



CHAPTER FOUR



The Journey to Light and the Road to the Restorative Inquiry

Introduction and Timeline

The Restorative Inquiry for the Nova Scotia Home for Colored Children is part of (and resulted from) a larger and longer story of seeking a just response to the harm and abuse experienced at the Home. It has been a journey that the former residents have called the “journey to light.” This public journey out of silence and darkness towards acknowledgement, understanding, and light began in the late 1990s, with revelations from former residents about their experiences in the Home. The former residents’ commitment and vision of this journey to seek a just response shaped the design, approach, and implementation of the Restorative Inquiry.



Candles, Journey to Light

Restorative Inquiry, courtesy Communications Nova Scotia

The Inquiry was mandated to:

- examine the experience of the Nova Scotia Home for Colored Children (NSHCC) as part of the history and legacy of systemic and institutionalized racism, both historic and current;
- understand the experiences of former residents within the NSHCC and the legacy and impact of these experiences for former residents, their families and communities; and
- consider what they might reveal about issues of institutionalized child abuse and prevention and protection in future.

Chapter 3 reviewed the relevant history of the institution from its founding through to its efforts to preserve its place as a historic site in Nova Scotia. The chapter concluded by looking behind the vision and operations of the Home and its broader significance to understanding residents’ experiences. While there is certainly evidence in the records related to the Home to suggest concerns with the quality of care provided, the voices and experiences of residents were generally absent from the historical records related to governance and operations. We came to hear their experiences much later when they shared them as adults. In conjunction with the Home’s efforts to achieve heritage status, the media reached out to ask former residents about their memories of the Home. What they heard was not what they expected for an institution that had held such a place of pride and achievement in Nova Scotia for so many decades. An understanding of the experience of former residents would not be complete without attention to the more recent history of their efforts to bring their experiences to light and seek a just response. This chapter is focused on the journey to light from the first public revelations about the harms and abuse through to the establishment of this public inquiry into the matter.

It is helpful to provide a general timeline of events leading up to and including the establishment of the Restorative Inquiry. A more detailed discussion of responses to abuse claims follows the timeline.

Timeline

1990	1994	1998	2001	2004	2007	2011	2012	2013	2014	2015	2016
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The Home began research to make application for heritage status.

1994

Share & Care: the Story of the Nova Scotia Home for Colored Children published by the Home (in advance of the institution's 75th anniversary).

1998

Application for heritage status considered by Halifax council in June. Acquired sufficient points to be recommended, "extra points were given for the significant Black achievement with respect to this property" but no recommendation made because of the state of repair of the Home building at the time. Application promoted media to reach out to former residents seeking their view.

September — Former resident Tony Smith and another former resident anonymously shared publicly their experience of abuse in the Home.

Several former residents contacted police regarding their abuse in the Home (in HRM, Digby, and Truro).

2001

First individual civil actions filed by former residents against the NSHCC, various children's aid societies, and the Government of Nova Scotia.

2004

December — Total of 67 individual civil claims had been filed by former residents.

2007

Nova Scotia passes *Class Proceedings Act* enabling class action claims in Nova Scotia.

2011

Class action filed on behalf of former residents of the NSHCC against the Province and the NSHCC.

2012

February — Application for certification of class action claim filed.

March — Police establish special investigative team to look into allegations of abuse at the NSHCC. They ask former residents to come forward if they have information. Former residents went to police stations across the country seeking criminal investigation into abuse allegations; over 40 complaints received.

VOICES (Victims of Institutional Child Exploitation Society) established by former residents and initially led by Tony Smith, Gerry Morrison, Tracy Dorrington-Skinner, Ross Anderson, Tamarah Clarke-Grant (with the support of Wagners Law Firm).

October — First reunion of former residents held at Emmanuel Baptist Church in Upper Hammonds Plains. Former residents (including elders) empower VOICES to advocate justice for former residents.

November 3 — *The Throwaway Children* documentary about abuse in the NSHCC aired on CTV program *W5*.

December 12 — Court certified class proceeding in *Elwin v. Nova Scotia Home for Colored Children*, 2013 NSSC 411.

December 13 — RCMP and Halifax Regional Police issue a statement that their investigation into the abuse allegations at the NSHCC is concluded and no charges will be laid.

2013

April — \$5 million settlement reached with the NSHCC and former residents

May 9 — Provincial Government (NDP) established “Expert Independent Panel” over objections of former residents who sought public inquiry. Robert Wright appointed to make recommendations for response to NSHCC.

October 8 — Liberal Government elected in Nova Scotia. Premier Elect Stephen McNeil made election night commitment to do right by the former residents of the Home. “I have made a commitment that I would be responding in a way to the Home for Colored Children with a full public inquiry.”

November — Premier McNeil met with former residents leading VOICES following the election to consider a plan to move forward to respond to the abuses at the NSHCC. Former residents indicate they are seeking a holistic response that takes a restorative approach to resolving the legal claims and to a public inquiry to deal with the broader issues and impacts.

2014

June – VOICES met with Government officials to name team to design restorative public inquiry.

July 4 – Commitment to a public inquiry that would take a restorative approach.

Settlement of class action claim announced (tentative deal June 2014; final settlement announced August 8, 2014). Included commitment to restorative approach to settlement distribution.

September – First meeting (retreat) Ujima Design Team (met weekly following).

October 14 – Government apology given by Premier McNeil to former residents of the NSHCC and to the African Nova Scotian community for the harms and abuses they experienced and for the legacies and impacts of systemic racism in Nova Scotia.

December – Ujima Design Team 2nd retreat (weekly meetings continued following).

2015

February – Deadline for former residents to apply for compensation under the class action settlement agreement.

April 14 – Terms of Reference completed Ujima Design Team.

May 11 – *Amendments to Public Inquiry Act* introduced in the legislature in response to request from Inquiry Design Team.

June 12 – Restorative Inquiry launched. Apology offered on behalf of the NSHCC Board leadership.

June – Interim Council of Parties established to set up Restorative Inquiry.

October – Independent assessment meetings with former residents begun as part of the class action settlement.

November 2 – Council of Parties appointed. Restorative Inquiry begins work.

November – *Amendments to Public Inquiry Act* (introduced in May) passed into law.

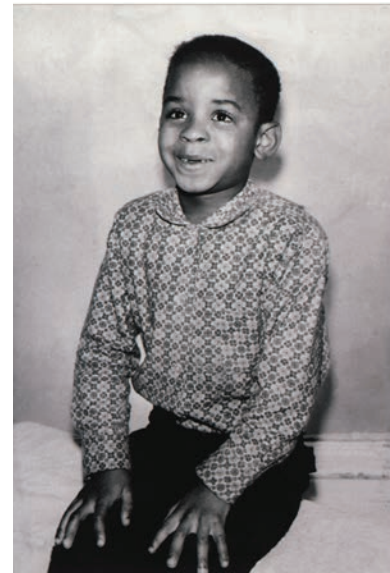
2016

February 25 – Independent assessment process for former residents (part of class action settlement) concludes.

June – Former residents received decision letters from independent assessment process.

First Revelations and VOICES

In 1998, the Nova Scotia Home for Colored Children's application for heritage status was considered by the Halifax Regional Council. As part of the media coverage of the application, *The Chronicle Herald* contacted former residents of the Home to get their perspective on the Home and its historical significance. One of the former residents contacted was Tony Smith, who would ultimately co-found the former resident advocacy group Victims of Institutional Child Exploitation Society (VOICES) and become the co-chair of this Restorative Inquiry. Mr. Smith recounted that he thought about how to respond to the reporter's question. He, like other former residents, had stayed silent about his experience in the Home since leaving at the age of eight. He knew breaking that silence would be difficult for him and also for his family. The pride the community had in the Home was reflected in the application for heritage status and the recent publication of *Share & Care: the Story of the Nova Scotia Home for Colored Children*, celebrating the vision and achievements of the Home ahead of its 75th anniversary. Yet Mr. Smith felt compelled to speak, to follow through with a promise he made to himself as a boy. Mr. Smith had a best friend who was a fellow resident who died following an incident of abuse in the Home. Mr. Smith recalls being warned not to say anything about the incident to anyone. He swore to himself that one day he would tell his friend's story. For this reason, Mr. Smith sought permission from his own family to tell his story, and, with their blessing, he told the reporter that he did not mind telling his story, but it might not be the one the reporter expected to hear.



Anthony Langford

courtesy of the Langford family

The Sunday Herald ran his story on September 13, 1998, along with the story of another former resident, called by the name "Peter" in the article, who came forward with similar accounts of harm and abuse during his time at the Home. Peter said of his experience in the Home: "I would use the word 'torture' and I use that word because this was extreme punishment and violence."¹ Mr. Smith was clear about why he came forward: he wanted his friend's story told and he wanted recognition and acknowledgement of the wrongs that were done to residents in the Home. Mr. Smith's and "Peter's" stories prompted other former residents to come forward. In the coming months, Mr. Smith and several others would contact police regarding their experiences. On November 1, 1998, *The Chronicle Herald* printed an article stating the RCMP had received a complaint about at least one historic incident in the Home, and that former residents had also filed complaints with the Provincial departments of Justice and Community Services. One of the former residents who came forward to police in 1998, Shirley Melanson, reflected on why

she came forward. She reported that, “[n]ear the end of [her] interview with Cst. Brooks, the RCMP asked [her] point blank, ‘What would you like to see happen?’ ‘I want to see changes’ was [her] reply. ‘Things need to change.’ ”² As discussed later in this chapter, the police did not proceed with a formal investigation of the allegations at the time. Police would later (2012) establish an investigative team to deal with allegations of abuse at the Home.

Individual former residents began to file civil suits later in 2001. They were seeking recognition for the harms and abuse suffered while living at the Home. Robert Borden was the first to file a civil claim, on March 1, 2001. As media coverage at the time reported: “Mr. Borden acknowledged compensation would be welcome — he hopes to go back to school — but said what he really needs is for his story to be validated by the authorities. ‘What I want is for them to admit they were wrong,’ he said quietly, ‘and that they knew about it.’ ”³ Several other individual civil claims were filed in the next 18 months. Tracy Dorrington-Skinner was the second to file a civil action, on December 18, 2001; Tony Smith became the third to file, on May 30, 2002; Gifford Farmer filed on June 10, 2002; and sisters Krista Borden and Lizette Dorrington filed on June 24, 2002. By December 2004, there were 67 individual civil claims filed. Most individual claims were made against the Nova Scotia Home for Colored Children, the Province, and the applicable children’s aid societies that made the placement at the Home. At the time, Nova Scotia did not allow class action suits. As a result, individual former residents had to pursue their cases independent of one another. It was not until 2007, with the introduction of the *Class Proceedings Act*, that class action lawsuits could be filed in Nova Scotia. In 2011, Wagners Law Firm filed a class action suit against the Home for Colored Children on behalf of three plaintiffs who were former residents. The Province of Nova Scotia was subsequently added as a defendant.



Robert Borden
courtesy of W5, *The Throwaway Children*

Former residents began working together more closely. Several former residents formed the Victims of Institutional Child Exploitation Society (VOICES), which was formalized through a memorandum of association in April 2012. Its stated objectives was, among other things:

- To provide a voice for victims of institutional child exploitation and abuse in Nova Scotia;
- To act as a source of comfort and support to victims of institutional child exploitation and abuse in Nova Scotia;
- To provide a vehicle for sharing with victims of abuse and with the public;
- To act as an advocate for greater control and monitoring

of child institutions in Nova Scotia;

To act as an advocate and resource for victims of
institutional child exploitation and abuse in Nova Scotia;

VOICES held a reunion for former residents in the summer of 2012 at Emmanuel Baptist Church in Upper Hammonds Plains. It was here that former residents first committed to support one another on a “journey to light” — moving out of the shadows of silence, secrecy, and shame, and sharing their truth in the open. As the class action suit proceeded through the courts, another series of media reports appeared in 2012. A documentary on the Home called *The Throwaway Children* also aired on the national CTV program *W5* on November 3, 2012, just ahead of the certification hearing for the class action suit. *W5* indicated this was their most-watched episode and it brought the stories of former residents prominently into the public eye. As a result, more former residents started



to come forward to share their stories. In the weeks following, Wagners Law Firm reported a significant increase in calls from former residents.

The reunion brought together many former residents of the Home from across the generations. Many did not know one another but were connected by their common experience of living at the Home. Many of the former residents

had never shared their experiences from the Home with others. Gathering together with other former residents provided a safe environment in which to share their experiences. Those gathered determined that they wanted their experiences known — that they wanted their voices to be heard — so that it might make a difference for children in care now and in the future. They committed to going forward on the journey to bring what happened to them into the light — to seek justice. The former residents at this reunion used Sankofa as a symbol of their journey forward. The wood-carved image of a bird was their talking piece for the gathering. It signified the importance of looking back at what happened in the past in order to fetch what they needed to understand in order to journey forward into the future. They promised one another to do this in a way that would ensure the voices of former residents were heard, would do no further harm, and would leave no one behind. The group gathered gave VOICES a mandate to take up this journey to light and advocate on their behalf. The mandate from this first reunion was foundational to the approach and work that followed.

Lawyers for the former residents were concerned that the journey to light former residents sought may not be achieved through the traditional legal process of civil litigation or even a public inquiry. In support of the former residents' desire to find a path forward consistent with their commitments to each other, their lawyers recommended that VOICES meet with a local law professor who had

experience and expertise in restorative justice and truth and reconciliation processes. Former residents met with Jennifer Llewellyn from the Schulich School of Law in 2012 and shared their experiences and their hopes for their journey to light. Professor Llewellyn suggested that their vision resonated with the idea of restorative justice and agreed to support them in their journey to advocate for, and design a response to, their abuse that would realize this vision of justice.

The first revelations by former residents brought public attention and triggered formal and informal responses from the Home, the African Nova Scotian community, and the Government.

Home and Community Response

It is important to place the Home's response to former residents' revelations regarding the harm and abuse in the context of the historical and ongoing relationship with the community and with the Government as part of the child welfare system in Nova Scotia. As indicated in Chapter 3, these relationships had a profound impact on the operations of the Home and to the conditions and circumstances that contributed to its failure to provide adequate care and protection to residents. The relationships continued to frame the Home's response to harm and abuse claims. Their response also reflected the Board's enduring concern to protect and advance the future of the institution. In many ways, the disconnect between the vision and mission of the Home as an institution from the operational work of caring for children is even more evident during this period. The patterns of governing and operating the Home throughout its history continue to inform its response to the claims brought forth by former residents and their efforts to seek justice.

