

IN THE SUPREME COURT OF NOVA SCOTIA

Between

ISAI ESTEY, by his litigation guardian, **E. ANNE MACRAE**

Plaintiff

-and-

**THE ATTORNEY GENERAL OF NOVA SCOTIA
REPRESENTING HIS MAJESTY THE KING
IN RIGHT OF THE PROVINCE OF NOVA SCOTIA**

Defendant

SETTLEMENT AGREEMENT

WHEREAS the Plaintiff brought this class action (the "**Action**") under the *Class Proceedings Act*, S.N.S. 2007, c. 28 for negligence and breaches of ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* in respect of Nova Scotia's administration of the *Social Assistance Act*, R.S.N.S. 1989, c. 432;

AND WHEREAS the Action was certified as a class proceeding on June 21, 2024;

AND WHEREAS counsel for the Parties to this Settlement Agreement have conducted a thorough analysis of the Plaintiff's claims, and they have taken into account the extensive burdens and expense of litigation, including the risks of going to trial;

AND WHEREAS in consideration of all of the circumstances and after extensive arm's length negotiations, the Parties to this Settlement Agreement wish to settle any and all issues among themselves in any way relating to the Action;

AND WHEREAS the Parties executed a term sheet on April 4, 2025 setting out the main terms of agreement between the Parties subject to the execution of this Settlement Agreement;

AND WHEREAS after their investigation, the Plaintiff and Class Counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and is fair, reasonable and in the best interests of the Class Members;

NOW THEREFORE the Parties to this Settlement Agreement agree to settle all matters related to the Action on the following terms and conditions:

Definitions

1. For the purposes of this Settlement Agreement and attached Schedules (hereinafter collectively the "**Settlement Agreement**"), the definitions in the Second Amended Statement of Claim apply, in addition to the following:
 - (a) "**Account**" means the interest-bearing account held by the Claims Administrator for the purposes of implementing this Settlement Agreement;
 - (b) "**Action**" means the class proceeding, including all amendments thereto, commenced by Isai Estey, through his litigation guardian Anne MacRae, in the Supreme Court of Nova Scotia against the Attorney General of Nova Scotia, representing His Majesty the King in Right of the Province of Nova Scotia, having Court File Hfx No. 514712, and certified as a class proceeding by the Certification Order;
 - (c) "**Additional Funds**" means the \$2,000,000 in additional funds that the Defendant has agreed to pay in settlement of this Action, payable only if there are more than 420 Claimants who have been determined to lack legal capacity by the Claims Adjudicator. It is intended that if the Additional Funds are paid by the Defendant, they shall be applied to the Pre-Limitation Fund and the Special Proof Fund on a proportional basis;
 - (d) "**Administration Costs**" means all costs to administer and distribute the Settlement Fund including the costs and professional fees of the Claims Administrator and of the Claims Adjudicator (as that expression is defined in the Compensation Plan), the costs of implementing the Notice Plan, and the cost of dissemination of Notice of Settlement Approval Hearing and Notice of Settlement Approval, and all taxes applicable thereto;

- (e) **"Application"** means the claim for compensation made by a Claimant by filing a Claim Form and submitting it to the Claims Administrator;
- (f) **"Approval Hearing"** or **"Settlement Approval Hearing"** means the Court hearing to approve the Settlement of the Action;
- (g) **"Approval Order"** means the order of the Court approving the Settlement;
- (h) **"Approved Applications"** means Claims assessed and approved by the Claims Administrator and/or Claims Adjudicator pursuant to the Settlement Agreement and the Claims Process for payment from the Settlement Funds, comprised of Approved Post-Limitation Applications and Approved Pre-Limitation Applications, as these terms are defined herein;
- (i) **"Application Summary"** the summary of a Claimant's durations as a member of the Waitlist Class, Institution Class, Hospital Class, and/or Nursing Home Class prepared by the Defendant in accordance with Part C of the Compensation Protocol, attached as Schedule "A" hereto;
- (j) **"Award"** means the award to be made to an Eligible Claimant, as calculated by the Administrator in accordance with the Compensation Protocol, attached as Schedule "A" hereto;
- (k) **"Category 1 Applications"** or **"Post-Limitation Applications"** means Applications received by the Claims Administrator in respect of durations as members of the Waitlist Class, Institution Class, Hospital Class, and/or Nursing Home Class after May 4, 2020;
- (l) **"Category 2 Applications"** or **"Pre-Limitation Applications"** means Applications received by the Claims Administrator in respect of durations as members of the Waitlist Class, Institution Class, Hospital Class, and/or Nursing Home Class between April 1, 1998 and May 4, 2020;
- (m) **"Certification Order"** means the order of Justice Hoskins pronounced June 21, 2024, attached as **Schedule "C"** to this Agreement;
- (n) **"Claim Form"** means the form, agreed upon by the Parties, through which Class Members may make an Application for compensation;

