigants. Proceedings against the Diocese of Hamilton were still ongoing.

ensuring the proper implementation of the Agreement. It also appointed the Assessors. It did not review or evaluate the applications for benefits. One hundred and fifty thousand dollars was set aside for its work.

The Assessors were responsible for conducting the validation process. Two Assessors were appointed. Both were aboriginal with a community or social work background. Neither had legal training.

The Assessor reviewed the application completed by the claimant, as well as any supporting documentation provided. The Assessor also conducted one or more private interviews with the claimant “in order to encourage a spontaneous, detailed statement.” All information was received in confidence.

In evaluating the claim, the Assessor was entitled to consider the statement-validity analysis developed by John Yuille of the University of British Columbia. Yuille was a professor of psychology who had developed a method for determining the validity of a claim, based on “the presence or absence of certain characteristics, which are typical of how humans recall and describe remembered events, particularly in the area of sexual abuse.”

The Assessor determined a claim on a balance of probabilities. If the Assessor found that the claimant was physically sexually abused by Father Epoch, then the claim was validated, and there was no appeal. If the claim was not validated, the claimant was entitled to repeat the application process with the second Assessor, who was available on a standby basis. The second Assessor could either validate the claim or reject it. In either case, there was no further appeal. In the end, 83 of 97 claims were validated.

The Jesuits paid for the costs of the validation process. The Agreement stipulated that the costs were not to exceed \$40,000.

(b) Details of the Compensation Package

Each validated claimant was paid \$25,000 as financial compensation for the abuse. The money was paid by the Jesuits and delivered to the claimant within 30 days of validation. However, each claimant had the option of receiving payment periodically over time or of placing the money in a trust fund for the benefit of the claimant and his or her family. The Agreement stipulated that the

compensation was deemed to be an award for pain and suffering, and thus it was generally not subject to income tax. It was also excluded from income for purposes of determining eligibility for social assistance payments.

The Jesuits also agreed to pay up to \$25,000 for the services of a financial consultant. The consultant was named by the Committee, and offered financial counselling to validated claimants.

Within 30 days of validation, each claimant was sent an application form for seeking payments from a Vocational Opportunity Fund. This was a fund dedicated to providing assistance to the claimant and his or her family for educational upgrading, vocational training, and medical and dental treatment. The maximum available award (for claimant and family) was \$4,000. No additional money was set aside for the fund. Instead, payments came out of the \$150,000 allocated to the Committee for its fees and expenses. Applications for payments were reviewed by the Committee, and all payments were made as directed by the Committee. The Agreement stipulated that the Committee was to make awards based on the best interests of the validated claimant.

Every validated claimant received an individual written apology from the Jesuits, delivered within 30 days of validation. Claimants submitted a request for an apology along with their application for benefits. They were entitled to outline what they wished the apology to contain, and the Jesuits agreed to comply with any reasonable requests in that regard. If the Jesuits did not consider a request to be reasonable, they were entitled to seek the opinion of the Chair of the Committee. The Chair's decision as to whether the request was reasonable was binding.

The Jesuits also agreed to publish an institutional apology, in which they expressed their "sorrow, regret and humility" for Father Epoch's acts. The apology was sent to the Chiefs of the Band Councils at Cape Crocker, Saugeen and Wikwemikong, with a request that it be printed in Band newsletters. It was also sent to the principal newspapers serving each of those communities, again with a request that it be published. A model homily based on the institutional apology was sent to the parishes where Father Epoch served, to be delivered by parish priests at a Mass dedicated to victims of child abuse. All claimants were notified by mail of the dates and locations of these Masses.

All claimants were entitled to receive counselling services of various types (including individual and family counselling, group counselling, self-help support teams, and telephone crisis intervention). Eligibility was not dependent on validation of a claim, but simply upon submission of a claim. Family members of claimants were also eligible for counselling services, although priority was given to those who were actually physically sexually abused by Father Epoch.

The Jesuits contributed \$400,000 towards the establishment of a multi-faceted counselling program. This was a program in which various therapists and support personnel were specifically contracted to provide individual and family counselling services to claimants and their families. It lasted for three years, and was established and supervised by a Counselling Advisory Group (“the CAG”), made up of one representative of each of the Jesuits, the primary victims and the “applicable Chiefs and Council.” The CAG was accountable to the Committee. A Co-ordinating Therapist was hired to supervise and direct the contract therapists.

The Jesuits also contributed an additional \$100,000 for discretionary counselling. This money was used to permit primary victims to seek counselling outside of the established counselling program. The victim’s choice of therapist for discretionary counselling was subject to the approval of the CAG.³⁰

The frequency and length of counselling for particular claimants was determined at the discretion of the therapists providing direct clinical services, subject only to the financial limitations of the program and the overriding discretion of the Co-ordinating Therapist, the CAG and the Committee. Efforts were made to make the counselling services geographically accessible to the claimants. The CAG was also directed to maximize the available counselling services by applying for access to cost-shared counselling programs funded by one or both of the federal and Ontario Governments.

A Recorder was appointed by the Committee for the purpose of memorializing the history of abuse by Father Epoch. The Recorder afforded a private interview to any claimant who wished one, as well as to anyone else who had relevant information and who wished to be heard. He outlined the abuse in a Report to the Committee, and also made observations and recommendations designed to assist in the prevention of future abuse in institutional settings. A copy of the Report was sent to all validated claimants.

The total cost of the Agreement was approximately \$2,500,000. All expenses were borne by the Jesuits. The amount allotted for counselling was not all spent, and the remainder was released for use in education programs for the prevention of sexual abuse.

³⁰The CAG was entitled to consider the qualifications of the therapist, the prospective benefit of the proposed therapy to the victim, and “any other criteria which the Committee deem[ed] to be reasonable.”

6. NEW BRUNSWICK

In December 1992, a former employee of the New Brunswick Training School at Kingsclear, Karl Toft, was convicted of having sexually assaulted a number of former students at the school. This brought to public attention the issue of institutional abuse in New Brunswick. A Commission of Inquiry was subsequently held, and a compensation program established in an attempt to provide redress to those who were victimized while under the care of the Province.

The New Brunswick Training School at Kingsclear was an institution operated by the Ministry of the Solicitor General. It was home to minors who had committed delinquencies, as well as to children who had committed no crimes, but who were wards of the state awaiting placement in foster care.

In 1985, a counsellor at the school reported an incident of sexual molestation involving Mr. Toft and a male student. Toft was transferred as a result of the report, but no other action was taken. A few years later, a colleague and three other male students filed further complaints of sexual assault against Toft. The regional police and the RCMP investigated the complaints, but no charges were laid. Toft was later rehired at the school to work at a summer camp.