The first response from anyone affiliated with the Home came in the original newspaper article on September 13, 1998. *The Chronicle Herald* quoted Rev. Donald Fairfax (who had a long-time association with the Home, which began with him teaching Sunday school there in 1939, and then as clergy attending to the Home in the 1960s). He expressed that he was surprised to hear about alleged abuse and it was the first time anything like this had been mentioned to him. The article reported he said, "I'm very disturbed to hear this, and I personally would like to talk to the men who have said this, because these kinds of things need to be talked about," ... "Certainly both of these men can't be speaking the untruth, and as dreadful as it is, I think you have to give them some consideration."⁴ He did go on to recall one particular female staff from the 60s who was especially cruel and, he thought, capable of just about anything. He indicated he was relieved when he heard that she left.

The Home Board reacted swiftly in the days and weeks following the first public revelations by former residents. On September 15, 1998, President of the Board Michael Mansfield wrote to all Board members and honorary Board members and attached *The Sunday Herald* article. The letter read in part:

In light of our 77-year history of caring for youths from all walks of life, this is a very damaging blow to our very existence.

Until the story appeared, we were totally unaware of these abuse allegations, and sickened to read of the graphic details.

It is most unfortunate that these two young men chose to talk to the media, rather than addressing their concerns with the management of the Home. Surely, if there is any substance to their stories, then counseling could have been arranged for the individuals and the perpetrators, alike, and the healing process begun.

At this point, we have advised our legal counsel of this situation, and have asked the Department of Community Services for their advice in handling allegations of abuse, based upon their experience with the Provincial Youth Centres.

Rather than taking the risks of individual opinions, we would ask that all enquires be directed to me...⁵

The Board minutes of September 15, 1998, reflect the Board's initial response to the revelations of former residents two days earlier. Under the heading "Newspaper Article — Untimely Item," the minutes record that "[m]any questions and concerns were aired by the Board members."

The Chair of the Board indicated that he had been in touch with the regional administrator from the Department of Community Services and was assured of "understanding, stating that this should in no way jeopardize their involvement with the Home but as a Board it is up to us how we want to respond to something like this."⁶ Board members expressed concern to secure some written assurance from the Department that this would not affect future placements at the Home. There were also questions raised about whether the claims made in the report were isolated or more widespread and whether there were records from this period that the Board should review. The executive director indicated that any records that might exist from this period would be sealed. The chair informed the Board that they had consulted legal counsel and prepared a public statement. The Board reviewed the statement and determined that the Board chair should be the only spokesperson on the matter at that time. The press release reflected similar sentiments to those contained in the letter to the Board members earlier that day. In addition, it noted:

We agree with the two gentlemen [who alleged the abuse] that none of these allegations of the 1960s could have been made known to the Administration as this Home has come to be known for its caring and nurturing of youths throughout its long existence.

As the only institution of its kind in all of CANADA, this Home stood proudly in spite of the hardships of the black population and through the spiritual leadership of the A.U.B.A. and the sacrifices of its people.⁷

The original draft of the press release attached to the Board minutes revealed concern with the motive of the media in covering this story. It suggested that the Herald sought out those who might not have positive memories of the Home to counter the fact the announcement of heritage approval for the old Home site was carried in the rival paper *The Daily News*.

There was significant consideration of how to respond in order to protect the reputation of the Home. In this regard, the Board read a letter from a former Board member and his suggestion for the creation of a “Friends of the Home” group to share positive messages about the Home.

Last night I read with horror the article that graced the front page of the *Sunday Halifax Herald*. This story about a “Legacy of Abuse” is most unfortunate. As to what components of the article are fact and what is literary license is not clear however what is clear is that this type of story will definitely hurt the image of The Home, an organization I hold quite dear. I wish to offer the following plan for consideration by the board.

The plan would be such that former residents of The Home who actually enjoyed their stay come forward and identify themselves as “Friends of the Home”. To this group former board members who served in any of the various capacities[sic] come forth as well as members of Friends of The Home. This group/organization would be a visible reminder of the many people for whom The Home has been a positive experience.⁸

The Board was in favour of such a group but thought it wise to ask that it be established by someone outside of the Board.

In the weeks that followed, the Herald ran further stories about the abuse allegations. The executive director’s report at the next Board meeting on October 20, 1998, reflects the immediate actions taken in response to the first allegations regarding abuse in the 1950–60s. Up to that point (in the month following the allegations), the executive director reports that he:

- informed honorary members;
- obtained a legal opinion;
- contracted a communications firm to offer recommendations;
- contacted former Board members about establishing the Friends of the Home group;
- liaised with the regional director of Department of Community Services;
- and
- met with MLA Yvonne Atwell to discuss the situation.⁹

Ms. Atwell was the MLA for Preston at the time and supportive of the Home and its bid for heritage status. When asked about the allegations by the media, she emphasized that they were “just allegations at this point,” but it was important that they be investigated according to whatever was the proper protocol for such things. Consistent with the reaction of others who had close ties to the Home, she expressed her belief in the value and success of the Home. She said, “[m]y understanding of the home for the past 75 years has been a very positive one in the community. Many people who lived in the Home, and I have heard from a few of them, felt that it was their own home and these people are quite upset by the allegations.” She indicated that the allegations should not affect plans to consider the Home for heritage status.

They should have heritage status, absolutely, the home is an icon in the community... My understanding has been that it has always been a good home. I've known several people who worked in the home even as far back as when I was a little girl living in the community and I never heard that there was a problem other than what you would have in a normal setting in that you discipline children when you are supposed to.¹⁰

A Situation Analysis prepared for the NSHCC by the communications consultants firm Shandwick Canada Inc. was shared at the October 20, 1998, meeting and the Board approved the recommended approach and actions. The report identified the “key issues” of concern arising from the allegation as this:

The community and supporters of the Home have been hurt by the allegations and the fact that the credibility of home has been questioned. There is also concern that damage to the Home's reputation may hurt the upcoming fundraiser.¹¹

In response to these key issues, the firm recommended a protective and, perhaps, defensive approach. The Home adopted these recommendations offered by the communications consultant. The objectives of the response made some mention of expressing care and concern for the former residents who came forward. However, it came as part of a strategy and tactics focused on defending the reputation and protecting the future of the institution. The objectives identified were:

To protect the reputation and credibility of the Home against unfounded allegations.

To demonstrate concern and care for individuals who may have had negative experiences at the Home.

To ensure that proper steps are in place to protect the Home's current residents from any harm.

The tactics recommended included:

Asking Board members to be alert for rumours in the community about allegations of abuse and possible appeals for compensation.

Consider steps that can be taken, should they be necessary. For example:

- Stage a community rally, featuring former residents relating their positive experiences to demonstrate the concern of the community both for the Home and for those who may have been hurt there;
- Formalize the Friends of the Home group;
- Release a public statement from the Board of Directors recognizing the negative allegations, but reflecting positive support for the Home;
- Maintain the current communication and open relationship with the Nova Scotia Department of Community Services; and
- Ensure current conditions at the Home are above question.

One of the first steps recommended to the Home was to have a small group from the Board meet with the managing editor of the Herald to inquire about the motive in covering this story, especially given that abuse in institutions is not uncommon.

The coming weeks would see more abuse allegations. The executive director's report to the Board on November 10, 1998, offered the following recap of events:

Abuse Allegations continue. Ms. Louise Surrette, Columnist with the Chronicle Herald, continued her assault on the Nova Scotia Home for Colored Children, and its alleged maltreatment of residents throughout the 1950s and the 1960s. Immediately following our last meeting, the President, Mr. Mansfield, and I met with the Managing Editor of the Herald, to express the Home's concern over these articles, and the effect it was having on the Home as well as local residents. We were assured that there are no premeditation involved, and that the writer had stumbled onto the story while gathering information for the heritage article. To balance the reporting they agreed to print the positive side of any former residents, if they wished to tell their stories. Mr. Clinton David and Mr. Lou Dixon came forward and presented a caring picture of life at the Home during this time. However, alongside of their article appeared the headlines, "Complaints filed with the RCMP, Province".

Shandwick Communications, acting on our behalf, reviewed the series of articles, again, and have prepared a statement for the President, our spokesperson, in the event that other media outlets should begin to show interest in these newspaper articles.

We have made an effort to keep our **Honourary Members** up to date, on these allegations, since many of them were quite actively involved with the Home during the period of time, under consideration. One of these Honourary Members, and his wife have come forward to suggest that the Home consider setting up an external "Panel of Inquiry" that would receive any/all stories of treatment while a resident at the Home. However, our communications consultants, and our lawyer, suggest that this route could "open the flood gates" and cost the Home dearly, for financial compensation.¹²

Despite the Board's concerns regarding the potential impact of the allegations and coverage for fundraising at the annual telethon on December 13, 1998, the Home exceeded its goal of \$50,000 that year. There is no further mention or discussion of the allegations in the record of Board minutes until April 20, 1999, when they note a visit by two RCMP constables regarding the allegations of Tony Smith. The minutes indicated that RCMP said the allegations remained unsubstantiated but that they would keep meeting with Mr. Smith.

The official minutes of the Board are silent about the allegations from this point until January of 2001 and the news coverage that a former resident had filed a Notice of Intended Action regarding abuse in the Home. The executive director's report to the Board for the January 9, 2001, meeting explained:

A few articles in the local newspapers, alleging child abuse in the 1950s brought an otherwise joyful Christmas holiday to an abrupt close. The two local newspapers called the Home to inquire about a "Notice of Intended Action" that was filed in the Supreme Court of Nova Scotia, by a former resident against the Attorney General of Nova Scotia, The Nova Scotia Home for Colored Children, The Department of Community Services and former foster parents. Mr. Mansfield, President responded to these questions, as per our protocol.

After sharing these articles with the Board of Directors, Mr. Mansfield and I, met with our legal consultants, at McInnis Cooper. On their [advice], I have notified our insurers, King Insurance and the Regional Administrator, Department of Community Services, to assess their support roles, in this pending case. The Law Firm advised us that these cases usually extend 2 years or more, and are very costly.

In light of the above claims, it is important to review the Home's name change strategies, and to take a second look at the creation of a separate Foundation, as a protective mechanism for the Home's [assets].¹³

In the Board's discussion of the report, members expressed concerned about the liability of the Board and decided that they needed to stay quiet and make no comment while this was in the courts. The Board minutes record a discussion of whether "there is some way to put this to rest? The Court case may deter people; however, we do not know if this is the only case, at this stage, it is not possible to know the outcome."¹⁴ They also discussed the proposal for a foundation and name change in response to the allegations. It was noted that: "The system seems to have the upper hand, as they set the criteria, they could make the decision to close the Home, we should have a contingency plan. Our land assets get in the way of negotiations with Community Services. How can this all work in our best interest."¹⁵ It was suggested the Board have a planning day to establish a foundation. In February 2001, the Board met to develop a strategic plan and establishing a foundation was a central part of that discussion.¹⁶

By March 2001, the first law suit had been filed and the Board decided that it must approach Government "so as to build some defense." The minutes also reflect that the chair and executive director met with the MLA for Preston, David Hendsbee, regarding legal costs and were awaiting the Government's response.¹⁷

In the ensuing months, more law suits were filed and media coverage continued to profile the allegations and experiences of former residents in the Home. The president's message to the newly elected Board of the Home on June 28, 2001, captured the Home's response over the preceding year and their approach moving forward.

We have had to deal with allegations of abuse directed towards our organization. The media chose to provide it's [sic] readership with "Sensationalistic" campaign of very negative coverage. Throughout this barrage of adverse publicity, we have managed to remain objective and non reactionary in any response to this situation. We are committed to remaining professional in our approach, as it relates to these matters, and have engaged the resources of our very reputable legal firm. This matter will be dealt with in a thorough and proficient matter.¹⁸

The Home's response to the law suits as they were filed, and throughout the litigation and settlement processes, would continue in this manner — guided by legal counsel and fully engaged in the adversarial process to examine and defend the claims. Its legal response was significantly shaped by the approach of the Government as a co-defendant. The nature and impact of the legal strategy will be discussed further on as we review the Government's response.

In a discussion paper prepared for the November 2002 Board meeting on the idea of a foundation, one of the objectives was to "remove assets, such as land and investments, from the balance sheet, so that these assets are not used to fund operations."¹⁹ Draft bylaws were prepared²⁰ but the application was eventually rejected in 2004 as the name "Nova Scotia Home Foundation"

was too general and required “a descriptive element to indicate the type of business to be carried out by the company.”²¹ By December 2004, it was thought that the “outstanding lawsuit might present a legal impediment to move assets into a Foundation.”²²

While the Home’s bid for heritage status in 1998 was a catalyst for former residents coming forward, it was not until 2006 as part of a renewed effort that two recommendations were brought to the Board²³:

- Subdivide the old Home site property to include the Henry G. Bauld Memorial Centre, the old Home, and the cottage
- Apply for registered heritage status on the old Home “subdivided site” comprising approximately seven acres

In August 2006 the Board met with the HRM Heritage Property Planner to revisit the NSHCC’s initial application for registered heritage status for the original orphanage building. The first application several years earlier had been denied. It was now thought that the additional facts would allow the NSHCC to qualify for heritage status “while maintaining the best interests of the Home.” The application did not seem to proceed further owing to the state of repair of the old Home building.

The Board also ultimately considered a name change. A discussion paper was developed for the November 2002 Board meeting.²⁴ The paper acknowledged that “any attempt to change the name must be considered tampering with a piece of history” but the real question is “if such action is in the best interest of the NHSCC?” The following points were considered:

- Is a name change of any real benefit or significance?
- Can a new name better reflect the goals and objectives of the Home?
- Is it possible a name review may negatively impact the Home in such a way to suggest that the process be abandoned altogether?

The Board’s reflection on these points was impacted by the fact that the NSHCC was “under attack” and facing allegations.²⁵ The Board agreed, after a protracted discussion in November 2003, that the Nova Scotia Home for Colored Children would be referred to as “The Nova Scotia Home.”²⁶

As the legal process proceeded, the African Nova Scotian community also responded to the allegations and the ongoing law suits. The community’s efforts in this regard reflect the continuing connection and commitment of the community to the Home and its historical significance for African Nova Scotians.

One such example was the emergence of the African Nova Scotian Leadership Think Tank (Think Tank). Started in December 2012, the group described themselves as “a coalition of African Nova Scotian organizations and Community Consultants who are working together to try to facilitate a process that will lead to a mediated solution regarding the allegations against the NSHCC.” The group does not seem to have remained active much beyond its advocacy with the NDP Government in 2013. There are no available records of the group’s membership. Based on information provided to former residents at a meeting with members of the group, and the Think Tank’s own minutes of their meetings with Government leaders, the group appeared to have approximately eight to ten members. Included among its members were previous Home Board members, members of the AUBA, individuals in leadership positions with Government-funded organizations, and individuals with close ties to the NDP Government at the time (including former MLAs and a former party candidate).