- (o) **"Claimant"** means any person who files a Claim Form in accordance with the Claims Process;
- (p) **"Claims Adjudicator(s)"** or **"Adjudicator(s)"** means the person or persons agreed upon by the Parties to make determinations in the Claims Process;
- (q) **"Claims Administrator"** or **"Administrator"** means the persons or entities agreed upon by the Parties or appointed by the Court to administer the Claims Process;
- (r) **"Claims Deadline"** means the date by which all Applications must be submitted to the Administrator in order to apply for compensation, which is fifteen (15) months from the Implementation Date;
- (s) **"Claims Period"** means the period during which Applications are accepted, ending on the Claims Deadline;
- (t) **"Claims Process"** means the procedure for the submission, review and determination of Applications set out in in the Compensation Protocol, attached as Schedule "A" hereto;
- (u) **"Class", "Class Member"** or **"Class Members"** have the meaning set out in the Certification Order:

Waitlist Class Members

All persons, who were alive as of May 4, 2022, who were on the waitlist for services (other than a residential placement for seniors) under the *Social Assistance Act*, R.S.N.S. 1989, c. 432 for any period of time after April 1, 1998, exclusive of any period for which an individual was a member of (a) the Institution Class; (b) the Nursing Home Class; or (c) the Hospital Class.

Institution Class Members

All persons, who were alive as of May 4, 2022, who for any period of time after April 1, 1998 resided at a Regional Rehabilitation Centre, Adult Residential Centre, or Residential Care Facility, while eligible for assistance under the *Social Assistance Act*, R.S.N.S. 1989, c. 432.

Nursing Home Class Members

All persons, who were alive as of May 4, 2022, who:

- (a) For any period of time after April 1, 1998, resided in a nursing home;

- (b) Were eligible for assistance under the *Social Assistance Act*, R.S.N.S. 1989, c. 432 while residing in the nursing home; and
- (c) Had been assessed by an agent or employee of the Department of Community Services as having support needs which fell within the mandate of the Department of Community Services pursuant to the Disability Support Program Policy (or Services for Persons with Disabilities Policy) applicable at the time of their residence in the nursing home.

Hospital Class Members

All persons, who were alive as of May 4, 2022, who for any period of time after April 1, 1998 resided in the Nova Scotia Hospital or another hospital operated by the Nova Scotia Hospital Authority or any of its predecessors, without a medical reason for the hospitalization, while eligible for assistance under the *Social Assistance Act*, R.S.N.S. 1989, c. 432.

and "**Waitlist Class**", "**Institution Class**", "**Nursing Home Class**", and "**Hospital Class**" shall have corresponding meanings.

(v) "**Class Member Data**" means the data maintained by the Defendant concerning Class Members' placements in Institutions, entries on the Service Request List, and vital statistics.

(w) "**Class Counsel**" means Koskie Minsky LLP and McKiggan Hebert Lawyers;

(x) "**Class Period**" means April 1, 1998 to the Implementation Date, inclusive;

(y) "**Compensation Protocol**" means the rules and procedures governing the submission, review, and determination of Applications and the distribution of compensation to Claimants, attached to this Settlement Agreement as Schedule "A";

(z) "**Counsel Fees**" means the fees, disbursements and all applicable taxes awarded to Class Counsel as determined and approved by the Court at the Approval Hearing pursuant to s. 41(2) of the *Class Proceedings Act*, S.N.S. 2007, c. 28;

(aa) "**Court**" means the Supreme Court of Nova Scotia;

(bb) "**Court Approval Date**" means the date on which the Court issues the Approval Order;

(cc) "**Disability Support Program**" or "**DSP**" means the program administered by the Province of Nova Scotia for the distribution of benefits under the *Social Assistance Act*, R.S.N.A. 1989, c. 432.