Toft was finally arrested in September 1991 and charged with 27 counts of sexual assault. Twelve additional charges were laid in 1992. He ultimately pleaded guilty to 34 counts of sexual assault and was sentenced to 13 years in prison.

Two more individuals have since been convicted of abusing child residents of New Brunswick institutions. Another was charged but not convicted. A fifth has been charged and will be tried in the near future.

On the same date that Toft was sentenced, the New Brunswick Government set up a Commission of Inquiry headed by the Honourable Richard L. Miller, a former Justice of the New Brunswick Court of Queen's Bench. The Inquiry investigated allegations of physical and sexual abuse at three provincial institutions: the New Brunswick Training School at Kingsclear, the Boy's Industrial Home in Saint John and the Dr. William F. Roberts Hospital School.³¹ The Boy's Industrial Home was the predecessor institution to the School at Kingsclear. The Roberts Hospital School was a facility operated by the New Brunswick Department of Health for mentally challenged minors and

³¹The Miller Report paid special attention to how the Toft case was handled by the authorities.

other wards of the state.

Mr. Miller released his Report in February 1995. Included amongst his recommendations was one for the creation of a compensation program. In June 1995, the Government responded to this recommendation by establishing the Compensation for Victims of Institutional Sexual Abuse Program.

The stated objective of the program was “to allow for the orderly, appropriate, timely resolution of claims, made against the Province, by persons who indicate they were sexually abused, by employees of the Province” at one of the three institutions examined during the Miller Inquiry. Lawyers from the New Brunswick Department of Justice and those representing the victims had established a process through which settlements could be negotiated. It was hoped that this would provide an opportunity to address legitimate claims outside of the court system.

The program commenced on June 8, 1995. On August 29, 1996, the Department of Justice announced that the Program would end the following day. In a press release, the Minister of Justice, the Honourable Paul Duffie, explained the reasons for the termination:

[T]his package has been in effect for 15 months, and now I believe that it’s time to bring closure to the process ... I believe that at this point, the majority of claims have been filed and are currently being investigated and processed.

Claims received after August 30, 1996, were initially treated as ordinary civil court actions, but on August 19, 1999 the Government re-opened the program and extended the deadline to November 19, 1999. This was done to accommodate claimants who had been unable to file a claim within the initial claim period.³²

By June 15, 2001, a total of 413 claims had been received. Two hundred and eighty-four of them had been settled, resulting in a payout of \$10,159,744.66.

(a) The Process

All persons who had been sexually abused by an employee of the Province at one of the three

³²Any claim made under the renewed program was subject to the terms of the New Brunswick *Limitations of Actions Act*, S.N.B., c. L-8. The Government had agreed not to plead limitations in the initial process.

institutions were eligible for compensation. Physical abuse was not compensable under the program.

There was no formal organization representing claimants in the process. They were encouraged to retain the services of counsel, but they were free to proceed without one. As it turned out, about 20 different lawyers represented all the claimants. Counsel were not permitted to charge a fee greater than 20% of the total compensation paid to a claimant. Legal fees were paid by the claimants.

Claimants commenced an application for compensation by filling out a statement of claim describing the actions of the alleged perpetrator. This statement was delivered to the Legal Services Branch of the Department of Justice, where it was reviewed by lawyers employed by the Province. Claimants were eligible for benefits when the Government was satisfied it was likely the claimant had suffered the harm alleged.

In order to arrive at an opinion, the Government usually requested authorization to review the contents of the claimant's medical files, psychological reports, young offender files, and the like. A claimant was also asked to consent to the release of all information relating to him or her which was obtained in the course of the investigation and conduct of the Miller Inquiry. None of this information was released to the public.

The claimant was interviewed by a lawyer from the Department of Justice and asked to recount in detail the actions that were committed against him. The Government had the right to ask that the claimant be sworn and the testimony transcribed. The Government could also ask that the claimant be psychologically tested, although no testing could occur without the claimant's consent.

Whenever a name was provided by the claimant, the alleged abuser was contacted by the Government to obtain his or her side of the story. If he or she was still employed by the Province, the relevant department was also contacted.

After reviewing all of the available information, the Government chose whether to accept or reject the claim:

- ! If it appeared that the claimant did in fact not suffer sexual abuse, as claimed, while in the care of the Province, the claim was refused. The claimant could then decide to either withdraw the claim (and possibly sue the Government instead) or avail himself or herself of the adjudication process described below.

- ! If it was deemed “likely that harm was done to the claimant,” a determination of the severity of the harm was made and an offer, in keeping with the amounts offered to other claimants who suffered similar harm, was made to counsel for the claimant.³³ If it was accepted, it was processed as outlined below. If it was not accepted, the amount could be negotiated. If an agreement could not be reached after a reasonable effort at negotiation, the claimant was permitted to refer determination of the award to an arbitrator. Alternatively, the claimant could decide to opt out of the program and proceed with legal action in the normal course.

In the end, only allegations against the five employees who were charged criminally were considered credible by the Government.

As indicated above, in cases where the Government and the claimant did not agree on the veracity of the claim and/or the quantum of damages, the matter could be referred to an independent arbitrator.³⁴ The procedure for the arbitration hearing was based on the New Brunswick *Arbitration Act* of 1973³⁵ (although the parties could agree to dispense with some features of the Act). It was an informal proceeding in which the rules of evidence were relaxed. Evidence could be presented by the Province and the claimant, but no witness could be forced to testify. Damages were proven in the same manner as in a civil case.

The arbitrator decided on the veracity of the claim being presented and, if necessary, the quantum of damages. The decision was binding and not subject to appeal. Judicial review could be sought, however, pursuant to the normal rules of court for such matters. In total, 14 cases went to adjudication. Ten were decided in favour of the Province and four were decided in favour of the claimant.

In cases where the Government and claimant agreed on both the veracity of the claim and the quantum of damages, the settlement recommendation was forwarded to various other departments of the Government for approval and verification:

³³The amount of the offer was based upon an award grid developed by the Solicitor General’s office in light of past compensation awards and the nature of the abuse suffered. The grid was never made public.

³⁴The same arbitrator was used for all cases to ensure consistency.

³⁵R.S.N.B. 1973, c. A-10.

- ! The recommendation was first sent to a policy advisor at the Department of the Solicitor General. The advisor would examine the facts of the case and determine whether the amount appeared to fall within the guidelines of the compensation program and the normal parameters for claims of a similar nature. If it did, the advisor would forward the recommendation to the Director of Policy Planning and Public Affairs.

- ! The Director of Policy Planning and Public Affairs would determine whether the recommendation was “satisfactory.” If it was, the Director would order the Director of Financial Services to prepare a cheque for the amount suggested.