VOICES had been actively seeking a meeting with Premier Dexter during 2012. The Premier’s comments in the media during this period began to focus on concern about the potential for former residents’ allegations to divide the African Nova Scotian community. In January 2013, VOICES received a request to meet from a local pastor who indicated that she was writing on behalf of some local pastors and representatives from some Black organizations who were concerned for the former residents and the Black community. She indicated that three members wanted to meet with VOICES to hear from them directly regarding their position on a resolution to the claims against the Home.

VOICES members met with this group on January 16, 2013, at the Black Cultural Centre. At the meeting, members identified themselves as representing the African Nova Scotian Leadership Think Tank (they would later refer to themselves as the African Nova Scotian Community Think Tank). At the outset of the meeting, the Think Tank members gave the representatives from VOICES a questionnaire to fill out with questions about what they wanted to see happen in dealing with their claims about the Home. The former residents inquired who the group represented and why they were asking these questions. The Think Tank members listed the organizations and individuals connected to the group. They indicated they would be meeting with the Premier to discuss the issues of the Home and that they would convey what the former residents were seeking. In the nearly three-hour meeting that followed, VOICES members reported that significant time was spent discussing the Think Tank members’ concerns that a public inquiry would be bad for the African Nova Scotian community. Given the connections of members of the Think Tank, and the overarching concern expressed for the protection of the African Nova Scotian community, VOICES experienced the meeting as an attempt to control and silence them with respect to their negotiations with Government. VOICES indicated that they did not require nor wish for the group to serve as a messenger to Government. Indeed, VOICES’ purpose was to ensure a mechanism for former residents’ voices to be heard and to enable them to advocate on

their own behalf. VOICES indicated they would be the ones to speak to Government on this issue and asked that the Think Tank be clear about this if, and when, they met with the Government.

The Think Tank did proceed to meet with Premier Dexter along with the Ministers of Justice, Community Services, and Finance. The Think Tank's executive summary notes of the meeting on January 22, 2013, indicate their goals for the meeting were to facilitate better communication with Government and gain a commitment from Government to find a process to respond to the Home's allegations that would get "all stakeholders to a win-win." The Think Tank summarized their concerns:

- African Canadian community is concerned about the allegations, the media, and lack of response from Government up to this point.
- Many African Canadian community members are watching and there is an expectation for action to be taken and for resolution to be found.
- The African Nova Scotian community is painfully aware of our history, including our relationship with Government, and it has been fraught with numerous examples of racism, marginalization, and systemic neglect.
 - This Government is in a perfect position to help change this now – in the present. We cannot afford to repeat the mistakes of the past.
 - We do not want to see further harm come to our community.
 - We want to see all the stakeholders in this situation get to a win-win.

According to its notes, the Think Tank did communicate (as VOICES requested) that they do not speak for the former residents. They also recommended that the Government meet with VOICES (although positioned this as about healing and listening, not about determining how to respond).

They recommended:

- 1) We know that you are in the midst of legal action regarding the allegations by former residents of the NSHCC and that process needs to continue its course. However, **we strongly recommend that government meet with the representatives from VOICES.** They are hurting on multiple levels, and they need to be listened to. We ask that you give them an opportunity to speak directly to Government.
- 2) **We recommend that the government meet with the board and Management of the NSHCC.** They are also hurting, and need an opportunity to speak directly to Government.
- 3) **We recommend that both these meetings be held within the next thirty (30) days, and that government meet with the TT [Think Tank] again following the two meetings.**²⁷

The implications of the Think Tank's message to Government was clear: they sought to position the matter of the Home as one between two parties (the former residents and the Home) both deserving of equal concern and consultation. This message was consistent with the general approach the Government had taken to the issue of the Home. The Government sought to position itself as a neutral mediator between the Home/community and the former residents. On February 2, 2013, before the Province agreed to meet with the former residents, then-Justice Minister Ross Landry replied to *The Chronicle Herald's* questions about when the Government might decide how to proceed, by saying that he and other Ministers were still meeting with members of the African Nova Scotian community. He said, "we firmly believe in hearing all sides, having a wide range of consultation, and getting a clear sense of reflection on the materials and evidence that's put before us before we make a decision." Mike Dull, lawyer for the former residents, questioned the outcome of "consultations" the Dexter government said it was having with the local Black community before making a decision.

They've not sat down with the victims to see what steps can be taken to heal their wounds. Rather they say they're consulting with members of the community... What members? Are there members of the community who do not want a public inquiry and the truth finding that comes with it? I cannot imagine any members of any community wanting to deny these victims a path towards truth and reconciliation. ²⁸

The Think Tank also clearly tried representing themselves as the entity to broker a solution with Government. To that end, they used the language of the former residents' call for a restorative response to the Home case in their meetings with the Premier. Notably, though, they suggested that such a process must be community controlled and resourced but with otherwise minimal involvement of Government. The day after their meeting with the Premier and cabinet members, the subgroup of the Think Tank reached out to the former residents once again to report on their meeting and inform former residents of their view of the way forward. They indicated the former residents would hear from the Premier.

The former residents did hear from the Premier in the coming days and a meeting was held with the Premier and other members of cabinet on February 6, 2013. Meeting notes taken at the time by a former resident in attendance indicated that the Premier identified his concern to avoid a divide in the African Nova Scotian community as being central to determining a way forward. As discussed in the next section of this chapter, this concern clearly influenced the direction the Government took in response to the abuse claims. Premier Dexter's appointment of an independent panel rather than a public inquiry to deal with issues of healing separate from the ongoing class action was consistent with the recommendations of the Think Tank and contrary to what former residents sought. ²⁹

Following the Think Tank's advocacy on behalf of the "community" with Government and the former residents, the late Rocky Jones, then Chair of the African Nova Scotian Ujamaa Association (a grassroots network of African Nova Scotian organizations and communities established to support integrated community economic development and capacity building) called a "Black Family Meeting" of the African Nova Scotian community. One of the issues on the agenda for discussion was the allegations against the Home. Jones, interviewed by *The Chronicle Herald*, said the upcoming meeting would deal with, "[t]he issue of the home, because it has been so front and centre, it has exposed many schisms in the community." Jones, unaware of the Think Tank and their activities regarding the issue of the Home, invited former residents to come and address the Black Family Meeting held by Ujamaa. The former residents refused his invitation, concerned it was a further effort by the community to control their advocacy in the matter. Surprised and concerned by their response, Jones pursued the issue further with VOICES. VOICES members shared their experience with Government and the Think Tank.

Jones assured VOICES it was not his intent to interfere but to ensure that the broader community could hear and understand the journey of the former residents. Some members of VOICES still did not feel comfortable attending the meeting given their experience with the Think Tank. Tony Smith, co-chair of VOICES, agreed to attend and speak. After hearing from him and about the journey and vision of VOICES, those at the Black Family Meeting (over 200 community members) stood in solidarity and support of the former residents in their call for a public inquiry (not the expert panel planned by Government). They supported former residents' bid to ensure their voices would lead the way in this call for justice. They endorsed the following release from the meeting:

The participants of the Ujamaa Black Family Meeting held April 5 & 6th 2013 support the VOICES organization in their demand for a public inquiry. The panel suggested by the government will re-victimize the victims, and will not provide transparency and clarity to the African Nova Scotian Community.

A public inquiry will allow the facts to be illuminated, and as a result provide the African Nova Scotian community an opportunity for healing.

Dr. Burnley "Rocky" Jones, Ujamaa Association Co-Chair ³⁰

Tony Smith committed to take the letter and news of the community support back to the former residents. He indicated to those gathered that this was a very significant moment because it felt like the first time in their long journey that the community had stood alongside former residents in support. Other former residents felt the same when they received news of the supportive stance of Ujamaa representing the grassroots of African Nova Scotian communities.

The concern, reflected by the Think Tank, to protect the institution and ensure its continuation into the future, was echoed throughout much of the history of the governance of the Home. As discussed in Chapter 3, there was a significant focus on protecting institutional assets of the Home. It is perhaps not surprising, then, that one of the early reactions to the abuse allegations and liability was to protect assets through the creation of a foundation. As noted above, the Board pursued this idea beginning in 2001 following the first Notice of Intended Action by a former resident against the Home. In 2004, efforts to establish a foundation and transfer the assets of the Home to this new and separate entity stalled because of concern over the implications of doing so in the midst of the civil action. In 2013, as the Home moved to settle current legal liabilities related to the class action claim for abuse at the Home up to 1989, they also renewed efforts to protect the remaining assets of the Home against future liabilities.

On the morning of March 16, 2013, the Board of Directors and staff of the Nova Scotia Home for Colored Children held a strategic planning session. The minutes reflect that the Board was concerned with creating opportunity for:

- Employment
- Promoting culture
- Creating a new branch not attached to the allegations ³¹

The following discussion about the Board structure was recorded in the minutes:

Are we able to separate so that the NSHCC as an overarching entity can do the larger pieces of work while maintaining Akoma as an entity with a specific focus on work?

Should the NSHCC cease to exist, can Akoma become the larger entity with an expanded mandate?

The board decided that they would move forward with option C, which leaves the NSHCC still incorporated under the Act but as a shell holding body corporate. The assets will be transferred out to a new company limited by guarantee Akoma Holdings (nominal amount \$10 required by directors) which will be a registered charity that holds, manages and develops real estate and other significant assets. The Akoma Family Centre Incorporated will also be setup as a separate company limited by a guarantee, which will also be a registered charity and operates the

child and youth care residential services. We can add other companies as we require but will have to obtain charitable status for each branch prior to start up.

[...]

We need to incorporate Akoma Holdings and Akoma Family Centre as registered charities

We need to clarify the charity to charity tax implications of transferring assets

We need to rebrand

We can revisit the option of changing legislation by winding up the NSHCC as a shell company in the future if we wish or changing the name of the shell company³²

This new strategic plan was approved on the evening of March 16, 2013, at a Board of Directors meeting which included staff of the Home.³³ The NSHCC executive director proceeded as authorized by the Board to incorporate Akoma Holdings Inc., and Akoma Family Centre Inc. The Certificates of Incorporation for both entities were issued on August 13, 2013.³⁴ At the time of incorporation, the registered officers for both companies were the same and reflective of the membership of the Board of the Nova Scotia Home for Colored Children.

On July 31, 2014, the Canada Revenue Agency notified that Akoma Holdings Inc. met the requirements for charitable registration under the *Income Tax Act* and a similar determination was made regarding Akoma Family Centre Inc., on August 13, 2014.

At the same time, the Board was actively working on achieving a legal settlement with respect to its part in the class action lawsuit. The Board ratified a settlement agreement to be presented to the claimants at the March 16, 2013, meeting of the Board.³⁵ At the April 10, 2013, meeting, the Chair of the Board reported that the complainants did not wish the acknowledgement to be included in the settlement as it was “too weak”³⁶ and the minutes of the May 8, 2013³⁷ meeting confirm that the acknowledgement was removed because the complaints were not agreeable to the contents. While we do not have access to the proposed “acknowledgement,” one can imagine the issue given the settlement agreement reflected the typical legal approach of denying any liability. In this context, it is difficult to imagine that a meaningful acknowledgement of harm and responsibility could be achieved. The settlement was subsequently approved by the Court on June 10, 2013, and was finalized following an opt-out period on September 11, 2013.³⁸

The Nova Scotia Home for Colored Children Board was still in existence at this time and was represented on the design team for the Restorative Inquiry. On June 15, 2015, the Honourable Tony Ince, Minister of African Nova Scotian Affairs, introduced the Chairperson of the Nova Scotia Home for Colored Children in a ceremony held at Emmanuel Baptist Church to launch the Restorative Inquiry. The Home issued a long-awaited public apology to former residents and the African Nova Scotian community. This came following the Home’s participation in the

design of the Restorative Inquiry and as part of its commitment to enter into that process as a partner. This apology was quite different in this respect from the “acknowledgement” that was originally offered as part of the legal settlement process. The chairperson issued the following public apology on behalf of the Board leadership:

The Nova Scotia Home for Colored Children was established in 1915 and opened in 1921. It was birthed as a result of collective action of African Nova Scotian communities to respond to the disregard and refusal of services by the government of the Province of Nova Scotia of Black children in need. The purpose and heart of the Nova Scotia Home for Colored Children was to be a safe, caring surrogate family for children taken into care by the province, as well as for families to identify themselves as needing support beyond their individual and extended family. Its original foundation was one of love, compassion, hope and perseverance. The current Board understands that many residents in the past did not experience the level of care and compassion that the founders conceived of and that all children have a right to. We, the Board leadership of the Home, apologize to the former residents and staff who suffered or experienced harm at the Home. We are deeply sorry for the physical, emotional and other harms that you have experienced. Many of us are descendants of former residents and of community members who wanted the best for residents and believed in the power of community. We want to honour that faith and original vision by advancing forward while learning from the past. The Nova Scotia Home for Colored Children wants to be part of the journey of healing and rebirth. We look forward to moving forward. To holding hands and being an active partner to respond to past injustices and helping African Nova Scotians in our voices to write the future message of our place in all aspects of the Nova Scotia society. We, through the Restorative Design Team, are grateful to be part of the collective voice building a new equitable relationship with the Province of Nova Scotia that will address the root cause of the challenges facing African Nova Scotian families and children.³⁹



NSHCC chair Sylvia Parris at Inquiry launch

Restorative Inquiry, courtesy of
Communications Nova Scotia

This was the second public apology issued to former residents for harms suffered or experienced at the Home, the first apology (as discussed further later in this chapter) was issued eight months earlier by the Premier of Nova Scotia on behalf of all Nova Scotians.⁴⁰ The significance of the Home's long-awaited apology to former residents was expressed immediately by the chairperson of VOICES who said:

This is very moving for me — and I know many other former residents — to hear this from the Colored Home. A lot of us thought this would never happen. On behalf of VOICES, and the former residents who were hoping this day would come to receive this apology, I thank you.⁴¹

On August 25, 2015, two-and-one-half months after issuing the public apology on behalf of the Home, the leadership of the Home executed two deeds gifting all of its assets and liabilities to Akoma Holdings Inc. and Akoma Family Centre Inc. Although the deeds were executed after the Home issued its public apology, upon execution of the deeds, the changes became effective retroactive to April 1, 2015.⁴²

The failure to disclose that these new separate entities were being established, effectively ending the operation of the Home as an entity, caused some uneasiness and concern among former residents regarding the source of the Home apology. It appears, however, that during the transition period, the newly established Akoma Holdings and Akoma Family Centre Inc. Board leadership overlapped with the Home Board at the time the apology was offered. Following the transfer of assets, however, the Akoma Board continued to represent the historical legacy of the Home through the Restorative Inquiry without clarifying that the Board of the Home was no longer in existence. This may have reflected their sense of moral duty to the legacy of the Home and certainly conformed to community expectations, given the general lack of awareness that the Home no longer existed as an operating institution. It ultimately became clear, through the Restorative Inquiry process, that the subsequent Board representation and participation on the Restorative Inquiry was actually provided by the Akoma Board.