(dd) "**Estate Claimant**" means a person who submits an Application on behalf of a deceased Class Member who was alive as of May 4, 2022 and whose authority to act on behalf of the Class Member has been established pursuant to Part I of the Compensation Protocol, attached at Schedule "A" hereto;

(ee) "**Excluded Claimant**" means a Class Member who validly opts out of the Action in writing prior to the Opt-Out Deadline;

(ff) "**Funder Levy**" means the amounts payable to the third-party funder, Hereford Litigation Finance 1 Limited, pursuant to the Litigation Funding Agreement in this Action, approved by the Court on August 19, 2024;

(gg) "**GIC**" means a guaranteed investment certificate issued by any Canadian Schedule 1 Chartered Bank or Canadian Trust Company, which shall have a term not exceeding one year.

(hh) "**Guaranteed Funds**" means the \$32,000,000 guaranteed amount which the Defendant has agreed to pay in settlement of the Action;

(ii) "**Honorarium**" means an honorarium, if any, to be paid to Isai Estey in the amount of \$15,000 as determined by the Court at the Approval Hearing or thereafter;

(jj) "**Implementation Date**" means the latest of:

- (i) The day following the last day on which a Class Member may appeal or seek leave to appeal the Approval Order; and
- (ii) The date of the final determination of any appeal brought in relation to the Approval Order.

(kk) "**Litigation Funding Agreement**" means the agreement between the Plaintiff, Class Counsel, and Hereford Litigation Finance 1 Limited, approved by the Court on August 19, 2024;

(ll) "**Notice Costs**" means the costs of disseminating Phase I Notice and Phase II Notice;

(mm) "**Notice of Approval Hearing**" or "**Phase I Notice**" means the Court-approved notice to the Class Members of the Certification Order, the Approval Hearing, and advising of the Opt Out Process;

(nn) "**Notice of Settlement Approval**" or "**Phase II Notice**" means the Court-approved notice to the Class Members advising that the Court has approved the Settlement and advising of the Claims Process;

(oo) "**Nova Scotia**" means the Defendant, His Majesty the King in right of the Province of Nova Scotia;

(pp) "**Objection Deadline**" means the deadline, to be prior to the Approval Hearing and to be agreed upon by the Parties and approved by the Court, for Class Members to object to the Settlement;

(qq) "**Opt-Out Deadline**" means the deadline, to be prior to the Approval Hearing and to be agreed upon by the Parties and approved by the Court, for Class Members to opt out of this Action;

(rr) "**Opt-Out Process**" means the process by which Class Members may opt out of this Action;

(ss) "**Party**" or "**Parties**" means one or both of the Plaintiff and the Defendant;

(tt) "**Phase 1 Notice Plan**" means the plan to disseminate Phase I Notice;

(uu) "**Phase 2 Notice Plan**" means the plan to disseminate Phase II Notice;

(vv) "**Post-Limitation Fund**" means the fund segregated pursuant to subparagraph 7(a) of this Agreement;

(ww) "**Pre-Limitation Fund**" means the fund segregated pursuant to subparagraph 7(b) of this Agreement;

(xx) "**Releasees**" means individually and collectively Nova Scotia, and each of its past, present and future officers, Ministers, employees, representatives, administrators, insurers, volunteers, agents, including the operators of the facilities listed in the Hospital, Nursing Home and Institutional Classes, and their respective heirs, successors, executors and assigns;

(yy) "**Service Request List**" means the list, maintained by the Province of Nova Scotia, of individuals who have requested a new or different support option available through the Disability Support Program;

(zz) "**Settlement**" or "**Settlement Agreement**" or "**Agreement**" means this Agreement, as executed by the Parties or their representatives, including the attached Schedules;

(aaa) "**Settlement Funds**" means the Guaranteed Funds and the Additional Funds (if applicable), which the Defendant has agreed to pay to settle the Action, inclusive of compensation for Approved Claims, Honorarium, interest, Counsel Fees, Administration Costs, and the Funder Levy; and

(bbb) "**Special Proof Fund**" means the fund segregated pursuant to paragraph 7(c) of this Agreement.