- ! The Director of Financial Services would determine if he was “in accord.” If he was, a cheque in the appropriate amount would be prepared and sent to the Department of Justice lawyer in charge of the case.

- ! The Department of Justice lawyer would examine the cheque and determine if it was satisfactory. If it was, he or she would deliver it to counsel for the claimant.

This multifaceted approval process was not required for damage awards ordered by the arbitrator. Instead, a cheque would simply be issued by the Director of Financial Services and given to counsel for the claimant. In all cases, funds would only be disbursed after the claimant had released the Province from further liability in relation to the claim.

Information received from claimants in the course of the compensation program was not referred to the police. Claimants were told that it was their choice whether or not to go to the police.

(b) Details of the Compensation Package

A variety of financial and non-financial benefits were available under the compensation program. In all cases, however, the total value of compensation (including non-financial benefits) could not exceed \$120,000, excluding any costs for counselling.

Validated claimants were eligible for a financial award. This award was normally given in one lump sum payment, but in exceptional circumstances (determined by counsel for the Province) a claimant could be provided with a small interim payment as part of his or her overall settlement.

Claimants also had the option of receiving their compensation, in whole or in part, through a structured settlement.³⁶ Claimants who received awards of less than \$50,000 did not have to include the money as income for the purpose of determining eligibility for social assistance.³⁷

Financial counselling was offered to assist successful claimants in managing the investment of their awards. The Province established a contact person to facilitate the provision of those services and generally assist the victims with inquiries.

Vocational training was made available through New Brunswick Community Colleges. The Province agreed to pay the \$800 fee for tuition and reimburse claimants for the cost of books and materials. In addition, where possible, claimants were given priority for placement in programs of their choice. The usual admission criteria for the programs still applied, but the Province agreed to waive the \$100 admission fee for academic upgrading. Claimants could also avail themselves of free assessment and counselling to determine their academic level and to discuss career options and community college programs that might be of interest or benefit.

Claimants were entitled to receive psychological counselling either through Community Mental Health Clinics or private counsellors. This benefit was available to anyone who submitted a claim; eligibility did not depend on validation of the claim. A fund of \$5,000 was set up for each claimant. When that amount was exhausted, a claimant could apply to the Director of the Mental Health Commission for an additional year, or \$5,000 worth, of counselling. Approval would only be given if the Director received a satisfactory opinion from a private counsellor as to the progress of the claimant which established the need for treatment and set forth an appropriate plan. There was no limit to the number of times that a claimant could apply for additional counselling, but the compensation program policy stated that psychological counselling should be viewed as relatively short-term.

Apologies were not originally part of the program. However, the Minister of Justice later decided to issue apologies on behalf of the Departments of Justice and Solicitor General and the Province of New Brunswick. According to one representative of the Solicitor General, the apologies

³⁶Some claimants who were incarcerated had their lawyers manage the money until their release.

³⁷The onus to report income was on the recipient of social assistance benefits. However, when an award exceeding \$50,000 was made to a New Brunswick resident, the Department of Justice advised the Human Resources Department of the amount of the award.

were extremely helpful for all victims.³⁸

7. NEWFOUNDLAND

Mount Cashel Orphanage was an orphanage in St. John's, Newfoundland. It was run by the Christian Brothers of Ireland and their Canadian counterparts, the Christian Brothers of Ireland in Canada. The Province began placing children who had become wards of the state into the institution in 1966, although it had provided funding to the institution prior to that time.

A number of children were physically and sexually abused while at Mount Cashel. Allegations have been made of incidents of abuse dating from as early as the 1950s to as late as 1982. Several Brothers have been convicted of criminal offences in relation to their conduct at the orphanage. Others are currently facing charges.

The police investigated complaints of abuse at Mount Cashel in the mid-1970s. Two reports were prepared (in 1975 and 1976), but no charges were laid.

In 1989, the Province set up a Royal Commission to inquire into the conduct and outcome of the police investigation, as well as the past and current policies and practices for handling allegations of child abuse. The Honourable Samuel Hughes, Q.C., a former Justice of the Ontario High Court of Justice, was appointed as Commissioner.

Mr. Hughes produced his Report in 1991. Although most of the Report dealt with issues other than compensation, Mr. Hughes did recommend that the Province establish some sort of arbitration scheme whereby victims of abuse could obtain redress for their injuries. The relevant portion of the Report is reproduced, in part, below:

I have already mentioned that my terms of reference contain no explicit direction as to this commission's mandate on the question of compensating those who make claims against the government as victims of sexual abuse at the hands of persons at Mount Cashel entrusted with their care by the Director of Child Welfare and I was careful not to consider any evidence relevant to the issue. However, Mr. John Harris, acting as counsel for some, if not all, of the alleged sufferers made an eloquent plea in his final argument for recommendations on it. ... After prolonged reflection I am of the opinion that the question becomes relevant under the

³⁸Jakubec, A. and C. Loewen, *Summaries of Institutional Abuse Models: New Brunswick's Compensation Summary for Victims of Sexual Abuse* (June 27, 1997), p. 4.

general authorization to make recommendations for the “furtherance of the administration of justice” and that to ignore it on the grounds that it was once explicitly provided for and subsequently abandoned would not be in the public interest.

Further inducement to make an extended comment and a recommendation on the subject of compensation has been provided by the Minister of Justice who made a public statement suggesting that the principle of compensation might be favourably considered by the government, subject to some qualifications as to a determination of liability by the courts which appeared to postpone any out-of-court assessment of damages to a time perceivably far in the future. If the mechanism of settlement by arbitration is decided upon the process should be prompt and contrast favourably with proceeding by way of civil litigation. The arbitration should be consensual and based upon the assumption without the admission that the government is liable to the complainants as victims of sexual abuse while wards of the director of child welfare during a designated period, and confined to those who have already made complaints to the police or this commission or both.

It is suggested that submission to arbitration should be voluntary, and that no attempt should be made to make arbitration conditional upon all the claimants submitting to it, but those who do must provide the government with a release of all claims relating to their complaints in consideration of receiving the compensation awarded by arbitration. All claimants submitting to arbitration should be on equal footing including those whose claims would otherwise be statute-barred. Those who reject arbitration and choose to pursue their causes in the courts should not, it is suggested, be given the latter consideration by a government however benevolent which has the interest of taxpayers in mind.

If the government decides to allocate a “global” sum within the confines of which the arbitrator would assess the compensation payable to each claimant, with consequential abatement if the sum set aside proves less than the sum of the individual amounts as at first calculated, such a limitation on assessment would emphasize the *ex gratia* nature of the resulting payments as contrasted with compensation based upon a confession of liability or a finding of such by a court. It is also desirable as being in keeping with normal constitutional practice in estimating expenditures and informing the public through the House Assembly of their place in the public accounts. The course of arbitration should be expeditious, particularly if the arbitrator selected is generally familiar with the evidence before this commission and the nature of the police investigation. To require an arbitrator to begin afresh, viewing all the evidence accumulated over the last eighteen months with an inexperienced staff, would be to ensure substantial delay.