The Deed of Gift and Donation Agreement dated August 25, 2015, with an effective date of April 1, 2015, transferred significant assets from the Nova Scotia Home for Colored Children to Akoma Holdings Inc. The deed also references the assets transferred in a separate instrument from the Nova Scotia Home for Colored Children to Akoma Family Centre, which is identified in the deed as *an affiliate of the Grantee* (Akoma Holdings Inc.). The particular assets and liabilities gifted to the newly incorporated Akoma Holdings Inc. included approximately 325 acres of real property comprised of the following parcels, including all buildings and structures erected thereon, excluding those buildings and structures situate on lands leased to third parties;⁴³ real property leases;⁴⁴ investments totalling \$1,400,000 held in various accounts; and miscellaneous personal property, for example all furniture, fixtures, equipment and other contents of the Bauld

Centre. Akoma Holdings also assumed all existing financial liabilities of the NSHCC, including a mortgage to Central Mortgage and Housing Corporation in the amount of \$548,130, dated January 17, 1978, and an operating line of credit with the Bank of Nova Scotia in the amount of \$300,000, dated September 22, 2014.⁴⁵

The Deed of Gift and Donation Agreement dated August 25, 2015, with an effective date as of April 1, 2015, also transferred assets from the Nova Scotia Home for Colored Children to an affiliate of Akoma Holdings, Akoma Family Centre Inc. The particular assets gifted to the newly incorporated Akoma Holdings Inc. were as follows: a licence for a child-caring facility issued on June 13, 2015, by the Province of Nova Scotia Department of Community Services pursuant to the *Children and Family Services Act*; personal property, such as all tools and equipment and all household and office furniture, appliances, furnishings and office supplies used in connection with the child-care services and contained in the two residential buildings located at 1016–1018 Main Street, Dartmouth, Nova Scotia, including, without limitation, two stoves, five refrigerators, two washing machines, two clothes dryers, seven sofas, two dining room tables and dining chairs; equipment leases; and computers, software, and related accessories.

Noticeably absent from the transfer of assets was the provision limiting the use of the assets for the benefit of the African Nova Scotian community, or for the benefit of the care and training of children. As discussed in Chapter 3, this provision was fundamental to the incorporation and subsequent legislation pertaining to NSHCC. The incorporation of the new entity Akoma Holdings and the transfer of the Home's assets to this new entity removed the provision that ensured the assets would remain connected to the African Nova Scotian community should Akoma Holdings wind up operations. The originating legislation incorporating the Nova Scotia Home for Colored Children was passed in 1915. Then, on May 5, 1978, the Nova Scotia Legislature assented to "*An Act to Revise an Act To Incorporate the Nova Scotia Home for Colored Children*," which provided the following with respect to the dissolution or winding up of the Home:

16. In the event of the dissolution of [sic] winding up of the Home all of its assets, remaining after payment or liabilities shall be distributed.
 - (a) to the African United Baptist Association or to any other Charitable organization designated by the Board, or
 - (b) to one or more charitable organizations, registered as such with the Department of National Revenue of the Government of Canada, with objects for the care, protection or education of the Black-Afro race.⁴⁶

A plain reading and interpretation of the dissolution or winding up provision contained in the 1978 act stipulates that, should the Home dissolve, all of its remaining assets (after payment of liabilities) shall be distributed to the African United Baptist Association or any other charitable organization designated by the Board.

On August 25, 2013, the Nova Scotia Home for Colored Children gifted and donated by deed all of its assets to two newly incorporated Nova Scotia companies, Akoma Holdings Inc. and Akoma Family Centre Inc. In Nova Scotia, incorporated companies are required file a Memorandum and Articles of Association with the Registry of Joint Stock Companies. A Memorandum and Articles of Association sets out the companied objects, and the manner in which the company is to conduct its business. The 2013 Memorandum and Articles of Association for both Akoma Holding Inc. and Akoma Family Centre Inc. provided the following with respect to the dissolution or winding up of the companies:

[...] in the event of liquidation, dissolution or winding up of the Company, the surplus assets, if any, after all liabilities of the Company have been paid, shall not be distributed to any member of the Company, but shall be transferred to one or more non-profit organizations that are also qualified donees under the *Income Tax Act* (Canada).⁴⁷

There is a subtle but important distinction to be made in interpreting the intent of the 1978 legislation and the 2013 incorporation documents regarding distribution of the Home's surplus assets upon dissolution or winding up. The 1978 (NSHCC) legislation makes clear the AUBA was first in line with respect to the distribution of the Home's surplus assets. However, the 2013 (Akoma) incorporation documents appear to remove the AUBA from its priority status upon dissolution of the companies. This provision in the 1978 legislation may also shed some light on the decision to retain the NSHCC as a legal shell or to wait until some later date after the transfer of assets is complete before dissolving the Nova Scotia Home for Colored Children as provided for in legislation.

Efforts to protect the assets of the Home were clearly linked to the threat posed by the costs and potential outcomes of litigation. Even after the class action claim was settled, the Home Board continued to seek support from the Government for the costs incurred. In a letter to then-Justice Minister Cecil Clarke, the Board expressed their concern regarding the costs of the litigation:

The defence costs to date have totaled close to \$700,000 for which the Home has been responsible for approximately 35% or \$245,000. We have been carrying this liability to the extent that our very existence is potentially under threat. The Home does not have available the financial resources to continue to pay the necessary legal costs to defend these claims and/or pay out any claims. If the Home does not receive support from the Province of Nova Scotia, we will not be able to continue our operations over time. Consequently, the Province would lose not only a valuable child care facility, but an important part of its cultural heritage. Furthermore, losing the Home would wound the African Nova Scotian community immeasurably — echoing the demise of Africville — and would be a significant blow to the Province's relationship with the African Nova Scotian community.⁴⁸

The letter requests that the Province provide the Home with the necessary resources to defend the legal claims and enter into an agreement to indemnify the Home for any claims payable. A similar letter was sent to the Minister of Community Services. The Government responded with a promise to schedule a meeting with senior officials of both departments after they reviewed the issues. It also noted that, based on previous discussions with the Home, it was clear that "the Home's current operating situation is not in crisis."⁴⁹ The Home wrote a similar letter to the Ministers of Justice, Community Services, and African Nova Scotian Affairs in 2012 seeking assurance that the Province would participate in the financial resolution of the legal claims.⁵⁰ This letter resulted in an invitation from Minister for African Nova Scotian Affairs Percy Paris to a closed-door meeting with the Minister of Justice and Minister of Community Services for the purpose of information sharing and without legal counsel present.⁵¹ Further correspondence reflected increasing frustration on the part of the Home Board with the government's lack of response and support. The Chair of the Board wrote to the Minister of Justice on May 11, 2012:

As you know, both the Home and the Province must file their respective evidentiary records with respect to the class action certification motion in June 2012. The evidence that the Home may have to file to properly defend itself may not be flattering to the Province. Furthermore, if the certification motion has to proceed, this will have a substantial impact on the options [available] to both the Home and the Province.

It is imperative that we meet in a timely fashion so that our response options are not so limited. The time to act is now.

I am sure you will not be surprised to hear that the Home's board has been receiving inquiries from members of the opposition parties. At the board's most recent meeting (May 9), it was acknowledged that as a matter of common courtesy and respect, the Home should respond to these questions.

I can assure you that the NSHCC board is committed to work with the Province to reach a timely, equitable resolution.⁵²

In June of that year, the local MLA Keith Colwell intervened on the Home's behalf, asking that Ministers meet with the Home in recognition of the urgency of the situation. The response from the Minister of Justice indicated this was a complex matter and they needed to tread cautiously.⁵³ The Government continued to decline requests to meet with the Home Board until February 4, 2013, when a meeting was held with Premier Darrell Dexter and other Ministers.⁵⁴ The notes prepared for the meeting reflected the efforts of the Home Board to meet with Government and to propose collaboration in a settlement of the class action. They indicated that the government had resisted these efforts and reported that the Home's legal costs were then over \$400,000. They requested that the Government consider settling the case and assist

the Home with its legal costs.⁵⁵ By October 2014, with the new Liberal Government of Stephen McNeil in power, and while the Home was engaged in plans for the Restorative Inquiry, the Home Board wrote to MLA Keith Colwell claiming its legal fees to be over \$750,000. The Home attributed this directly to “the reluctance of past governments to acknowledge their obligations which would have ultimately minimized financial impacts.”⁵⁶ The letter continued:

As we participate in the Restorative Inquiry, we are anxious to address this very fundamental issue. The Board is requesting from the government some restitution towards our legal bills.⁵⁷

Throughout 2014 and 2015, their efforts continued with the Government to get compensation for legal fees. The Government indicated it had no plans to provide such funding as it considered the issues settled and would not revisit the matter.⁵⁸

It is clear that the Home felt tied to the Government in its legal response to abuse allegations for some significant period. In part, this seems to have been because they were uninsured for a significant number of the claims and, therefore, felt unable to settle the claims without Government assistance. In the end, the Home did come to an agreement to settle its liabilities for an amount within their insurance coverage. Fully understanding the Home’s response in this case, then, requires an appreciation of the Government’s response to the abuse claims.

Government Response

Given the complex nature of the relationship between the Home and the Nova Scotia Government since the Home’s inception (as discussed in Chapter 3), it is not surprising there were significant connections to the Home within Government at the levels of officials, politicians, and parties that shaped their interactions in response to abuse.

The Provincial Government’s direct involvement in the response to former residents’ allegations of harm and abuse began in 2000 when the first Notice of Intended Action named the Government and the Children’s Aid Society alongside the Home. As noted in the discussion above, the Government was involved at the earliest stages of the allegations as the Home reached out and sought advice and support from the Department of Community Services. The NSHCC turned to the Government for support because of their role as part of the child welfare system. Former residents also looked to the Government for a response to their claims. They wanted their complaints investigated but the Government indicated that responsibility fell to the police.⁵⁹

A. Police Response

Tony Smith was the first former resident to publicly disclose his abuse to *The Chronicle Herald*, in 1998. A few months later, he reported his abuse and ongoing concerns about residents at

the Home to the RCMP. Other complaints followed, including one by former resident Shirley Melanson, who complained to the RCMP in Digby detachment and her statement was forwarded to the Sackville detachment. She reported that the officer who took her statement followed up to see if she had heard anything further from her complaint. She never heard from anyone else with respect to her complaint.⁶⁰

The initial complaints generated no response from authorities. Fourteen years later, more former residents made complaints to police following the revelations in the *W5* documentary on the Nova Scotia Home for Colored Children. Some former residents renewed earlier complaints and others came forward for the first time. One of the former residents who went to police had been involved in a documented case of sexual assault that was brought to police attention at the time it occurred. As noted in Chapter 3, the police declined to investigate at the time because of her age (she was 16) and the fact she did not appear from the third-party accounts (the police never met with her at the time) to have put up a fight in response to the staff member involved. There was, therefore, a significant range in the nature of the report's time period and alleged harms. In March 2012, in response to this new round of complaints, the RCMP, in collaboration with Halifax Regional Police, launched what they characterized as a widespread investigation. At the time, the RCMP stated it had no record of any earlier complaints. They undertook a review and concluded:

"We have conducted an extensive review of existing RCMP records and have determined that prior to now, there is no record of any complaints or criminal investigations in regard to the alleged sexual and/or physical abuse of residents residing at the Nova Scotia Home for Coloured Children," wrote RCMP spokesman in an email.⁶¹

Two RCMP officers told *The Chronicle Herald* that they received complaints about the Home for Colored Children. In 1998, an RCMP officer said:

We have received a phone call in regards to the Home for Colored Children... At this point, an investigator hasn't been assigned nor has exactly where an investigation will take place from been determined. It is very premature at this point to say what will take place and it is hard to say when this will begin. It is tricky because the matter is years old, so whether it is this week or next week, we can't really say.⁶²

Another RCMP officer reported, in 2003, that there had been an investigation, but no charges laid.⁶³

In 1999, Tony Smith made a public appeal for others who were abused in the Home to come forward to police because the RCMP had indicated to him they needed more information to warrant a further investigation.⁶⁴ The Home Board minutes contain evidence of the police investigation into Tony Smith's complaint in April 1999 as they reported two officers attended at the Home with respect to the complaint.⁶⁵

The denial of receiving any prior complaints and the failure to follow up on them was a source of contention for many former residents, some of whom already had a negative view of law enforcement stemming from their experiences as children in care. As discussed in Chapter 2, as part of the Inquiry process, the RCMP undertook another comprehensive search for the files and a review of processes and procedures that may have contributed to the failure to identify the earlier interview and investigation during 2012. This process identified a number of potential contributing factors, including policies at the time related to file storage, data entry, file tracking, file retention, and the system of file classification that may have resulted in files being culled/destroyed erroneously. The RCMP acknowledged previously the search was conducted to confirm the existence of files, not whether or why such files may be missing. The RCMP engaged in the process within the Restorative Inquiry with a commitment to learn and understand what happened and the significance and impact on individuals who had come forward.

No charges were ever filed related to abuses at the Home. In December 2012 (one day after the certification of the class action claim), the integrated RCMP/Halifax Regional Police (HRP) investigation team concluded their investigation into allegations of physical and sexual abuse at the Home. They released the following public statement regarding their conclusions:

In March 2012, the RCMP and HRP released a statement encouraging individuals with direct information on alleged abuse to come forward to speak with police. An investigative team was formed shortly after to focus solely on these allegations. We understand that a significant period of time has passed since these alleged instances of abuse took place and it may have been difficult for people to discuss this very challenging time in their lives. However, we were encouraged by the number of people that came forward to speak with police. The team did an exceptional job conducting a thorough investigation and various avenues available for investigative perusal were examined.

The investigative team traveled throughout Nova Scotia, New Brunswick, Quebec, Ontario and Alberta to personally interview 40 complainants. Possible witnesses and those with potential information on the allegations were also interviewed in an effort to corroborate statements and garner further evidence.