2. For greater certainty, where this Agreement uses terms which are found in the Disability Support Program Policy Manual, the parties' assumption is that they have the same meaning as in that Document

Settlement Funds

3. The Settlement Funds consist of:
 - (a) Guaranteed Funds in the amount of \$32,000,000; and
 - (b) Additional Funds in the amount of \$2,000,000, to be contributed by the Defendant if there are more than 420 Claimants who have been determined to lack legal capacity by the Claims Adjudicator.
4. The Settlement Funds will be used to pay the Approved Claims, Administration Costs, Funder Levy, Counsel Fees, Honourarium, and all applicable taxes in accordance with this Settlement Agreement in full and final settlement of the Action.

5. For greater clarity, the maximum amount that the Defendant shall pay under this Agreement is \$34,000,000.
6. The Defendant shall, within thirty (30) days of the Court Approval Date, transfer the Guaranteed Funds into the Account. Interest earned on the Account shall be for the benefit of the Class, and shall be applied to pay approved Applications. The Administrator shall have the ability, at its discretion, to purchase one or more GICs from the Settlement Funds held in the Account to generate interest for the benefit of the Class while ensuring funds are available for payments required under paragraph 10.
7. Upon receipt from the Defendant, the Claims Administrator shall hold the Settlement Funds in segregated funds:
 - (a) A Post-Limitation Fund of \$21,200,000.00; and
 - (b) A Pre-Limitation Fund of \$9,500,000.00; and
 - (c) A Special Proof Fund of \$1,300,000.00.
8. The Claims Administrator may, with the approval of Class Counsel, draw Administration Costs and Notice Costs from the Account as such costs come due.
9. All authorized deductions (including Counsel Fees, taxes, Honorarium, Administration Costs, Notice Costs, and the Funder Levy) shall be deducted from the Post-Limitation Fund and the Pre-Limitation Fund on a proportional basis.
10. The Settlement Funds shall be paid out as follows:
 - (a) Payments shall be made, to satisfy the Counsel Fees and applicable taxes in the amount approved by the Court;
 - (b) Payments shall be made, to pay Administration Costs, Funder Levy, and any honourarium to be awarded to the Representative Plaintiff, plus applicable taxes, as approved by the Court;
 - (c) Payments shall be made, to pay the Approved Claims, in accordance with the Compensation Protocol.
 - (d) If there are funds remaining after all the above payments are made, the Claims Administrator will make a further distribution to Approved Claimants on a *pro rata* basis, if economically and practically feasible.
 - (e) If the Claims Administrator determines that funds cannot be economically allocated among Approved Claimants, the Plaintiff shall seek

Court approval for payment of the balance of funds to a community organization, agency, or charity which advocates for and/or supports people with disabilities in Nova Scotia.

11. If the total number of Claimants who (i) are determined to be legally incapable pursuant to the Compensation Protocol and (ii) are determined to be eligible for compensation, exceeds four hundred and twenty (420), the Defendant shall pay the Additional Funds to the Claims Administrator, and such amounts will be distributed in accordance with the Settlement and the Compensation Protocol.
12. The Claims Administrator shall pay the Counsel Fees and the Honorarium described in paragraph 4, in the amounts approved by the Court, within ten (10) days after receipt of the Guaranteed Funds from the Defendant.

Principles Governing the Compensation Protocol

13. Compensation to be paid to Eligible Claimants will be allocated according to the Compensation Protocol, attached as Schedule "A" hereto.
14. The Compensation Protocol is intended to be interpreted and applied in such a manner so as to render it accessible, low-barrier, confidential, user-friendly, and trauma-informed, while giving effect to the need to verify the facts underlying an Application.
15. The parties acknowledge that the Class Members have varying support and access needs. The Claims Administrator shall adopt procedures which reflect best practices for communicating with, supporting, and validating the autonomy of people with disabilities, and may retain a third-party consultant or other advisor to assist with the development of such procedures.
16. The Defendant agrees that payments received in accordance with the Compensation Protocol do not impact eligibility for, amount of, or timing of social assistance benefits delivered under the *Social Assistance Act*, R.S.N.S. 1989, c. 432 and the *Employment Support and Income Assistance Act*, S.N.S. 2000, c. 27.
17. Subject to applicable laws, where a Class Member has been awarded compensation under the Compensation Protocol, the Administrator shall make best efforts to pay such compensation to the Class Member using any payee information maintained by the Defendant for the purposes of the Disability Support Program.