Recommendation 33:

That the Government of Newfoundland and Labrador invite all claimants against it for compensation on the grounds of having suffered sexual abuse at the hands of persons entrusted with their care at Mount Cashel Boy's Home and Training School as wards of the Director of Child Welfare pursuant to the provisions of the *Child Welfare Act, 1972* with respect to all complaints made in good faith during a designated period to consensual arbitration, on the assumption, but without an admission, that it is liable to the said claimants.

Recommendation 34:

The Government of Newfoundland and Labrador set aside a sum of money within which the arbitrator may assess the amounts payable by it to each of the claimants referred to in recommendation 33 submitting to arbitration.

Recommendation 35:

That the provisions of the *Limitation of Actions (Personal) and Guarantees Act, R.S.N. 1970, c. 206* as amended be inoperative as against those claimants who submit to arbitration without prejudice to the position of the Government of Newfoundland and Labrador in defending an action in court.

The Government of Newfoundland did not act upon the recommendations of Mr. Hughes. It was facing a number of lawsuits from former residents of Mount Cashel at the time,³⁹ and it decided to respond to claims through the court system in the traditional manner. More lawsuits were launched against the Government as time went by.

In December 1996, the Government announced that it had reached a settlement with 39 of the civil claimants.⁴⁰ Four further claims were settled shortly thereafter. The Christian Brothers of Ireland in Canada were involved in two of the settlements before being ordered to wind up under the *Winding Up and Restructuring Act*.⁴¹ The Government is currently trying to obtain reimbursement for its costs from the Roman Catholic Church.

³⁹The Christian Brothers of Ireland in Canada and the individual alleged perpetrators were also commonly named as defendants in the lawsuits.

⁴⁰The Government refused to consider compensation for individuals abused before 1966, the year when the Province first began to place children at Mount Cashel.

⁴¹R.S.C. 1985, c. W-11.

The process undertaken in Newfoundland to address the claims of child abuse at Mount Cashel cannot truly be characterized as a compensation scheme or program. It is more accurately described as an out-of-court settlement with several individuals who had commenced civil proceedings against the Province. All settlements were negotiated on an individual basis, and no formal process for validation or review was ever established. However, the informal process adopted bore some resemblance to the schemes employed in other provinces, and for that reason is briefly summarized here. Very few details of the settlements have been released to date.

Lawyers for the Government assessed the claims underlying the lawsuits by examining materials that were available from various sources. Testimony given before the Hughes Inquiry and during the criminal trials of the Brothers charged in connection with the abuse was reviewed. RCMP records were examined; the police had investigated 27 complaints in 1975, and had conducted another investigation concurrent with the Hughes Inquiry in 1989. Church and Provincial records were also consulted. The Government often determined that such sources provided enough detail to validate claims.

The size of the financial settlements varied depending on the nature of the abuse suffered. No formal compensation matrix was ever developed, although near the end of the process an informal grid of damages was produced to ensure consistency. In the end, individual settlements ranged from \$50,000 to \$250,000. Most of the money was awarded for pain and suffering, although some money was designated for counselling and healing.

The Government provided financial counselling to claimants who desired it. It also negotiated with insurance companies to provide services for payment of awards in structured settlements, the costs of which were borne by the Province. Money awarded in financial settlements was not excluded from income for purposes of determining eligibility for social assistance.

No counselling services were offered to claimants. As indicated above, some of the money awarded was designated for counselling and healing, but the Government had no way of ensuring that this money was used in any particular way. Paying for the costs of counselling was the responsibility of the claimant.

The Roman Catholic Archdiocese of St. John's, facing civil claims for abuse at Mount Cashel

and other institutions, established a counselling program for the victims of sexual abuse.⁴² The program is still ongoing. Counselling services are extended to anyone who claims to be a victim of sexual abuse, as well as members of his or her family. Travel costs to and from counselling are covered in some circumstances. If an individual is already in therapy and/or wishes to obtain services from a private counsellor or clinic, the Archdiocese will pay for the costs of those services.

The Archdiocese also took other steps in response to the incidents of child abuse. In 1992, it established a Chair in Child Protection at Memorial University, the purpose of which was to institute a program of study into how society deals with child abuse. The Catholic Church has committed \$1,000,000 over 10 years to fund the Chair. The Archdiocese also provides approximately \$30,000 to \$40,000 a year in bursaries for educational upgrading by social workers who work with victims and perpetrators of sexual abuse.

The Government did not provide claimants with any kind of apology. Instead, the Minister of Justice expressed regret in a statement to the Provincial legislature in December 1996. The Christian Brothers issued an apology to the residents of Mount Cashel Orphanage, and in 1990 former Archbishop A.L. Penney of the Roman Catholic church tendered an apology for the abuse and the pain that it caused.

8. BRITISH COLUMBIA

For many years the British Columbia Ministry of Education operated the Jericho Hill School in Vancouver to provide education for deaf children. Prior to 1979, blind children were also enrolled in the school. The school offered classes from kindergarten to grade 12. Students ranged in age from five to 20. Some were day students and some were in residence. Until 1987, many of the students in residence were at the school seven days a week because their parents could not afford to bring them home for weekends. After 1987, the Province paid for transportation home every weekend and major holiday. In 1993, the school was moved to Burnaby, and re-established as a “school within a school” at South Slope Elementary School and Burnaby South Secondary School.

In 1982 and 1987, allegations of sexual abuse of children in residence at Jericho were made

⁴²It also commissioned its own inquiry into abuse within the Church: Winter, G.A., *Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy*, submitted to the Most Reverend A. L. Penney, D.D., Archbishop of the Archdiocese of St. John's (St. John's, Nfld.: Archdiocese of St. John's, June 1990).

during interviews conducted by Ministry of Human Resources and Ministry of Education personnel. Allegations were made of abuse by both staff members and older students at the residence. The Vancouver Police Department was advised of the allegations, but no charges were laid.

By the early 1990s, six lawsuits had been commenced against the provincial Government in connection with alleged sexual abuse at Jericho. A complete investigation into all complaints was undertaken by the police and various Ministries of the Provincial Government in 1992. The investigators ultimately concluded that charges should have been laid in 1982 and 1987.

The Provincial Ombudsman also commenced his own investigation of the alleged abuse in 1992. He published his Report in November 1993, concluding, amongst other things, that abuse had occurred and that a non-confrontational process should be established to determine compensation for the victims.