The investigative team has determined that the evidence brought forward does not support the laying of criminal charges. The information obtained was unable to be corroborated to meet the threshold that would formulate reasonable and probable grounds to lay criminal charges. It is important to understand that in order for police to lay charges in any investigation, these grounds must be supported by evidence that will withstand the scrutiny of the court process.

This investigation warranted only limited consultation with the Nova Scotia Public Prosecution Service due to a lack of reasonable and probable grounds to lay charges.

Throughout the investigation, some individuals were earlier notified that their cases would not be investigated further. This was determined by the inability to gather sufficient evidence to support and substantiate criminal charges. Many years have passed since some of the allegations were to have taken place and some of those alleged to have committed criminal acts have since passed away.⁶⁶ Beyond this press release, the police did not elaborate on their decision not to pursue any of the cases. Given the range of circumstances, including those allegations that pertained to individuals who were still living and working in HRM, and a case where there had been previous police involvement, the blanket refusal to pursue any cases was confusing and upsetting to former residents. Their disappointment was heightened by the police decision to re-open an investigation a few months later, in April 2013, in the high-profile case of the sexual assault of Rehtaeh Parsons, a Halifax area teen who took her own life following an alleged sexual assault and bullying after the distribution online of images related to the assault. The police had made the decision not to pursue charges for lack of evidence in her case as well. However, following a public outcry and threats from the group Anonymous, the police announced they would re-open the case on the basis of new and credible evidence. Although, the case similarly involved evidentiary issues related to prosecuting sexual assault, the NSHCC cases were further complicated by the passage of time and the age of some of the complainants at the time of the incidents. Given the harm experienced by some former residents when earlier complaints were not pursued, former residents experienced the unwillingness to reconsider their case as a reflection their harms were less important.

B. Legal Response

The Government initially regarded the revelations of abuse as a matter for police and a matter for the Home to deal with in terms of the public perception of the institution. It was not until the filing of the first civil claim that the Government became directly involved in the response to former residents' allegations. From 2000 to 2013, the Government response was primarily handled as a legal matter by the Department of Justice.

The Government's response to the civil claims regarding the Home followed the investigation and Government response to abuse allegations in Provincial youth facilities, including the Shelburne School for Boys, which began in 1994 with a comprehensive Government process including an investigation and compensation program. At the time the first civil claims were made regarding the Nova Scotia Home for Colored Children, the Province was in the midst of a formal review of the response to Shelburne and other Provincial institutions. Mr. Justice Fred Kaufman was mandated to conduct the review in 1999 and produced his report with wide-

ranging recommendations for future Government responses to institutional abuse claims in 2002.⁶⁷ Just after the first civil claims were filed in the Home case, the Law Commission of Canada produced their report *Restoring Dignity: Responding to Child Abuse in Canadian Institutions*, which identified significant concerns regarding the traditional legal process of responding to institutional abuse.⁶⁸ In his final report, Kaufman indicated that he “found the Law Commission’s analysis to be extremely helpful in identifying the needs of survivors and the criteria and principles to be used to examine the merits of various approaches.” He noted that the Law Commission recognized that the needs and interests of everyone involved need to be considered when designing a response and used this to qualify the Law Commission’s approach to redress saying: “[o]f course, I share the Law Commission’s view that fairness for all affected parties must be considered in assessing any approach to reported institutional abuse. However, I hold a somewhat different view as to how fairness is to be achieved, particularly for alleged abusers, within a government redress program.”⁶⁹ Justice Kaufman’s express commitment was to ensure processes met the needs of all concerned. Perhaps not surprisingly, given his role as a judge within the adversarial justice system, his analysis and recommendations reflected a faith and commitment to existing adversarial processes as the means to vouchsafe legitimacy and fairness. As a result, Kaufman’s analysis and recommendations allowed for the role of Government redress programs but reinforced the place of mainstream adversarial justice approach as core to such responses.

The Provincial Government mounted a rigorous and exhaustive defence of the civil claims right up to the point of settlement in 2014. It made use of the available legal procedural options at the preliminary stages to challenge and resist former residents’ claims before they could be heard and adjudicated in terms of the substance of their claims. These procedural responses included demands for particulars regarding each individual claim, further interrogatory requests requiring responses to further written questions, motions for summary judgment to dismiss claims based on discoverability and limitation periods, and other procedural efforts to defeat or weaken the claims at the preliminary stages prior to the certification of the class action claim in 2012. The litigation approach of the Government was mirrored in lock step by the NSHCC. This approach resulted in significant delays in the process and created burdens for individual claimants and the class as they were required to be examined about their experience multiple times under significant time pressures. A detailed account of each step of the litigation from 2001 to 2014 is not necessary for the purposes of this report. It is helpful to illustrate the nature of the litigation process and its progress leading up to the settlement of the class action claim.

I. Individual Civil Claims

In response to the individual claims made by former residents beginning in 2001, lawyers for the Province made Demands for Particulars. In total, they made such demands for 62 claims. In addition, lawyers for NSHCC delivered Demands for Particulars on 27 former residents.

Demands for Particulars can be made under the Civil Procedure Rules that apply to civil claims in the Province of Nova Scotia. Rule 38.08 allows a party in a civil case to demand a further and better statement of a claim. The demand can only be made for a better statement of the claim and not for evidence that supports that claim. Once a demand is delivered to a party, they must file an Answer within 10 days. For former residents, this meant that once a demand was made, they had to meet with their lawyers to go over more details of their experience and commit these to writing to share with the other side.

Lawyers for the former residents complained that this was a stall tactic and delayed the respondents (Government, NSHCC, and the children's aid societies) having to respond to the claims. The requests caused substantial distress among former residents who were asked repeatedly for more and more detail at the very early stage when they were simply stating (or "pleading") their case. Such demands for more information are generally defended by the other side as necessary where pleadings are vague, and to secure further and better details about the case to be met in order to draft a defence.

Defences in the Home case were not filed until 2004 and 2005. This was the case even for the early claims filed in 2001. This meant, for example, that Robert Borden, the first former resident to file a complaint in 2001, was left waiting for a response to the substance of his complaint from the Home until December 17, 2004, and from the Government until January 19, 2005. The Home and Government filed en masse, boilerplate, identical defences to all claims. Despite receiving 89 sets of particulars, which provided more details about each claim, the defences did not generally make any reference to individual circumstances. They offered blanket denials of everything.

On August 17, 2005, despite having received 89 Answers for Particulars from former residents, the NSHCC served a long list of Interrogatories on each claimant. Rule 19 of the Civil Procedure Rules in Nova Scotia allows a party to demand answers in writing and the person asked must provide answers within 20 days. If a person refuses to answer a question, a judge can order the person to do so and could charge the individual who refuses for the cost of the process to get answers. In the Home case, lawyers for the former residents refused to answer these questions, arguing that they were not necessary to the case. The NSHCC brought a motion in Court seeking that the lawsuit be dismissed if answers were not provided. The Court sided with the NSHCC's procedural right to compel answers and set an October 31, 2006, deadline by which all questions had to be answered.

These procedural steps were a good defensive litigation strategy. They focused the attention of former residents and their lawyers on the individual claims and not on the allegations of systemic negligence that underpinned each claim. The impact was to consume lawyers for the former residents with efforts to locate and meet with their clients to convince them to reply (in many cases) to a third set of written questions.

The early former residents to make claims filed (disclosed) their “List of Documents” (evidence) supporting their cases in 2005. Defendants delayed in producing the relevant documents in their possession. The NSHCC did not provide disclosure by way of a “List of Documents” with respect to the earliest cases until 2007 and 2008. The rules of procedure require that such disclosure happen within a reasonable period following the end of pleadings. Typically this is a matter of weeks not years. Their disclosure should have provided any documentation in their possession relevant to the pleadings that alleged decades of systemic neglect/knowledge of abuse. However, the Home produced nothing about the Home’s operations (finances, inspections, etc.). Their documents also contained nothing about any instances of any abuse inflicted on any former residents. There was no disclosure of staff files despite being asked for information regarding these staff in a Demand for Particulars from former residents’ lawyers following the Home’s statement of defence. The Home’s disclosure on each of the cases consisted simply of the resident’s case file. The Home said that a resident’s personal file was the only relevant documentation in their possession or control.

The disclosure of the Government of Nova Scotia was even less. Despite waiting until 2008 to meet disclosure obligations, the Province’s “List of Documents” in all cases claimed that they had no relevant documents in their possession or control.

Following document disclosure, several former residents (11) underwent discovery examinations. Each discovery lasted about a day and required a former resident to sit in a boardroom with at least six lawyers and answer questions about abuse and life outcomes. The experience of being examined was often very stressful for individuals. It was even more so for former residents who were required to recall precise details of traumatic childhood experiences under pressure; any mistake in their recall or inconsistency in their description would be used against them later to challenge their credibility.

One of the focuses of these examinations for lawyers for NSHCC was related to the issue of “discoverability.” In Nova Scotia (as in other Canadian jurisdictions), there is a limit to how long a person has to file a legal claim for compensation. That period starts when you “discover” you have a legal claim. Shortly after the examinations of Tony Smith and Robert Bordon, lawyers for the NSHCC (supported in this position by the lawyers for the Government) filed Motions for Summary Judgment. They asked the Court to decide on these cases without a trial on the facts of what happened. They asked the Court to dismiss the claims because they were brought too late, according to the *Limitation of Actions Act*. It was the NSHCC’s choice to argue this position. Limitation periods are not be applied unless argued by one of the parties to a case.

The Summary Judgment Motions were heard before Justice Walter Goodfellow on March 23, 2009. He struck (dismissed) their claims. He made a finding of fact that it was “plain and obvious” the former residents in question discovered the connection between the abuse/harms and the legal claim they could make in the 1980s. The judge’s determination on this factual issue was not something former residents were permitted to challenge. This means that the

clock on the limitation period would have started in the 1980s and the former residents ran out of time before coming forward publicly and filing a claim. Changes to *Nova Scotia's Limitations of Actions Act* in 2015 removed the limitation period in cases of sexual abuse so that the outcome in these cases would not happen today.

Justice Goodfellow determined with respect to Tony Smith's claim:

When one advances allegations of sexual abuse and discloses such allegations in detail to wife and family and a panel for prospective employment as a counsellor for adolescents plus his with the press, et cetera, these undisputable facts direct from Smith overwhelmingly establishes that he was reasonably capable of commencing a proceeding no later than in the 1980s, at the most 1990.⁷⁰

With respect to Robert Borden's case he found:

There being no arguable issue that clearly as [sic] 1985/1986 Borden had a substantial degree of awareness if not complete awareness of what had transpired against him was wrong and the harm he suffered was directly caused by such wrongful conduct. His conversations with Ann and Denise clearly indicate acknowledgement of entitlement to pursue those who had wronged him. I conclude the limitation period as relates to the cause of action of negligence prevails...The accumulative effect of the direct evidence from Borden clearly indicates that in 1985/1986 he was reasonably capable of commencing a proceeding.⁷¹

Both former residents appealed the decisions to summarily dismiss their claims to the Nova Scotia Court of Appeals. The decisions were upheld by that Court because it said there was no "palpable and overriding error" in the first judge's view of the facts that would cause them to revisit the decision. The former residents tried to appeal this decision to the Supreme Court of Canada, but the Court refused to hear the case.

Lawyers for the rest of the former residents continued to pursue further and better disclosure from the NSHCC. They indicated they would bring the matter back to the Court if the NSHCC did not disclose the information they requested (including files of all alleged abusers, and documentation related to all abuse/neglect in the possession of the Home regardless of whether such abuse/neglect was inflicted on a former resident who had started a lawsuit). Under threat of further Court motions, the Home produced the employment files of alleged abusers in 2011 (six to seven years after their defences were filed). However, the Home refused to disclose documentation pertaining to all "other" abuse/neglect, stating in a letter:

With respect to individual claims, systemic negligence is irrelevant; either an individual is abused or they were not abused and either the defendants are liable or they are not liable.⁷²

...

We have not reviewed all of the files of residents who are not Plaintiffs in this action (except when those residents are alleged to have themselves been abusers) as those documents are irrelevant and indeed confidential. The NSHCC has absolutely no obligation to go through the records of residents who are not involved in this litigation⁷³.

Former residents, through Gerald Morrison's claim, brought forward a motion to the Court to get the Home to produce this information in an effort to show patterns and the systemic nature of neglect and abuse. At Court, lawyers for the Home indicated that they would search for, and produce, documentation of "other" abuse/neglect but only if Gerald Morrison paid them to do so. Justice Duncan agreed that documentation pertaining to "other" abuse/neglect was relevant to Gerald Morrison's allegation of systemic negligence and ordered production of the same. However, he limited the scope of relevance to only six months before Gerald Morrison entered the Home and two-and-a-half months after his departure. If the Home had any documentation in its possession concerning abuse outside of those strict timelines, they did not have to disclose it in Gerald Morrison's case. The Home was unsuccessful in its efforts to have Morrison pay the cost to search for relevant documents.⁷⁴

Part of the complexity faced by former residents in making their claims was the fact that there were multiple defendants. Former residents sued those with shared roles and responsibilities for their care, including children's aid societies and the Government on whose authority many were placed in the Home and who had responsibility for regulation and oversight of child welfare and protection. This created debate among defendants regarding their share (if any) of responsibility for what happened to former residents. Defendants made arguments about the extent of their liability against one another and with respect to certain former residents. This included overarching arguments about whether the Government had any oversight responsibility for the Home once children were placed in it, given it was a private child-caring institution. Government also disputed its responsibility for children who resided in the Home but were not placed there as wards of the Province. Finally, they generally denied all liability for those who lived in the Home pre-1951 because rules limited liability of the Government for its actions before that time.

II. Class Action

While the individual claims proceeded through these various procedural steps, a proposed Class Action Claim was being developed. Class actions were not possible in Nova Scotia before the introduction of the *Class Proceedings Act* in 2007. The former residents of the Home filed a Class Action Claim on February 7, 2011,⁷⁵ after case law had developed across Canada finding that class actions are well suited for institutional abuse claims.

The Class Action named two defendants: the Attorney General of Nova Scotia (the Nova Scotia Government) and the Nova Scotia Home for Colored Children. A motion to certify the class action was filed in February 2012. Certification means that the Court has looked at the case and determined that a class action is the best way to deal with multiple claims. There is no requirement for defendants to file a defence unless/until a class action is certified. This means that, until it is determined whether a class action is the best way to proceed, the defendants (the Government and the NSHCC) did not have to make any response to the claims made in the class. No Statement of Defence was ever filed in the class action regarding the NSHCC.