18. The Parties agree that all compensation payable under the Compensation Protocol is in the nature of non-pecuniary damages not referable to income.

Communications

19. The Parties agree that when commenting publicly on the Action or this Settlement, they shall:
 - (a) Inform the inquirer that the Action has been settled to the satisfaction of all Parties;
 - (b) Inform the inquirer that it is the view of the Parties that the Settlement of the Action is fair, reasonable and in the best interests of the Class; and
 - (c) Decline to comment in a manner that casts the conduct of any Party in in this litigation in a negative light or reveals anything said during the settlement negotiations.

Court Approval

20. As soon as practicable after execution of this Settlement Agreement, the parties shall advise the Court, and seek Court approval of the form, content, and plan for the dissemination of Phase I Notice.
21. In conjunction with the development of the Phase I Notice Plan, the parties shall negotiate the terms of the Opt Out Process, the Opt Out Deadline, and the Objection Deadline, for which Court approval will be sought at the time that approval for the Phase I Notice Plan is sought.
22. The parties agree to file motion materials, as necessary, with respect to the Approval Hearing and counsel shall act reasonably and in good faith on the content of such motion materials.
23. Class Counsel shall bring a motion for Court approval of its requested Counsel Fees and reimbursement of disbursements, and all applicable taxes, and the Honourarium, to be heard immediately after the Approval Hearing.
24. The Defendant shall take no position on the quantum of Counsel Fees sought by Class Counsel.

Release

25. As at the Court Approval Date, each Class Member who has not opted out, whether or not he or she submits an Application or receives compensation in accordance with the Compensation Protocol, will be deemed by this Settlement Agreement to have completely and unconditionally released, remised, and forever discharged the Releasees of and from any and all actions, counterclaims, causes of action, claims, whether statutory or otherwise, and demands for damages, indemnity, contribution, costs, interest, loss or harm of any nature and kind whatsoever, known or unknown, whether at law or in equity, and howsoever arising which they may heretofore have had, may now have or may hereafter have whether commenced or not, in connection with all claims pleaded in the Second Amended Statement of Claim in the Action. The Second Amended Statement of Claim is attached as Schedule "B".
26. As at the Court Approval Date, each Class Member who has not opted out will be forever barred and enjoined from commencing, instituting, or prosecuting any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, directly, representatively, or derivatively, asserting against the Releasees, or any of them, any claims pleaded in the Second Amended Statement of Claim in the Action.
27. As at the Court Approval Date, each Class Member who has not opted out will be forever barred and enjoined from commencing, instituting, or prosecuting any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, directly, representatively, or derivatively, against any person or entity that could or does result in a claim over against the Releasees, or any of them, for contribution and/or indemnity at common law, or equity. It is understood and agreed that if such Class Member commences such an action or takes such proceedings, and the Releasees, or any of them, are added to such proceeding in any manner whatsoever, whether justified in law or not, such Class Member will immediately discontinue the proceedings and claims or otherwise narrow the proceedings and claims to exclude the several liability of the Releasees.
28. This Settlement Agreement shall operate conclusively as an estoppel in the event of any claim, action, complaint, or proceeding which might be brought in the future by such Class Member with respect to the matters covered herein. This Settlement Agreement may be pleaded in the event that any such claim, action, complaint, or proceeding is brought, as a complete defence and reply, and may

be relied upon in any proceeding to dismiss the claim, action, complaint, or proceeding on a summary basis and no objection will be raised by such Class Member in any subsequent action that the parties in the subsequent action were not privy to the formation of this Settlement Agreement.

29. For the avoidance of uncertainty, nothing in this Settlement Agreement releases, interferes with, or otherwise affects any claims based on assault or sexual assault which any Class Member may have against the Defendant or its servants, agents, or employees, or any claims by a putative Class Member who has opted out of the Action.
30. For greater certainty, the release provisions above have the effect of releasing against any claim pleaded in the Second Amended Statement of Claim in the Action which could be made under the *Human Rights Act*, including claims for damages under the *Human Rights Act*.
31. Nothing in this Settlement Agreement, or any schedule thereto, shall be construed as releasing, limiting, or otherwise affecting any claim asserted or issue raised in the matter of *Disability Rights Coalition v. The Province of Nova Scotia*, Board File No. 51000-30-H14-0148, including with respect to the implementation of the Interim Consent Order issued on June 28, 2023, and any further orders issued in that proceeding.
32. Upon the Court Approval Date, each Class Member is deemed to have released the Claims Administrator, as well as any Claims Adjudicator(s) appointed pursuant to the Compensation Protocol, from liability with respect to the Settlement or any claims which arise or could arise in relation to the determination, disposition, approval, denial, and/or adjudication of an Application or potential Application that was handled in accordance with the terms of the Compensation Protocol, including but not limited to a claim in respect of the sufficiency of the compensation received.