The Provincial Government responded to the Ombudsman's Report by appointing former British Columbia Supreme Court Justice Thomas Berger, Q.C., as special counsel. Mr. Berger was directed to inquire into allegations of abuse at Jericho and make recommendations as to how the six lawsuits against the Government, and any others that might follow, could be resolved.

In order to complete his task, Mr. Berger was given access to a variety of materials which had been assembled by the Government and police. An arrangement was worked out so that he would be under no obligation to disclose to the Government any evidence he gathered, statements he received, or documents or other materials he obtained. In particular, none of this information was made available to counsel in the branch of the Government responsible for defending against the lawsuits that had been, or might be, filed in connection with alleged sexual abuse at Jericho.

The material reviewed by Mr. Berger included transcripts of interviews with complainants, a summary of a Government data base relating to allegations of sexual abuse at Jericho, and records of interviews with public servants in the Ministries concerned. Mr. Berger also met with a group of therapists who had been treating some of the victims of the sexual abuse. The therapists did not disclose the identities of their clients, but were able to report generally on their clients' experiences at Jericho. Finally, Mr. Berger held meetings with the deaf community and deaf organizations to discuss the history of Jericho, the allegations of sexual abuse generally, the difficulties of language and communication for students at Jericho, and the relationship of those difficulties to the incidence of sexual abuse.

Mr. Berger produced his Report in 1995. He concluded that sometimes widespread sexual abuse had taken place at Jericho. There had been abuse by staff as well as abuse by some older children against younger children. The abuse had taken place over a period of many years, but was most prolific during the period from 1978 to 1987. In 1978, the Province decided to house all the residents, of both genders and all ages, in the same dormitory. Mr. Berger concluded that the Government had been aware of the problems at the school as early as 1982, but had failed to take adequate actions in response. He found that the protective agencies of the state had been unable to adequately address the needs of deaf children. The police and Crown had been unable to communicate with deaf children, let alone assemble their evidence.

Mr. Berger recommended that the Provincial Government accept responsibility for all claims of sexual abuse suffered by students who had attended Jericho Hill School. He also made detailed recommendations as to the form and content of a compensation program.

On June 28, 1995, the then Attorney General of British Columbia, the Honourable Colin Gabelman, acknowledged the allegations of sexual abuse at Jericho as well as the Provincial Government's responsibility to ensure the well-being of children in its care. In response to the recommendations contained in the Berger Report and the Report of the Ombudsman, the Government made a commitment to develop and implement a redress program to assist former students who had been sexually abused while at Jericho. This resulted in the Jericho Individual Compensation Program, which commenced operations in 1996. The program was designed by the Government and was not the result of a negotiated agreement with the victims.

(a) The Process

All deaf, hard of hearing, deaf-blind and blind students of Jericho were eligible to apply for benefits under the compensation program. Compensation was only awarded for pain and suffering from sexual abuse which occurred before December 31, 1992. Physical and emotional abuse (no matter when it occurred) was not compensable under the Program.

A claimant commenced an application for compensation by filling out an application form. The form required the claimant to state in writing that he or she was sexually abused in connection with his or her attendance at Jericho, that the abuse occurred before December 31, 1992, and that the claimant was younger than 19 at the time. It also required the claimant to provide the names of individuals to whom he or she had disclosed the abuse.

All applications were reviewed by a Compensation Panel. The Panel was composed of two hearing lawyers and a deaf-blind therapist, appointed by the Attorney General after consultations with representatives of the deaf community. Together, the Panel members had expertise in the law, sexual abuse issues and the needs of sexual abuse victims, and the needs of deaf and hard of hearing persons. The Terms of Reference of the program also specifically directed the Panel to develop an awareness of 1. the needs of the deaf community and the importance of skilled interpreters for comprehending the claim information of deaf claimants, 2. the cultural differences between deaf and hearing persons, and 3. the needs of deaf-blind, hard of hearing and blind persons.

The onus was on the claimant to establish to the satisfaction of the Compensation Panel that there was a reasonable likelihood that he or she was sexually abused at Jericho. The abuse could have been perpetrated by a school employee or another resident. It also could have occurred on or off site, but it had to have been associated with attendance or residence at the school while the Government was responsible for the claimant's care and custody. Sexual abuse was defined in part as follows:

Sexual abuse means any sexual exploitation of a child and may include any behaviour of a sexual nature towards a child. Sexual abuse may exist even where there is consent to the sexual behaviour. Sexual activity between children may constitute sexual abuse if the difference in age or power between the children is sufficient that the older or more powerful child is clearly taking advantage of the younger or less powerful child ... Normal affectionate behaviour towards children and normal health or hygiene care are excluded.

The Compensation Panel was directed to operate informally. It would determine whether the abuse occurred and, if so, the appropriate amount of financial compensation. It was anticipated that

most claims would be determined on the basis of documentary evidence, although an oral hearing could be held if the claimant desired it, the Panel thought it necessary to decide the claim, or the Panel wished to review additional information from the claimant. Claimants were not permitted to have an advocate appear with them or on their behalf in the application process. Interpreter and intervener services were provided free of charge.⁴³

Compensation Consultants were appointed to assist both claimants and the Compensation Panel in the process. The role of the Consultants was described in the Terms of Reference:

- (1) to ensure that the claimant is fully aware of the parameters, procedures and possible outcomes of the claim process, in the context of the other avenues of redress available to a claimant: a civil suit or a criminal injury compensation claim;
- (2) if requested by the claimant, to assist the claimant in the preparation and presentation of a compensation claim, by locating, detailing, organizing, transcribing, or otherwise ensuring the completeness and accuracy of a compensation claim;
- (3) to ensure that the panel is presented with a sufficiently complete and coherent claim for the purpose of the panel assessing claim validity and the amount of compensation;
- (4) to assist the panel in reviewing its decision with the claimant if requested by the claimant.

In order to be able to assist the claimants, each Consultant was fluent in American Sign Language and other modes of communication used by the hearing-impaired, knowledgeable about deaf culture, and knowledgeable and experienced in dealing with sexual abuse and interviewing traumatized individuals.

A claim was assessed on the basis of pre-existing documented information, interviews with the claimant by a Compensation Consultant and, if applicable, the presentation made by the claimant at an oral hearing. Claimants were asked to consent to the release of records from outside sources for review by the Panel, and all such information was treated as confidential. Claimants were also entitled to file any prior statements they gave to the authorities in connection with the alleged abuse and, in appropriate cases, reports from therapists. In cases where the Panel required a report from a therapist to decide a claim, the program would request and pay for it. Alleged perpetrators were not contacted or asked for their side of the story.