In addition to retaining their long-standing counsel at McInnis Cooper, when the Class Action was filed, the NSHCC retained nationally renowned class action lawyer Ward Branch to defend them. After a decade of rigorous litigation, Branch took a practical approach to resolving the case against the NSHCC. It was explained (for the first time) to former residents (through their lawyers) that the NSHCC was not insured for the vast majority of the claims made against it. Given this reality, success for the former residents in their claim would strip



Lawsuit documentation

the NSHCC of its assets in order to pay out compensation. In 2012, the former residents entered into settlement discussions with the NSHCC. The former residents agreed to consider a settlement within the limits of the available insurance that would protect the existing assets of the Home. These discussions resulted in the NSHCC settling the class action (and all its liabilities pre-1990) for \$5 million all inclusive.

That settlement was approved by the Nova Scotia Supreme Court as being fair and reasonable on June 10, 2013. The funds were ordered held in trust pending the outcome of the case against the Province.

The Provincial Government took a very different approach. It rejected offers to participate in settlement discussions along with the NSHCC and continued to invest in litigation as a means of dealing with the claim. The Government continued its rigorous defence against the class claim that began with respect to individual claims. For example, after the former residents filed their evidentiary record in support of certification of the Class Action Claim, the Government brought a Motion to Strike most of their evidence. Government lawyers were comprehensive in their efforts to get rid of the evidence. As explained in the reported Court decision in the case: "The Province challenges these statements on many grounds, including: irrelevance; hearsay; unqualified opinion evidence; speculation; inappropriate argument; and inappropriate solicitor's

affidavit.”⁷⁶ When challenged on the Government’s decision to take this approach, which legal experts described as extreme, Premier Dexter insisted: “The applications made yesterday before the Supreme Court were routine. They are a routine matter.” He did not acknowledge that it was a choice made by the Government to proceed with such a legal strategy. Instead he portrayed the matter as one required by the rules of Court. “The Supreme Court has its own set of rules that it applies, it looks at evidentiary questions, all of those things.” He went on to argue “these are routine applications. They happen all the time. The rules before the Supreme Court are that they have control over their own process.”⁷⁷ Government efforts were successful in taking out parts of the affidavits (statements) that were submitted in support of the former residents’ case. The vast majority of the evidence, however, was accepted by the Court.

This was not the only legal tactic employed by the Province to ensure the Class Action Claim was not certified. The assessment of whether to certify a class action is not based on an evaluation of the claims themselves (for example, whether what is alleged happened or not). Courts have determined that the relevant question to decide if a class action should proceed is whether it meets the requirements for such a claim. It is the responsibility of the party bringing the claim to show that:

- ▶ there is a legal “cause of action” or claim to be made in the case;
- ▶ that it is possible to clearly define a group of people (a class) who will be included or covered by the case;
- ▶ that there are common issues of law and fact among the claims of the group;
- ▶ that a class action is the best way to proceed with the multiple claims involved; and,
- ▶ that the individuals selected to represent the class in terms of the claims adequately represent the interests of the rest of the group in the case.

The requirement that plaintiffs show a cause of action — that they have a legal claim — does not require them to prove all the facts of the case to get a class action certified. Proving the facts of the claims only happens at trial. A Court will only refuse certification because the claim lacks a cause of action if it is “plain and obvious” that it discloses no reasonable cause of action and cannot succeed. This is not meant to be a high bar for plaintiffs to get over. The certification stage is intended to be procedural, the required evidence in support is meant to be lower than at trial in order to protect the process from becoming bogged down by evidence that goes to the merits of the case. This means that plaintiffs are not normally cross-examined on the details of their case, on whether the facts alleged are true at the certification stage of the process. The courts in Canada have unanimously stated that certification is not about the merits of the claim (individually or across the members of the class). Despite this, lawyers for the Government subjected former residents who had shared their experiences in affidavits

to cross-examinations in Court that were primarily focused on the merits of their evidence. Former residents subjected to this cross-examination were very distressed. The certification hearing lasted almost two weeks, which is almost unprecedented in Canada in terms of length.

While the experience of cross-examination was harmful to the former residents, it did not, ultimately, affect the outcome of the proceedings. On December 12, 2012, the Court certified the case as a class proceeding.⁷⁸ There was one significant impact of the certification proceedings: the Province argued that the class ought to be limited to those who lived in the Home from 1951 to 1990 (as opposed to what was proposed by the former residents, which would have included all residents from 1921 onwards). The lawyers for the former residents conceded that tort claims pre-dating the enactment of the *Proceedings Against the Crown Act* (1951) were not allowed by law. Lawyers for the former residents did ask the Court to extend the time period for the class to include those who had lived in the Home prior to 1951 for the purpose of allowing them to seek “declaratory relief.” This meant that those who lived at the Home prior to 1951 could not sue for compensation, but they could seek a finding and a declaration (statement) from the Court that they had been subjected to harm and abuse along with the rest of the class. The only difference between residents pre-1951 and post was who would be entitled to be included in a Court order for compensation. This was ultimately accepted by the Court. Though the Court agreed that it was “plain and obvious” that tort compensation was not available to pre-1951 residents, it included pre-1951 residents in the class definition by virtue of their right to seek a determination from the Court that they were harmed.

III. Efforts to Settle – Beyond the Courts

A month before the release of the certification decision, on November 3, 2012, the CTV investigative journalism program *W5* aired the documentary *The Throwaway Children*. The documentary was described as an investigation of the “horrific stories of abuse and terror at



Former residents

a residential home that was supposed to protect vulnerable children. [It] explores a devastating cover-up spanning decades that includes allegations of physical, emotional and sexual abuse affecting orphaned and abandoned children.”

After the Home settlement, the *W5* documentary, the continued regular media coverage, and then the decision to certify the class action claims so that

they would proceed, the public calls for the Province to give “justice” to the former residents and for a public inquiry intensified. The matter was brought up regularly in the legislature, including calls from both opposition parties for a public inquiry.⁷⁹ As discussed in the first part of this

chapter, former residents had formed VOICES by 2012 and were actively advocating for a restorative process to settle the claims and publicly inquire into what happened. Members of the African Nova Scotian community and supporters of the Home, specifically the small group calling themselves the Think Tank, were also actively lobbying Government regarding the way to deal with the abuse allegations. The Dexter Government sought to separate the issue of liability (since the Home settled its liabilities, the Government was left as the lone defendant in the class action case) from the calls for a different response that would address the need for healing. When challenged in the Legislature regarding the Government's decision to rigorously defend former residents' claims in Court while promising to address the need for healing, Premier Dexter explained that their approach in Court:



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...has nothing to do with the question of how we go about dealing with questions surrounding what happened at the Nova Scotia Home for Colored Children]. They have to do with the question of compensation.

Everyone, including the claimants, has the right to ensure that the examinations of those claims is full and complete, based on appropriate evidentiary standards, because that's how we have confidence in the system that we have.

On the other hand, we also have a process, which I have announced, which is designed to look at the larger questions associated with the Nova Scotia Home of Colored Children, the questions associated with social justice...⁸⁰

The Government spent considerable time meeting with members of the African Nova Scotian community concerned to ensure their response would not contribute to a divide or harm to community interests. In doing so, the Government failed to acknowledge the complexity of its own role with respect to the harms and abuses at the Home. Their response suggests they viewed their responsibility as a matter best left for the courts to determine. At the same time, however, they sought to deal with the broader issues of concern for the community and former residents through the appointment of an independent panel.

Former residents had consistently advocated for a public inquiry as part of an integrated response that would take a restorative approach to settling the legal claims and addressing the systemic and institutional nature of the harms as a way forward. At their first meeting with the Premier and other cabinet members, the Government sought assurance that the discussions would be without prejudice and confidential in order to protect their interests in the civil process. VOICES refused such conditions, stating (in a letter from Ray Wagner, their counsel) that they had an obligation to the other former residents to be transparent and inclusive in their advocacy on their behalf.⁸¹ At the meeting, VOICES was clear about their interest in a public inquiry and the need to settle the civil claims in order to create conditions to deal with the issue in a restorative way that would contribute to healing. The Premier indicated that he was not prepared to talk about a settlement and wished to keep the matter of healing separate from the ongoing litigation. The former residents followed up on their meeting with a letter re-stating their position on March 7, 2013. Their letter outlined their proposed two-part process to deal with the allegations regarding the Home. It suggested “1. A mediated resolution of the civil claims, including the proposed class action ... 2. The collaborative design of a restorative justice process.”⁸² The letter clearly articulated that a restorative approach required settling the adversarial civil claims process before moving on to deal with the broader issues of healing. With respect to the need to settle the civil claims, Tony Smith wrote: “I have seen firsthand the harm that the adversarial adjudicative process causes the former residents. This must end if healing is the goal.”⁸³

On March 26, 2013, the Government addressed its plans for response in the speech from the Lieutenant-Governor opening the session of the Legislature. The Government announced that it would establish an independent panel. It did not provide many details regarding the composition or mandate of this panel. The panel was described in the speech as a means of community healing and there were several references in the speech to the fact the panel will be developed “in consultation with members of the African-Nova Scotian community.”

Premier Dexter indicated that he was not ruling out the possibility that he would call the panel an “inquiry” in the future. He said: “People can call it whatever they want. I don’t care what they call it... By their nature, panels carry out inquiries. I don’t see anything of significance in a particular name.”⁸⁴ The idea of the panel, as described, was not well received by former residents. Tony Smith commented in the media: “I didn’t see anything in there today about the government taking responsibility for their own actions.” Former residents also expressed significant concern about the central role of community representatives in determining the way forward. They noted, “there are competing interests within that community, and a process good for others won’t necessarily be good for them.”⁸⁵ Tracy Dorrington-Skiner commented regarding the panel proposed: “I heard a bunch of talk about healing, but the healing is more related to the community than the former residents of the Nova Scotia Home for Colored Children.”⁸⁶ An editorial in *The Chronicle Herald* on March 28, 2013, agreed with the former residents’ position.

You can't blame former residents of the Nova Scotia Home for Colored Children for being skeptical about the NDP government's proposal this week to investigate — via an undefined "independent panel" — their allegations of past chronic neglect and physical and sexual abuse at the facility.

For as much as government officials say the panel will have teeth and a mandate to dig for truth, whether through testimony or government documents, none of that will be confirmed until the proposed body's terms of reference, powers and personnel are known.

...

Provincial officials have also said they're trying to tread a path that does what's needed and has the widespread support of the African-Nova Scotian community.

But as Tony Smith and Tracey Dorrington-Skinner, both former residents of the Home, aptly noted Tuesday, that community has competing interests.

If former residents of the Home who've alleged abuses are not satisfied with what government ultimately proposes, the province will run the risk of appearing to put mollifying the community ahead of getting answers, ugly as they may be.

The province won't put a timetable on when details of the independent panel will be finalized. It's a complex matter, and certainly must be done right. But for those who've spent years hoping to find justice, including readers who've been following our stories of these horrific allegations for more than a year, this is taking far too long, leading many to question motives.⁸⁷

On May 9, 2013, Premier Dexter announced the establishment of an independent expert panel as opposed to a full public inquiry to examine the history of the Home. Robert Wright, a former official with the Department of Community Services and member of the African Nova Scotian community, was appointed to this panel. His first task was to recommend terms of reference and a mandate for the panel to the Government for their consideration. The panel was appointed while the Government continued to defend the class action suit. VOICES immediately responded with their objection to the panel and indicated that they would not be a part of the panel process because it "doesn't do anything for the victims."⁸⁸ At the time, Tony Smith explained to the media, "In order for us to start the healing process there has to be a settlement, meaning that we're no longer in dispute. You can't be in dispute and still try to do the healing."⁸⁹ Tracy Dorrington-Skinner, another former resident and co-chair of VOICES, said: "We former residents feel that we're being revictimized by our current government ... Whenever we have been given an opportunity to speak, nobody listens to us. They ask us what we want, we tell them what we want and we end up getting what they throw at us."⁹⁰

Premier Dexter responded to the objections of former residents, saying: “I think they have a fundamental misunderstanding of the nature of inquiries and of what these things undertake.”⁹¹ The Government’s press release indicated that: “Mr. Wright will meet with former residents of the home, and community members to develop terms of reference for a process that will allow former residents to share their stories, examine the response of public policies, programs and services, and provide a means of healing in the community.”⁹² VOICES held a press conference and shared a detailed statement of their position and the resolution they sought, including details about their understanding of the approach to a public inquiry.⁹³ They were clear that they would not co-operate with, or participate in, the panel process as proposed.

Former residents did not participate directly in the process led by Robert Wright to recommend the makeup and mandate of the independent panel. Nevertheless, Robert Wright fulfilled his mandate and provided proposed terms of reference for an independent expert panel without their co-operation. His report, however, coincided with the Provincial election, which resulted in a change in Government with the election of a Liberal majority and Stephen McNeil as Premier. The Government response to the abuse allegations at the Home was a central issue in the 2013 Provincial election.

Stephen McNeil had met with former residents on the campaign trail and promised them justice and a public inquiry if elected. When he was elected with a majority government on the night of October 8, 2013, he mentioned his commitment to do right by the former residents in his first media appearance. He subsequently met with members of VOICES to discuss possible pathways forward to resolve their claims and establish the sort of public inquiry former residents were seeking.

On June 3, 2014, it was announced that the Province had reached a class action settlement with former residents, wherein they would pay \$29 million to the class. The Government settlement provided for a “lump sum” settlement. This meant that, beyond the general parameters of the settlement agreement, the distribution approach was left up to lawyers for the former residents and the Court-appointed administrator. It was required, however, by the terms of the settlement agreement, that the funds be distributed in a manner consistent with restorative principles. This reflected the determination of the lead plaintiffs to make good on the commitments former residents made to one another. They had agreed that any resolution must leave no one behind, must do no further harm, and must ensure that the first voice was heard and their experiences recognized. Finally, they wanted what happened to them to matter — to make a difference. The former residents recognized their commitments were well aligned with a restorative approach to justice and sought a settlement agreement that reflected those principles and processes.

The settlement figure, and the restorative manner of distribution, was approved by the Honourable Justice Arthur LeBlanc as being fair and reasonable on July 7, 2014, (unreported decision). He appointed the Bruneau Group to administer the distribution of the compensation fund according to the settlement agreement and in consultation with the former residents’

lawyers. The Bruneau Group was a prominent bilingual Canadian settlement administrator drawing from expertise in law, claim administration, financial management, and information technology to deliver class action settlement administration services. Laura Bruneau, the CEO of Bruneau Group, was known for her willingness to take innovative approaches to class action settlements and agreed to work closely with an expert in the field to design the settlement distribution process according to restorative principles.