No Admission, No Use

33. This Settlement Agreement, whether or not approved by the Court, and any proceeding taken pursuant to this Settlement Agreement are for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement or the schedules hereto, or any action taken hereunder, shall be construed as, offered in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind by the Parties of the truth of any fact alleged or the validity of any claim or defence that has been, could have

been, or in the future might be asserted in any litigation, court of law or equity, proceeding, arbitration, tribunal, government action, administrative forum, or any other forum, or of any liability, responsibility, fault, wrongdoing or otherwise of any Parties except as may be required to enforce or give effect to the Settlement and this Settlement Agreement. For greater clarity, the Defendant denies any and all liability whatsoever. This Settlement is agreed to with an express denial of liability.

Termination

- 34. This Settlement Agreement shall, without notice, be automatically terminated if the Court does not approve this Settlement Agreement. In the event of termination, this Settlement Agreement shall have no force or effect, save and except for this section and section 33, which shall survive termination.

General

- 35. This Settlement Agreement shall be governed, construed and interpreted in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable therein.
- 36. This Settlement Agreement constitutes the entire agreement between the parties and may not be modified or amended except in writing, on consent of the parties, and with Court approval.
- 37. This Settlement Agreement may be signed (including electronic signatures) by the Parties in counterpart, and delivered electronically, which shall have the same effect and enforceability as a single executed document.

IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement to be executed on his/her/their behalf by his/her/their duly authorized counsel of record, effective as of August 20, 2025.

McKIGGAN HEBERT LAWYERS

August 20, 2025

Date

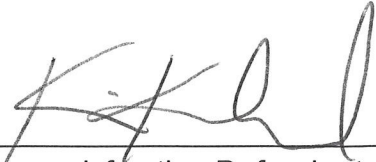


Co-Counsel for the Plaintiff and the Class with Koskie Minsky
LLP

ORIGINAL

NOVA SCOTIA DEPARTMENT OF JUSTICE

Aug 20, 2025
Date



Counsel for the Defendant, The Attorney General of Nova
Scotia Representing His Majesty the King in right of the
Province of Nova Scotia

KM-10116593v11

ORIGINAL

SCHEDULE "A" – COMPENSATION PROTOCOL

Part A: Definitions

1. The definitions in the Second Amended Statement of Claim and in the Settlement Agreement apply in this Compensation Protocol. In addition:
 - a. "**Application Summary**" means the summary of a Claimant's durations as a member of the Waitlist Class, Institution Class, Hospital Class, and/or Nursing Home Class prepared by the Defendant in accordance with Part C of this Compensation Protocol.
 - b. "**Capacity Period**" has the meaning ascribed thereto in paragraph 36 of this Compensation Protocol.
 - c. "**Claimant**" means a Class Member, on whose behalf or in respect of whom an Application under this Compensation Protocol has been submitted;
 - d. "**Class Member Data**" means the data maintained by the Defendant concerning a Class Member's placements in Institutions, entries on the Service Request List, and vital statistics.
 - e. "**Class Size Data**" means the summary of data compiled by the Defendant in the form of an Excel spreadsheet and provided to Class Counsel on October 16, 2024.
 - f. "**Community Option**" means a Group Home, Developmental Residence, Small Options Home, Supervised Apartment, Independent Living Support, Alternative Family Support, Temporary Shelter Arrangement, or Flex-Independent as those terms were defined in the DSP Policies that applied from time to time.
 - g. "**Deceased Claimant**" has the meaning ascribed thereto in paragraph 68(a) of this Compensation Protocol.
 - h. "**Dispute Form**" means the form agreed upon by the parties to be used by Claimants to initiate a dispute under this Compensation Protocol.
 - i. "**DSP Policies**" applicable at any time means the policies of the Defendant that applied to the DSP at that time.
 - j. "**DSP Policy Manual**" means the policy manual created by the Defendant containing the DSP Policies.