⁴³Interveners provided assistance to deaf-blind individuals. Whenever possible, claimants were permitted to choose their interpreters and interveners.

Once a claim was accepted by the Panel, a determination of an appropriate amount of compensation was made. The claimant then had 30 days in which to accept or reject the settlement offer. One thousand dollars was set aside for each claimant to pay an independent lawyer (and interpreter) to review the offer. If the claimant decided to accept the offer, he or she was required to sign a release, waiving any further claims against the Government.

There was no appeal against the decisions of the Compensation Panel concerning the validity of a claim or the amount of compensation. However, the Panel was entitled to review its decisions if the claimant asked for the opportunity to provide new or additional information about the claim.

The deadline for submitting applications was September 30, 1998. Four hundred and five applications were received, although 40 were later withdrawn, leaving 365 to be considered by the Compensation Panel.

(b) Details of the Compensation Package

Individual victims of sexual abuse at Jericho were entitled to a financial award for pain and suffering. As indicated above, the amount of compensation was determined by the Compensation Panel upon review of a claim. The Panel was directed to fix the level of compensation having regard to the nature, extent and impact of the sexual abuse. Relevant considerations in determining the nature and extent of abuse included its duration, frequency and type, and whether it was accompanied by threats, coercion and/or force. The impact of the abuse related to its long-term impact on the claimant's physical and psychological well-being, as evidenced by such things as the presence or absence of psychological dysfunction, physical trauma, alcohol and drug abuse, sexual dysfunction and personal and marital problems. The impact of the abuse on lost vocational or income potential was not compensated.

The program prescribed three tiers of financial compensation, devised in accordance with the recommendation of Mr. Berger and the precedent set by the Grandview program in Ontario:⁴⁴

⁴⁴The following table is reproduced from Shea, Goldie, *Redress Programs Relating to Institutional Child Abuse in Canada* (October 1999), p.13.

	ABUSE	COMPENSATION AMOUNT
Tier 1	Sexual Abuse	\$3000
Tier 2	Serious Sexual Abuse	Up to \$25,000
Tier 3	Sexual Abuse - Serious and Prolonged	Up to \$60,000

Any compensation for the abuse that a claimant had already received from a lawsuit, an out-of-court settlement, or a Criminal Injury Compensation Program claim was deducted from the compensation awarded under the Jericho program.

Compensation was paid in a lump sum, although it could be placed in trust or paid out by way of annuity through a financial service provider. Any compensation paid to a minor was placed in trust until the claimant had reached the age of 19. No compensation was provided to members of a victim's family.

The compensation was deemed to be an award for pain and suffering, and was therefore exempt from income tax. Further, the Province did not include the compensation in determining eligibility for social assistance.⁴⁵

The program ended on March 31, 2001. Of the 365 applications that were considered by the Panel, 359 were validated. The Panel's offer of compensation was accepted in 344 of those cases, resulting in a total of \$12,665,000 compensation paid. The average award was \$35,500.⁴⁶

It was anticipated that some successful claimants would require financial advice about the impact of the award on their personal finances, or about maximizing its financial benefits. The program covered the cost of interpreters for meetings with a financial advisor of a claimant's choice. However, the program did not cover the fees of the advisor.

Some claimants had consulted lawyers for the purpose of commencing legal proceedings against the Government in connection with the abuse, or for determining their options in that regard.

⁴⁵This was not initially an element of the program, but was incorporated at a later date.

⁴⁶There is currently before the British Columbia Supreme Court a class action suit brought against the Province by former residents of Jericho for the abuse they suffered. Some of the members of the class accepted compensation under the Jericho Individual Compensation Program and signed releases waiving any further claim against the Government. It is expected that the validity of the releases will be challenged in the lawsuit.

A successful claimant could have the attendant legal fees paid by the program if they were incurred prior to the time frame for submitting applications under the program. The fees had to be reasonable, and payment had to be recommended by the Compensation Panel. The funds were disbursed once a claimant accepted compensation and signed the release.

Each successful claimant received an individual apology from the Government. The apologies were confidential and written in non-legalistic language.

As a form of community compensation, the Government donated \$1,000,000 to be used generally for the benefit and advancement of the deaf community throughout the Province. The money is administered by The Deaf Community Trust of British Columbia, an organization whose membership is representative of deaf persons throughout the Province. The Government also constructed new residences for students of the Provincial School for the Deaf.

The Jericho Individual Compensation Program was designed primarily to provide financial compensation to the victims of sexual abuse. However, at the time the program was established the Government also committed itself to continue and enhance a program called the Residential Historical Abuse Program (“RHAP”). This was a program established in 1992 in response to the allegations of sexual abuse at Jericho. It provides counselling and therapy services to any individual who alleges he or she was a victim of sexual abuse while in the care of the Province. To qualify for services, individuals did not have to prove that they were sexually assaulted. They simply had to have attended a provincially-funded residential facility, which was defined to include foster homes, group homes, hospitals and correctional facilities for children and adolescents. RHAP funded up to six counselling sessions per month for qualifying individuals.⁴⁷ There was no limit on the amount of time that an individual could participate in the program. The only financial constraint was the program’s overall budget.

As many of the alleged Jericho victims who came forward to RHAP were deaf, hard of hearing or deaf-blind, the Government developed a separate program to administer mental health services to them: The Deaf, Hard of Hearing and Deaf-Blind Well-Being Program. The program is available free of charge, and the Province pays for any interpretation services required for the therapy. The program also provides sign language lessons to parents of deaf children and to professionals and staff who work with the deaf.

⁴⁷Qualifying individuals were initially given a short assessment, and then a treatment plan was prepared. The plan was reviewed and updated every six months.

9. FEDERAL GOVERNMENT

For over a century, Canada had an aboriginal residential school system. It was initially operated solely by religious organizations, but in 1874 the federal Government became involved in order to meet its obligations under the *Indian Act*.⁴⁸ The schools were then run jointly until 1969, when the Government assumed full responsibility. It is estimated that over 100,000 children attended the schools over the years in which they were in operation. The last school closed in 1996.

In 1996, the Royal Commission on Aboriginal Peoples (“RCAP”) released its Report, entitled *Gathering Strength - Canada’s Aboriginal Action Plan*. The Report contained personal accounts from aboriginal people who had suffered from sexual and physical abuse while at residential schools. It also documented the far-reaching impact of the abuse.

In January 1998, as part of its response to the Report, the Government of Canada issued a Statement of Reconciliation. It contained the following expression of regret and apology:

The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the federal Government which have contributed to these difficult pages in the history of our relationship together.

.....