One of the other issues to be determined with respect to the settlement were the legal fees owed to class counsel (Wagners Law Firm). In a reported decision dated October 16, 2017, Justice LeBlanc awarded legal fees to Wagners Law firm in the amount of \$5.78 million (17 per cent). This was a reduction from the \$6.6 million sought by Wagners, an amount that already reflected a reduction from the 25 per cent fees provided for in the agreement with class members. The \$6.6 sought by Wagners represented a fee rate of 19.4 per cent.⁹⁴

The reduced amount reflected Justice LeBlanc's finding of factual errors in the timekeeping of Wagners Law Firm over the course of the lengthy period of litigation. The judge was also not prepared to acknowledge the relevance of legal work done in the individual actions prior to the class action claim as contributing to the success of the class action because this had not been explicitly covered in the fee agreement with former residents:

Neither the settlement agreement with the Home (which was approved July 11, 2013), nor that with the Province, provided for the fees and disbursements arising from individual proceedings to be subsumed into the class proceeding... As noted above, in this case, counsel has not pointed to any contractual basis for incorporating fees from the various individual actions into the global amount for the class proceeding. That being said, I am satisfied that the work done in those individual proceedings would have contributed to the eventual certification of the class action, and to the settlement. I am convinced that it would be an injustice to deny recovery of a reasonable proportion of fees relating to the individual proceedings, or rather, to refuse to consider those amounts in determining whether the fee claimed is fair and reasonable.

In addition to legal fees, Wagners sought to recover disbursements/expenses incurred of \$457,000 plus HST from the class settlement. The majority of these disbursements were incurred advancing individual cases (experts, interest on loans, etc.). Justice LeBlanc refused to allow Wagners to be reimbursed for these disbursements from the class action settlement fund.

With respect to Wagners' suggestion such a decision would leave some former residents responsible for their own disbursements for individual cases that led up to the class claim,

Justice LeBlanc stated:

Counsel suggested that the individual plaintiffs would have been left with personal responsibility for disbursements in those proceedings if I did not allow them to be included. I wish to make clear that class counsel should not seek to recover these expenses from the class members. It should not be the client's responsibility if counsel fails to ensure that the relevant fee agreements allow for inclusion of those disbursements.

Former residents were very concerned that Justice LeBlanc know they were supportive of their legal counsel. Former residents credited the law firm with making their access to justice possible by carrying the case for a significant period of time and taking on all of the financial burdens and risks associated with the litigation. The former residents sought to place their views that they had been treated more than fairly by Wagners on the record, but Justice LeBlanc refused to hear from them.

IV. Distributing the Settlement

The settlement agreement was fundamentally shaped by the commitments of the former residents to a restorative approach both in terms of its structure and approach. First, it was agreed that the distribution process itself would be designed and implemented restoratively. Since there was no existing restorative model of claims distribution to follow, it was the responsibility of the Court-appointed claims administrator to work with experts to design and implement (including education and training for those involved) the distribution consistent with restorative principles. A restorative approach was also taken to the overall approach to the settlement in the agreement in order to fulfill the former residents' commitments to one another. The difference this approach made was evident in key aspects of the settlement including:

- **The inclusion of a common experience payment available to all class members, even those pre-1951.** Owing to the determination by the Court during the certification period that residents pre-1951 were not entitled to compensation but only declaratory relief from the Courts, the Government calculated its settlement amount excluding those who lived in the Home pre-1951. Likewise, the amount of money provided to be distributed only included "wards" and did not contemplate compensation for those who lived in the Home but were not wards of the state. As a result, the money was calculated on the basis that pre-1951 and non-wards would not receive money.

The former residents understood this was the assumptions the Government made when the settlement was offered. However, they were not limited by the agreement in terms of how they could share the money among the class members. They sought to do so in a way that was fair and lived up to the principled commitments they made to one another. The first step they took

towards this end was to decide to provide compensation for the common experience of residents that everyone who lived in the Home would get (pre-1951 and non-ward residents included). This choice meant that post-1951 wards would get less money as a share of the total amount of compensation because they would be sharing it among more former residents. It also meant, though, that no one would be left behind.

The common experience payment recognized that residents living in the Home did not receive the care they deserved. Across the generations, residents experienced neglect and were exposed to or subjected to significant abuse. The common experience payment was also designed in a way to lessen the burden on former residents. The Home and Government were responsible to share information to assist in determining residency at the Home. This information was made available to the former residents to support their claim. Also, former residents could share their story at this stage, if they wished (and further choose to have it shared with the public inquiry, once it was established), or they could choose to simply apply based on their residency at the Home.

- **The settlement process also provided for an assessment process for those who felt their experiences went beyond the common negative experiences of all former residents to include significant or severe physical, sexual, emotional, and psychological abuse.** Where this was the case, and the former resident wished to make a further claim for recognition and compensation, they could apply to the individual assessment process.

Here again the commitment to do no further harm was front and centre. The former residents agreed to a process that would minimize the harms associated with compensation scales that calculated the value of particular acts — for example, so much money allotted for physical abuse, or sexual abuse, and categories that affected compensation within each of these categories. In the former residents' view, it was more important to focus on the harm experienced and not simply on the acts that were perpetrated against them. In their view, one could not capture the harm experienced by only paying attention to the nature of the abusive act. This would miss much of what was central to former residents' harm. The compensation assessment process design also did not focus on compensation for impact or outcomes. That is, it did not seek to compensate for the harm that resulted in terms of a calculation loss or impact proven.

Former residents wanted to share the compensation according to the harms experienced, but they did not want to assume they could assess the experience of harm simply from resulting losses or impacts. They were

concerned this would punish those former residents who had been able to undertake the work of healing to minimize the impact of the harm on their lives. This seemed unfair, because the fact they recovered does not mean they were less harmed or do not still experience some harm. Others coped with their past harms by ignoring them, and they may or may not experience significant impacts in future. Still others had their lives devastated by the enduring impacts of the harms they experienced. It would also have been complicated to determine how much of negative life outcomes were related directly to what happened in the Home when some former residents had abusive and harmful experiences before and after their time in the Home.

The decision was to use the best knowledge from experts in childhood trauma to assess all of the factors related to former residents' experience that would enable a sound prediction of the level of harm that would result. A process guide was developed identifying these factors and how they support an overall assessment of relative levels of harm likely to have resulted. Factors included:

- *Severity*
 - Nature of treatment or abuse (abuse can be emotional, psychological, physical, and/or sexual). Severity of abuse does not refer to the type of abuse but the level of the abuse, for example how intrusive, extensive, or extreme.
- *Duration of abuse*
 - Period of time over which abuse(s) occurred
 - Frequency
- *Type of relationship*
 - Authored by person who was trusted
 - Authored by someone with power, authority, or control (real or perceived)
- *Age of onset*
 - Take into account effect of early childhood abuse/trauma on brain development
 - Abuse in later years of adolescence can affect identity formation (especially sexual abuse)
- *Other factors contributing to vulnerability and increased harm resulting from abuse*
 - Length of time in the Home
 - Prior abuse
 - Race (particularly, in this case, being African Nova Scotian and sometimes skin colour within this group)

- Lack of care or support (no caring adult)
- Alienation from family or community
- Gender (consider the effect of intersection between nature of the abuse and gender of the person who caused the harm)

► **The compensation scale had a resulted number of categories and provided common rates for all claimants in the same category.** Former residents were also clear they did not want an overly complicated process that would require extremely detailed information in order to arrive at a precise calculation of the value of a claim. Former residents knew that, while there were some real differences in the level of harm residents experienced, it was not possible to make fine distinctions between their harms. Furthermore, they understood that one of the most important roles compensation would play was as symbolic recognition and acknowledgement of the harm former residents experienced.

They wanted to ensure that the symbolic value of compensation was not undermined by a process in which former residents had to pay close attention to every detail of their experience to gain a few more dollars and increase the “value” of their harms.

To meet these objectives, the former residents agreed to a compensation scale that would assess claims based on the resulting experience of harm. The scale had four broad categories: 1) significant harm, 2) very significant harm, 3) severe harm, and 4) very severe harm. Within each category, however, former residents would receive the same amount of compensation. This allowed for recognition of different broad levels of harm but did not create a hierarchy of harm within these categories.

► **The assessment process was approached restoratively – it was non-adversarial and facilitated.** Finally, the way in which former residents engaged within the distribution process was of significant concern for the former residents. They wanted a process in which former residents would feel supported to tell their story and to share their experiences in a way that would help evaluators understand the relevant factors but did not involve adversarial processes. They wanted former residents to have the opportunity to be heard and supported throughout the process. The distribution process was thus designed to include a facilitator who was there to ensure the process went well and the former residents received the support they needed to understand and participate with as little harm as possible. They also designed a non-adversarial process in which former residents would be invited to share

their stories but not be “cross-examined” in the traditional way. It was also significant for some former residents that their experiences be heard more broadly so that they might make a difference for others. In order to facilitate this without requiring former residents to share their stories multiple times if they did not wish to, there was an option to share recordings of their experience and related submissions with the public inquiry when it started. This did not preclude former residents from also participating in the public inquiry.

The former residents recognized that even a process meant to be trauma-informed and do no further harm could be triggering. For some residents, the settlement process was the first time they told anyone about what they had witnessed and experienced as children in the Home. With support from the Provincial Government, the Family Service of Eastern Nova Scotia was engaged to provide health support to former residents during the settlement period through a 1-800 number and with funding for in-person counselling. The distribution of funds was also structured to ensure that the portion of monies dedicated for counselling and wellness was distributed immediately once a determination of a former resident’s file was made, rather than waiting for the final distribution of compensation at the end of the process.

The Bruneau Group was hired to serve as Claims Administrator tasked with complying (and ensuring others complied) with the Court-ordered manner for restorative distribution of the \$34 million total settlement (including the contribution of \$5 million from the NSHCC).

Broadly speaking, the settlement agreement required the Bruneau Group to:

- Hire claim facilitators and claim evaluators
- Receive claim forms from former residents
- Assess whether there existed documentary evidence from the NSHCC objectively demonstrating their residency at NSHCC (pre-1951 residents only needed a signed statutory declaration swearing that they were in the Home, given the state of records available pre-1951)
- Distribute pro-rated common experience payment in accordance with years of residency at NSHCC
- Schedule independent assessment processes for claimants who applied and requested to be part of that process
- Receive, review, and share decision letters of claim evaluators
- Distribute the remainder of the settlement fund, pro-rated, in accordance with the decisions

Former residents were given until February 27, 2015, to complete and send a claim form to the Bruneau Group. Bruneau Group received 358 claim forms by this deadline.

Three hundred forty-two (342) claims were accepted. Sixteen (16) were found to not meet the criteria (no proof of residency [eight], residency after 1989 only [four], deceased before settlement [one], claimant “lost” – made application and then could not be contacted [three]).

The Bruneau Group issued common experience payments to former residents totalling \$6,104,000 prior to the independent assessment process. Funds were also distributed before the conclusion of the distribution period totalling \$1,176,000 in health supports payments.

The Independent Assessment Processes (IAP) commenced in the fall of 2015. Between October 24, 2015, and February 25, 2016, a total of 283 former residents (post-1951) took part in the Independent Assessment Process. Processes were held across North America. Former residents received their decision letters in June 2016.

Former residents were given the opportunity to appeal the decisions and could do so without fear that their compensation amounts would be reduced on appeal. If former residents felt there was an error in the determination, they would ask for a review by the administrator. If the administrator determined an error was made that benefited the claimant, the amount was not changed. Only if the error was found to disadvantage the claimant was the amount adjusted upward. Former residents had to file an appeal form within 30 days after receiving their decision letter. Forty-five (45) former residents filed appeals within the 30-day deadline. This is a statistically low number within claims distribution processes, especially given the generous appeal conditions that removed disincentives to appeal. The Bruneau Group was responsible for reviewing the appeals for palpable errors/incorrectness. Six (6) appeals were granted.

The table below highlights the IAP decisions breakdown (including appeal decisions):

IAP Claims			
Total IAP in-person evaluations	283		
Level of harm	Number of awards	Health support payment	Per cent of class
No harms beyond the common experience	30	—	11%
Level 1: Significant harm	84	\$2,000 each	30%
Level 2: Very significant harm	58	\$4,000 each	20%
Level 3: Severe harm	61	\$6,000 each	21%
Level 4: Very severe harm	50	\$8,000 each	18%
Total sum paid for IAP awards at 90.56%	\$19,001,839.18		
Total sum paid for health support		\$1,176,000.00	
Grand total IAP compensation paid	283	\$20,177,839.10	

After all other portions of the \$34 million settlement fund had been distributed, there was \$19 million remaining for IAP payments. The other funds covered the common experience payments provided at the early stage of the distribution process (\$6,104,000), health support payments (\$1,176,000), class counsel fees (\$5,780,000), and administration costs for the settlement (including the costs of facilitators, evaluators, travel, and other administrative costs). Each former resident had their IAP payment pro-rated downward by 90.056 per cent. This means that there were enough funds remaining to fund over 90 per cent of the amount contemplated in the settlement agreement. The settlement agreement was crafted based on best estimates of numbers of residents and the value of individual claims. Former residents were aware that, depending on numbers and assessments, the lump sum may not allow the full amounts for compensation levels projected in the agreement. Given that the number of applicants was higher than was anticipated when the numbers were calculated in the agreement, and the original agreement numbers did not contemplate the inclusion of pre-1951 and non-wards, it is remarkable that the reduction in awards was under 10 per cent. Former residents received their final IAP payments in the early fall of 2016.

C. Public Inquiry

The agreement to settle the class action came alongside a commitment from the new Provincial Government to establish a public inquiry. The timing posed some challenges. Ideally the settlement process for the class action claim would have been closely linked to the public inquiry process to ensure a connection between understanding and responding to individual experiences and dealing with the broader systemic issues related to harm and abuse. An integrated restorative process that would have allowed former residents to share their experience one time would have been ideal. Former residents were also aware, however, of how long many former residents had been waiting for some response and that there were some who were aging or ill. They did not want to cause further delay in the settlement process. At the same time, it was important to the former residents that the public inquiry be carefully designed so that it would not be another process about them, but without them. The decision was made to move forward with the settlement distribution while the terms of reference and mandate of the public inquiry still were being determined.

The settlement process was designed, though, in anticipation of the public inquiry process and with knowledge that the public inquiry would take a restorative approach. It was important that the settlement process not run contrary to the principles of a restorative approach. It was also important that the information and experiences shared within the settlement process inform the public inquiry process to ensure the experience of former residents was central to the inquiry without additional burden on former residents. One of the ways this integration was possible between the processes was through the involvement of the same group of people from VOICES, Government, and external experts supporting the development of both aspects of the response.