- k. **"Estate Executor"** has the meaning ascribed thereto in paragraph 68(a) of this Compensation Protocol.
- l. **"Institution"** means, in addition to a Regional Rehabilitation Centre, an Adult Residential Centre and a Residential Care Facility the Community Treatment Program as that term was defined in the DSP Policies.
- m. **"Nearest Relative"** has the meaning ascribed thereto in paragraph 69(e) of this Compensation Protocol.
- n. **"Next of Kin Claim"** has the meaning ascribed thereto in paragraph 69(a) of this Compensation Protocol.
- o. **"Next of Kin Representative"** has the meaning ascribed thereto in paragraph 69(a) of this Compensation Protocol.
- p. **"Personal Representative"** has the meaning ascribed thereto in paragraph 70 of this Compensation protocol.
- q. **"Protocol"** means this Compensation Protocol.
- r. **"Residential Care Facility"** means, for the purposes of this Compensation Protocol, a facility designated as such in the DSP Policy Manual, and for greater certainty shall not mean a facility designated as a "residential care facility" under the *Homes for Special Care Act*, R.S.N.S. 1989, c. 203 only.

Part B: Submitting Applications for Compensation

2. The Claim Form shall request that a Class Member describe the circumstances underlying their Application, including the names of any Institutions, Nursing Homes, or Hospitals where the Class Member was placed, as well as the applicable dates, to the best of the Class Member's knowledge and recollection. The Claim Form shall stipulate that providing such information is encouraged but not required, and that no Class Member's entitlements under this Compensation Protocol shall be limited by information provided by a Class Member in their Application.
3. A Class Member may submit a claim for compensation by completing an Application and submitting it to the Claims Administrator prior to the Claims Deadline.
4. The Claims Administrator shall review each Application to confirm that it includes the information listed in paragraph 9 of this Compensation Protocol and, if the Claims Administrator determines that the Application is incomplete, shall notify the

Claimant in writing, no later than thirty (30) business days after receipt of an Application, that the Application is incomplete.

5. A Claimant who has been notified that their Application is incomplete shall have the later of (a) sixty (60) days from the date of the notice by the Claims Administrator or (b) the Claims Deadline to provide the Claims Administrator with the missing information, failing which the Claimant's Application shall be denied by the Claims Administrator.
6. In respect of an incomplete Application, the Claims Administrator may contact a Claimant to request or obtain the missing information, or may correct any errors or omissions if the information is readily available to the Claims Administrator.
7. The Claims Administrator may accept an Application despite minor deficiencies, provided that the deficiencies do not preclude the Claims Administrator from determining the Application.
8. A Class Member may submit an Application within ninety (90) days after the Claims Deadline if the Claims Administrator is satisfied that:
 - a. The Class Member was delayed in delivering an Application due to the Class Member's disability;
 - b. The Class Member intended to submit an Application, but was not able to deliver the Application due to circumstances outside of their control; or
 - c. The Class Member establishes exceptional circumstances.
9. The Claims Administrator shall review each Application and verify that the Claimant has provided the following information:
 - a. Name;
 - b. Date of birth;
 - c. Contact details;
 - d. Whether the Claimant believes that they were a Class Member in respect of any period on or after May 4, 2020;
 - e. Whether the Claimant believes that they were a Class Member in respect of any period before May 4, 2020;

- f. Where the Application has been prepared by an Estate Executor or a Next of Kin Representative, an indication that Class Member was alive as of May 4, 2022; and
 - g. An indication that the Claimant consents to:
 - i. The Defendant sharing information concerning the Application with the Claims Administrator, including information about the Claimant's enrollment in the Disability Support Program, to the extent required under this Compensation Protocol; and to
 - ii. The Claims Administrator sharing information provided by the Claimant with the Defendant.
10. Upon determining that an Application is complete, the Claims Administrator shall forward the Application to the Defendant.