To those of you who suffered this tragedy at residential schools, we are deeply sorry. In dealing with the legacies of the Residential School system, the Government of Canada proposes to work with First Nations, Inuit and Metis people, the Churches and other interested parties to resolve the longstanding issues that must be addressed.

Accompanying this Statement was the announcement of a community healing fund worth \$350 million, to be administered by the Aboriginal Healing Foundation. The purpose of the fund is to support community-based healing initiatives to address the legacy of physical and sexual abuse in residential schools. The fund is not used to pay for compensation of individual victims or the costs of litigation respecting abuse claims.

Many individuals have filed lawsuits against the federal Government and other defendants

⁴⁸R.S.C. 1985, c. I-5.

seeking compensation for damages suffered while they were at residential schools.⁴⁹ Given the sensitivity of the issues raised by the plaintiffs, the Assembly of First Nations and others asked the Government to explore a range of approaches to resolving claims of abuse in a timely and sensitive manner.

In 1999, the Departments of Justice, Health, and Indian and Northern Development engaged in a series of exploratory dialogues with survivors of residential school abuse, aboriginal healers, and aboriginal and church leaders. The dialogues helped to open the lines of communication and assist all of those involved to understand the needs of survivors. Agreement was ultimately reached on a set of principles to guide efforts by the Canadian Government to resolve abuse claims. These principles can be summarized as follows:

- ! Canada has extensive relationships with the former students, their families and communities which will continue well after any individual claim is dealt with. The processes used and outcomes sought in resolving claims should be mindful of these relationships and strengthen and improve them.
- ! The residential school caseload should be strategically managed as one file, recognizing the need for an overall strategic approach, regardless of whether the claims are advanced in litigation, in the dispute resolution pilots or in other alternatives to litigation.
- ! Canada recognizes that a significant number of wrongs did occur. From there, Canada seeks to create a climate for the early, safe, credible and effective resolution of the claims. Canada wants to know who was wronged according to existing civil law standards, and whether Canada has or shares liability. Where Canada does, the goal is not to avoid or minimize it, but to provide appropriate redress.
- ! It is of utmost importance that those acting for Canada keep in mind the continuing, though often unacknowledged, trauma that childhood sexual abuse creates and the health and safety risks involved when survivors are asked to address the procedural or substantive aspects of their claims. These risks extend to families and communities.

⁴⁹As of March 2001, more than 7,200 individuals had filed civil claims. A number of class and representative actions had also been filed.

- ! Reliable validation of individual claims is a key consideration. “Innovative and safe means to this goal should be sought within the overall context of ensuring the integrity of each resolution, and thus the overall credibility of Canada’s resolution strategy for these matters. Survivors have been strong supporters of the need for integrity and public credibility as resolutions are achieved.”

- ! Canada should seek outcomes which advance the short- and long-term health prospects of the survivors, their families and their communities.

- ! The emphasis on safety and on helping to rebuild relationships also applies where Canada resists claims. The approach can be adversarial respecting a specific issue, but should not appear to put Canada into an adversarial relationship with those bringing it forward.

These principles were included in a set of strategic directions provided to counsel for the federal Government in addressing aboriginal residential school cases. The directions also suggest that Canada should be favourably disposed to requests to resolve claims outside of litigation in proceedings which can be designed in collaboration with those using them. The proceedings can include innovative approaches within litigation, such as discovery mechanisms and redress elements already adopted in certain cases.

The directions further indicate that, whatever process is used, a focus on health and safety should remain. In particular, health supports need to be available whenever survivors are asked to tell the story of their abuse, and Canada should seek ways to assist requests for the involvement of support persons or representatives of the survivors’ community in any proceeding. Canada should not use technical defences to prevent or discourage abuse allegations from being determined on their merits. Closure for individuals and healing for their families and communities will not be achieved if provable claims are turned away or compromised on a technicality. Canada also has a direct interest in the fairness of the entire process, including the fairness of the fees survivors are charged by their own lawyers. It is not in Canada’s interest that a validated survivor be left with a lingering sense of injustice, whatever the cause. It is also important for closure that others with liability for abuse accept their responsibility and provide redress.

The Government has now instituted 12 pilot Dispute Resolution Projects in various communities across Canada to address alleged sexual and physical abuse of aboriginal children in residential schools. A Dispute Resolution Project requires a group of approximately 40-60

complainants willing to proceed on the terms contained in a framework agreement designed by the group (also known as “a Survivor Group”) and the Government of Canada. Our review examined two such framework agreements. In summarizing these agreements, I have not identified the communities or complainants’ groups to which they relate.

(a) Framework Agreement #1

The first framework agreement states, at the outset, that the Government of Canada acknowledges its role in the development and administration of residential schools and apologizes to those who were physically and sexually abused at the schools. The agreement between the Survivor Group and Canada is intended to resolve claims within a Dispute Resolution Project in a way that is safer for survivors than litigation, that is credible, and that promotes healing.

The agreement provides that compensation is for physical and sexual abuse, although other actions can be compensated if they constitute a recognized cause of action for which Canada is liable in law. Cultural and language loss cannot be compensated as they are not causes of action recognized by the courts. The determination of whether an act of discipline constitutes physical abuse is based on the standards of the day when the discipline took place. The burden of proving a claim is on a balance of probabilities. Canada will not rely on limitation periods to defeat a claim within the Project.

The agreement articulates the need for a holistic process that incorporates credible validation of claims. Validation is to be safe, efficient, flexible, effective, inclusive, credible and fair. The parties are to minimize to the extent possible the number of times a survivor is required to tell his or her story.

Validation is to occur through a fact finding session, wherein a fact finder determines what did or did not occur, based on the survivor’s story, the information of other witnesses, the views of the parties, and the relevant documents.

The agreement stipulates that the fact finders must be lawyers. The parties are to jointly select two fact finders, one male and one female. Each survivor will have the choice of telling his or her story before either the male or female fact finder, but not both. The parties are to look for fact finders who demonstrate sensitivity to the aboriginal culture and issues, and who are fair, sensitive, independent, objective, open-minded, and good listeners. The parties are to provide the fact finders with an agreed-upon suggested reading list and are to arrange a workshop for them on aboriginal

cultural awareness.

Canada is directed to share relevant documents in its possession, subject to privacy legislation or, where a statement of claim has been filed, pursuant to court rules. The Survivor Group must also share relevant documents in the possession of individual survivors with Canada. Based on the shared documents, the parties will agree to as many facts as possible. Where possible, individual survivors are to provide written statements at least two months prior to their fact finding session in order to expedite the process, allow potential witnesses to be contacted, and permit counsel for both parties and the neutral fact finder to prepare for the hearing.

Survivors will tell their story to, and respond to questions from, the fact finder. Survivors will not have to speak to facts previously agreed to by Canada.