In the end, the settlement process and the Inquiry did overlap. The final decisions for the settlement were made in June 2016 and the final funds distributed in fall 2016 during the first year of the Inquiry. This was an important factor to consider as the Inquiry sought to involve and support former residents to participate in the Inquiry.

The other significant and important overlap was with the Government apology that was offered in the early stages of the design process for the Inquiry and while the settlement distribution process was underway. As the design work progressed, it became clear that a restorative approach to an inquiry would meet with greater success if the key parties acknowledged and took responsibility for their roles in the harms that former residents experienced. On October 10, 2014, Premier McNeil delivered a formal apology on behalf of the Province to former residents of the Nova Scotia Home for Colored Children, and to the African Nova Scotian community.



VOICES co-chairs and members of the Legislative Assembly at the Official Apology, October 2014

Apology to Former Residents of the Nova Scotia Home for Colored Children On behalf of the Government of Nova Scotia

I apologize to those who suffered abuse and neglect at the Nova Scotia Home for Colored Children.

It is one of the great tragedies in our province's history that your cries for help were greeted with silence for so long. Some of you have said you felt invisible. You are invisible no longer.

We hear your voices and we grieve for your pain. We are sorry.

Some of you faced horrific abuse that no child should ever experience. You deserved a better standard of care. For the trauma and neglect you endured, and their lingering effects on you and your loved ones, we are truly sorry.

We thank you for showing such courage and perseverance in telling your stories. Your strength, your resilience, and your desire for healing and reconciliation should be an inspiration to all Nova Scotians.

To the African Nova Scotian community: we are sorry. The struggle of the Home is only one chapter in a history of systemic racism and inequality that has scarred our province for generations.

African Nova Scotians are a founding culture in our province — a resourceful people of strength. The Home for Colored Children was birthed in the community as a way to meet a need that was not being met.

We must acknowledge that in many ways, and for many years, we as a province have not adequately met the needs of African Nova Scotian children and their families. We are sorry.

As Nova Scotians — as a people, walking together — we must do better. An apology is not a closing of the books, but a recognition that we must cast an unflinching eye on the past as we strive toward a better future.

We are sorry for your suffering, we are grateful for your courage, and we welcome your help in building a healthier future for all of us.

Honourable Stephen McNeil, Premier of Nova Scotia

Premier Stephen McNeil delivering Official Apology, October 2014

Restorative Inquiry, courtesy of
Communications Nova Scotia

Subsequently, at the formal launch of the Inquiry, the apology on behalf of the Nova Scotia Home for Colored Children was made. The timing of these apologies was significant in terms of the settlement process. It meant that compensation was provided to former residents along with explicit acknowledgements of responsibility for the harms experienced and apologies for that harm. The Government apology was included with the compensation cheque sent at the end of the settlement distribution process.

The Government was aware that VOICES had a vision of what a public inquiry should entail. They had advocated for a process different from a traditional public inquiry, which is typically a judicial process where a commissioner or commissioners summon witnesses, gather evidence, and issue a final report with recommendation for what should be done after the inquiry. Former residents wanted to maintain their commitment to “do no further harm” to each other or to anyone else in the process. VOICES recognized that asking former residents to testify in a traditional inquiry setting could potentially be triggering or harmful. VOICES also wanted an approach where the parties who would be considered most “at fault” in a traditional model — including the Province and the Home — could engage as partners rather than from a defensive position. Ultimately, they wanted a process focused on making a difference for the future.



Ujima design team members

The Premier indicated to VOICES that he wanted former residents to shape the terms of reference for the inquiry. After meeting with Government officials who originally sought VOICES' input on a model, VOICES suggested a design process for the public inquiry that would bring together those who were key to its success. The former residents identified the parties who should be invited to be

a part of a collaborative design process and suggested it be facilitated by Jennifer Llewellyn, an expert in restorative principles. It was significant that Government agreed to participate in this process and fully empower it to set the terms of reference and mandate for the inquiry. The design group was not merely asked to provide recommendations. The Government made a commitment to a public inquiry and then undertook setting mandate and terms of reference through a collaborative facilitated process in 2014. Government did not give up its power to make these determinations, rather, it exercised its decision-making authority in partnership with others through this design process. In this way, the design process modelled the approach that would be key to this Restorative Inquiry. The Government membership of the design team included the Deputy Minister to the Premier, the Executive Director for the Office of the Status of Women, and a representative from the Office of African Nova Scotian Affairs and the Nova Scotia Human Rights Commission. The design group included three former residents (VOICES); one

legal expert trusted by former residents; five representatives from Government; two members of the NSHCC Board; three members of the African Nova Scotian community; and a facilitator with expertise in restorative process. The group had expertise in law, policy, and governance; African Nova Scotian history and community; racial justice; inquiry processes; community-based processes; restorative justice; human rights; gender analysis; and communications. This team began its work in September 2014 and adopted the name Ujima, the Africentric principle of collective work and responsibility. In *Nguzo Saba* (the seven principles of Kwanzaa), Ujima is defined as “to build and maintain our community together and make our brothers’ and sisters’ problems our own, and to solve them together.”

From the beginning, the design team had to contemplate not only how to design a public inquiry in a restorative manner, but how to operate restoratively with each other in the design process. For example, while the Home Board settled its part of the class action suit, many former residents — including those in the design process — did not feel the terms and language in the settlement went far enough in taking responsibility for what happened and acknowledging former residents’ pain. Former residents and past and current Home Board members on the design team had to work through their tensions to engage and work with each other in the design process. The process itself became a model of how the Restorative Inquiry could work.

As the design team crafted an approach and model for the Inquiry it reached out to other potential participants in the work, including the staff and Board members of Akoma, the executive of the AUBA, Halifax Regional Police and RCMP, and municipal and Provincial leaders. One of the



Ujima design team working session



Minister Tony Ince at Restorative Inquiry launch, June 2015

central tenets of the Restorative Inquiry was building relationships and connecting parties to their role and responsibilities to build the future together. This work began in the design phase as a way of inviting people into the process as partners prepared to engage and work together.

It was also important to ensure the conditions that would allow all parties to participate fully in the Restorative Inquiry. One of the significant issues that presented itself early on in the

design process was the concern that individuals might not feel free to participate for fear that they would be exposed to criminal or civil liability as a result of something they said or shared. This was not only a concern for those from Government or the Home, but also for former residents who might not feel able to share their experience fully. The design team proposed a change to *Nova Scotia's Public Inquiries Act* to address this issue. On November 20, 2015, the Nova Scotia Legislature passed an amendment to the *Public Inquiries Act* providing that:

No testimony or other statement given at an inquiry by a witness or other participant may be used or received in evidence against the witness or participant in any trial or other proceeding against the witness or participant, other than a prosecution for perjury in giving the testimony or statement.

The Restorative Inquiry's mandate and terms of reference were formally introduced on June 12, 2015, at Emmanuel Baptist Church, the site of VOICES' first reunion for former residents. Participants were invited to light candles as a symbol of joining the former residents' Journey to Light, and to sign a Statement of Commitment acknowledging their support for the inquiry. (For text of Statement of Commitment, see Chapter 2)

These symbolic gestures also served as a way to change people's expectations of what a public inquiry looks like and to invite them into a different way forward. Despite the fact that the Statement of Commitment was not binding, but, rather, marked an invitation to participate in the Restorative Inquiry in a different way at the outset, some parties felt unable to sign for fear of creating liability.

Following the announcement of the terms of reference and mandate of the Restorative Inquiry, there was significant work to do to launch the work of the Inquiry. An Interim Council of Parties was appointed to establish the operating entity required to support the work of the Restorative Inquiry and to hire the initial staffing complement and appointment of the permanent Council of Parties. The Council of Parties was officially appointed on Nov. 2, 2015. With this appointment, the work of the Restorative Inquiry officially began.



Premier McNeil at Restorative Inquiry launch, June 2015

Restorative Inquiry, courtesy Communications Nova Scotia

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- ⁴⁷ RI, Research File, Doc 31, "Akoma Documents", Memorandum and Articles of Incorporation of Akoma Holdings Inc., 2013, s. 2; Memorandum and Articles of Incorporation of Akoma Family Centre Inc., 2013, s. 2.
- ⁴⁸ RI, Research File, Doc 21, Letter to Honourable Cecil Clarke from NSHCC Board Members David Hendsbee, George Jordan, Darrell Thurber, Ron White and Michelle Williams-Lorde, April 24, 2009.
- ⁴⁹ RI, Research File, Doc 22, Letter to David Hendsbee, Chair of NSHCC Board from Chris d-Entremont, Minister of Community Services, May 1, 2009.
- ⁵⁰ RI, Research File, Doc 23, Letter to Honourable Ross Landry, Honourable Denise Peterson-Rafuse and Minister Percy Paris from Sylvia Paris, NSHCC Board Chair (undated).

- ⁵¹ RI, Research File, Doc 24, Letter to Veronica Marsman, Executive Director NSHCC from Honourable Percy Paris, February 24, 2012.
- ⁵² RI, Research File, Doc 25, Letter to Honourable Ross Landry, Minister of Justice from Sylvia Paris, NSHCC Board Chair, May 12, 2012.
- ⁵³ RI, Research File, Doc 26, Letter to Honourable Ross Landry, Minister of Justice from Honourable Keith Colwell, June 8, 2012; RI, Research File, Doc 27, Letter to Honourable Keith Colwell from Honourable Ross Landry, Minister of Justice, June 26, 2012.
- ⁵⁴ RI, Research File, Doc 27, Letter from Justice Minister Ross Landry to Keith Colwell, June 26, 2012; RI, Research File Doc 36, Letter from the Honourable Keith Colwell to Veronica Marsman, ED NSHCC, August 1, 2012; RI, Research File, Doc 37, Email from Justice Minister Ross Landry to Veronica Marsman, ED NSHCC, November 9, 2012.
- ⁵⁵ RI, Research File, Doc 28, Meeting Notes Nova Scotia Home for Colored Children (NSHCC)/Akoma, Meeting with the Premier and Officials, February 4, 2013.
- ⁵⁶ RI, Research File, Doc 29, Letter to Honourable Keith Colwell from Sylvia Paris, President NSHCC/Akoma Family Centre, October 20, 2014.
- ⁵⁷ RI, Research File, Doc 29, Letter to Honourable Keith Colwell from Sylvia Paris, President NSHCC/Akoma Family Centre, October 20, 2014.
- ⁵⁸ RI, Research File, Doc 30, Letter to Sylvia Paris, Chair Akoma Family Centre from Deputy Minister of Justice Tilly Pillay, November 10, 2015.
- ⁵⁹ "Victims of Abuse Urged to Come Forward" *Chronicle Herald*, September 12, 1999.
- ⁶⁰ Jacob Boon, "Former Colored Home Resident First Spoke Out in 1998: "No One's Ever Contacted Me", *Openfile*, March 23, 2012, <https://s3.amazonaws.com/media.muckrack.com/portfolio/items/28645/ColoredHomePart4.pdf>
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- ⁶⁵ HF, Box 40–239, "Minutes 1998–1999", Executive Director's Report, Board Meeting, April 20, 1999.
- ⁶⁶ RI, Research File, Doc 35, Press Release: RCMP, December 13, 2012.
- ⁶⁷ Justice Fred Kaufman, *Searching for Justice: An Independent Review of Nova Scotia's Response to Reports of Institutional Abuse*, January, 2002.
- ⁶⁸ Law Commission of Canada, *Restoring Dignity: Responding to Child Abuse in Canadian Institutions* (Ottawa: Law Commission of Canada, 2000).
- ⁶⁹ Justice Fred Kaufman, *Searching for Justice: An Independent Review of Nova Scotia's Response to Reports of Institutional Abuse*, January 2002 at Chapter XVIII, p.1.
- ⁷⁰ *Smith v. Nova Scotia* (Attorney General), 2009, NSSC 137.
- ⁷¹ *Borden v. Nova Scotia* (Attorney General), 2009, NSSC 312 para.56–57.
- ⁷² RI Research File, Doc 44, Letter from J. Kulik to R Wagner, July 8, 2011, Exhibit K of Dull Affidavit dated Jan 10, 2012 filed at Nova Scotia Supreme Court, Hfx.No.192118.

- ⁷³ RI Research File, Doc 45, Letter from J. Kulik to R Wagner, September 20, 2011, Exhibit M of Dull Affidavit dated Jan 10, 2012 filed at Nova Scotia Supreme Court, Hfx.No.192118.
- ⁷⁴ *Morrison v. Nova Scotia*, 2012, NSSC 136.
- ⁷⁵ It was amended on April 8, 2011 to replace Aubrey Pelley (former resident initially to be a representative plaintiff) with June Elwin, Harriet Johnson, and Deanna Smith.
- ⁷⁶ *Elwin v. Nova Scotia Home for Colored Children*, 2013, NSSC 196.
- ⁷⁷ Nova Scotia, Legislative Assembly, 62nd Leg., 5th Sess., May 2, 2013.
- ⁷⁸ *Elwin v. Nova Scotia Home for Colored Children*, 2013, NSSC 411.
- ⁷⁹ Nova Scotia, Legislative Assembly, 62nd Leg., 5th Sess., April 23, 2013; Nova Scotia, Legislative Assembly, 62nd Leg., 5th Sess., April 25, 2013; Nova Scotia, Legislative Assembly, 62nd Leg., 5th Sess., May 2, 2013.
- ⁸⁰ Nova Scotia, Legislative Assembly, 62nd Leg. 5th Sess., May 2, 2013.
- ⁸¹ RI, Research File, Doc 34, Letter from Raymond Wagner to Premier Darryl Dexter [sic], February 4, 2013.
- ⁸² RI, Research File, Doc 32, Letter from Tony Smith, VOICES to Premier Darrell Dexter, March 7, 2013.
- ⁸³ RI, Research File, Doc 32, Letter from Tony Smith, VOICES to Premier Darrell Dexter, March 7, 2013.
- ⁸⁴ "Ire Greets Home Panel News: Ex-residents say N.S. takes no responsibility for abuses", *Chronicle Herald*, March 27, 2013.
- ⁸⁵ "Ire Greets Home Panel News: Ex-residents say N.S. takes no responsibility for abuses", *Chronicle Herald*, March 27, 2013.
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- ⁸⁷ Editorial, "Proposed NSHCC Panel: Still Waiting for Answers", *Chronicle Herald*, March 28, 2013.
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- ⁹³ RI, Research File, Doc 33, Press Conference Speaking Notes VOICES, May 9, 2013.
- ⁹⁴ *Elwin v. Nova Scotia Home for Colored Children*, 2014 NSSC 375, LeBlanc, J., October 16, 2014.