The parties may give the fact finder, in advance, a list of questions they would like the fact finder to ask the individual survivor (or a list of issues they would like to have explored). During the session, counsel for Canada and the individual survivor will approach the fact finder together about additional questions either of them would like the fact finder to ask.

Each survivor can be accompanied at the fact finding session by his or her lawyer, family members or another support person. Canada will have one of its lawyers and a maximum of one other person present, unless the individual survivor agrees that more can attend.

Survivors may arrange for additional witnesses to present information. This information is to be given to Canada at least two weeks before these witnesses will be heard, subject to an agreement to waive this notice period.

Canada may present information to the fact finder through its own witnesses, subject to the same disclosure obligations imposed on the Survivor Group. Agreed-upon experts may also provide their assessment to the fact finder.

Witnesses who are members of the Survivor Group are to be questioned only by the fact finder. Other witnesses may be questioned by counsel for any party. Counsel will not ask leading questions of their own witnesses.

Paragraphs 28 and 29 of the agreement are of particular significance. They provide:

1. For the credibility of the validation process, Canada will attempt to contact persons alleged to have committed acts of abuse and they will be given the opportunity to provide their story to the neutral fact finder. For the safety of the survivor, the person will be first advised in writing about the process and in a general way about the allegations. Only if the person decides to participate will more specifics of the allegations be provided.
2. If the person alleged to have committed acts of abuse decides to tell his or her story to the neutral fact finder, it will be in a different location than where the survivor tells his or her story, and at a later time. The person will be accompanied by legal counsel and a support person if her or she chooses and will assume his or her own costs.

All those providing information to the fact finder are to acknowledge the solemnity of the process through oath, affirmation or the holding of an eagle feather. The fact finder will take notes, but the survivor's story will only be recorded if the survivor agrees.

After the fact finding session, the fact finder will prepare a written report. The report is to contain the decision as to what did or did not occur and a non-binding opinion as to the effect of any abuse on the survivor and its impact on the survivor's life.

The parties will then attempt to reach agreement regarding the impact of the abuse through negotiation based on the facts found, and the opinion offered, by the fact finder. The parties will also attempt to reach an agreement regarding the legal significance of the facts. If the parties cannot agree on either issue, they may refer outstanding questions to the fact finder.

The fact finder cannot consider questions concerning the appropriate amount of monetary compensation for validated claims. The parties will attempt to reach an agreement regarding compensation through negotiation. Amounts of compensation are to be based on damage awards from relevant court decisions. Canada will not try to negotiate less than the amount it believes a court would award. If the parties cannot agree, a mediator will be selected to facilitate negotiations based on the facts agreed to by the parties or determined by the fact finder. If the parties cannot agree through mediation, the parties are to meet to consider other options for determining the amount.

The agreement contemplates that Canada will pay a certain percentage of the compensation amount. There are also provisions that contemplate the possibility that Church organizations may ultimately agree to participate. Courts have found that the churches share liability, but the churches

have been concerned about the financial burden that settled claims would impose on them. On October 29, 2001, the federal Government announced that it will pay 70% of the compensation negotiated by validated victims of sexual and physical abuse.

A certain percentage of compensation amounts is to be dedicated to the individual survivor's healing. This money can be used for such things as community healing, education, vocational or training programs, counselling, therapy or trauma treatment. The money will be held in trust for the individual survivor in the trust account of the survivor's lawyer. The individual survivor will provide a written plan for the use of the funds to be presented to the Board of Directors of the Survivor Group. In order to respect the principle of survivors having control over their own healing, Canada will not play a role in deciding the purposes for which an individual survivor uses his or her healing funds.

The agreement indicates that the fact finding sessions are to be closed to the public unless the parties agree otherwise. Subject to any legal requirements, all information relating to the process, including any settlement, shall be kept confidential, except where the information discloses abuse of a child who is presently a minor.

The fact finder is to return materials to the survivor or destroy them, once a matter has been settled or the Project ended. Canada's legal requirement to keep documents that come into its possession is articulated, although the Agreement provides that Canada will keep only one copy of certain materials.

Canada is to provide funding to the Survivor Group for survivor participation costs. It will also assume the costs of the process.

(b) Framework Agreement #2

The second framework agreement is similar to the first agreement, but with some significant differences. This agreement refers to "complainants," rather than "survivors." Disclosure is to be exchanged in accordance with the practice in civil actions. Canada is to utilize its resources to locate relevant documentation regarding each complainant and is to provide copies of background historical documentation, including personnel files, student records and policy statements regarding discipline, to the fact finder and all parties. The fact finders are also to be provided with a bibliography of reading materials in relation to the history of residential schools. The oral evidence before the fact

finder is to be recorded for use later in the process.

Cash compensation is to be paid in a manner that accords with the complainant's preferences. Consideration is to be given to structured settlements. Canada is to pay 50% of the damages. However, if Canada and a church organization come to an agreement regarding the apportionment of responsibility for claims that would apply to the complainant's case, the complainant may require that Canada pay the portion of damages for which it is responsible under that agreement. The complainant may also require that Canada's apportioned share be adjusted based upon any judicial determinations respecting another residential school that would be binding or highly persuasive on a trial judge hearing an action commenced by the complainant for his or her particular claim. Fifteen percent of settlement proceeds are to be directed to healing and related purposes. The money is to be deposited into a trust fund, administered by a steering committee consisting of representatives of the complainants and Canada.

10. ANALYSIS

The above represent some, but not all, of the approaches taken by governments in Canada to reports of institutional abuse. I do not intend to analyze here the elements of each of these approaches and their respective merits or shortcomings. Instead, in Chapter XVIII of this Report, I refer to elements of these approaches which may be helpful to explain my recommendations. Put simply, there are features of approaches taken in other jurisdictions that commend themselves to me and which I have adopted, in whole or in part.

The approaches taken in other jurisdictions are relevant in another way. They collectively demonstrate the variables that exist in each jurisdiction that compel participants in the design and implementation of a government response to recognize that different situations require different solutions, and that one cannot, therefore, blindly follow what has been done elsewhere. In short, there can be no single template for a government response to reports of institutional abuse. Indeed, the approaches outlined above demonstrate that the Nova Scotia situation differed in some respects from the circumstances which presented themselves elsewhere. For instance, the Nova Scotia Government failed to recognize that the existence of multiple allegations against current employees compelled a different approach to the issue of validation than was taken in Ontario. As well, the Nova Scotia Government failed to recognize that Ontario had taken some measures to safeguard against fraudulent claims that were discarded by Nova Scotia without regard to their rationale.

In summary, an examination of the approaches in other jurisdictions has enabled me both to recognize the shortcomings of the Nova Scotia Program and to craft recommendations for the future.