Part C: The Application Summary

11. Upon receipt of a completed Application from the Claims Administrator, the Defendant shall review the Application together with the Class Member Data for that Claimant and prepare the Claimant's Application Summary.
12. The Defendant shall prepare each Application Summary in good faith.
13. The Application Summary shall specify the dates during which, based on the Class Member Data, the Defendant believes the Claimant to have been a member of the Waitlist Class, Institution Class, Hospital Class, and/or Nursing Home Class, as well as the durations of membership in each category.
14. The capitalized terms in paragraphs 15, 16, 17 and 18 that are not defined elsewhere herein or in the Settlement Agreement, shall have the meaning given to them in the applicable DSP Policies.
15. In determining when the Claimant was a member of the Waitlist Class, the Defendant shall apply the criteria below.
- a. Subject to the other criteria in this paragraph, all time during which the Claimant had an active submission on the Service Request List will be counted toward the Claimant's total duration as a member of the Waitlist Class.
 - b. Time during which the Claimant was (i) on the Future Planning Registry, (ii) had a delayed Timeframe for Placement in which the future year of

placement was specified, or (iii) based on context, was otherwise not seeking an immediate placement, is not counted.

- c. Time during which the Claimant was listed as Agreed to be Waitlisted, but none of the conditions in subparagraph 15(b) applied, or during which the Claimant's Timeframe for Placement was immediate, is counted unless context establishes that the Claimant was not seeking an immediate placement.
- d. Time during which the Claimant was in a Temporary Shelter Arrangement, Transitional Facility, or a Customized placement is not counted.
- e. Time during which the Claimant was placed in Community Option and was on the Service Request List for a different Community Option is not counted.
- f. Time during which the Claimant was a member of the Institution Class, Hospital Class, or Nursing Home Class is not counted.
- g. For the avoidance of uncertainty:
 - i. Subject to the specific exemptions listed in subparagraphs 15(a)-(f), time during which the Claimant was assessed as eligible for a Community Option, but was receiving Flex-At Home or Flex-Living with Family, is counted.
 - ii. Time during which the Claimant was in a shelter for unhoused people is counted.

16. In determining when the Claimant was a member of the Institution Class, all time in an Institution is counted, including time during which the Claimant is indicated as Agreed to be Waitlisted, had a future Timeframe for Placement, or was on the Future Planning Registry.

17. In determining when the Claimant was a member of the Nursing Home Class, all time in a Nursing Home while the Claimant was eligible for assistance under the *Social Assistance Act* and had been assessed as having support needs which fell within the mandate of the Department of Community Services pursuant to the applicable DSP Policies, is counted, including time during which the Claimant is indicated as Agreed to be Waitlisted, had a future Timeframe for Placement, or was on the Future Planning Registry.

18. In determining when the Claimant was a member of the Hospital Class, the Defendant shall apply the following criteria:

- a. All time in a Hospital without a medical reason for the hospitalization is counted, including time during which the Claimant is indicated as Agreed to be Waitlisted, had a future Timeframe for Placement, or was on the Future Planning Registry.
 - b. All time during which the Class Size Data describes the Claimant's Case Category as "HM Other" is counted, unless other fields in the Class Size Data indicate that the Claimant was in a different situation during the same time.
19. No time shall be counted for the Waitlist Class, Institution Class, Hospital Class, and/or Nursing Home Class for any period after August 20, 2025.
20. The Defendant shall deliver a completed Application Summary to the Claims Administrator within sixty (60) days of receipt of the completed Application.
21. If the Claimant cannot be identified in the Class Member Data or the Class Member died before May 4, 2022, the Defendant shall notify the Claims Administrator that no Application Summary will be prepared, and the Claims Administrator shall deny the Application, and shall provide notice to the Claimant of the denial. A Claimant who wishes to challenge the denial of their Application under this paragraph must notify the Claims Administrator within sixty (60) days of the notice of the denial.

Part D: Delivery of the Application Summary

22. Upon receipt of an Application Summary from the Defendant, the Claims Administrator shall assess whether, based on the Application Summary, the Claimant may be eligible for any compensation in accordance with Part G of this Compensation Protocol. The Claims Administrator's assessment shall be organized into the following categories:
- a. Category 1 Durations: On or after May 4, 2020;
 - b. Category 2 Durations: Between April 1, 1998 and May 3, 2020 inclusive.
23. Within thirty (30) days of receipt of the Application Summary from the Defendant, the Claims Administrator shall provide each Claimant with their Application Summary, as well as the Claims Administrator's assessment of the Claimant's eligibility.
24. If the Claims Administrator has assessed the Claimant as ineligible, the Claims Administrator shall deny the Application and notify the Claimant that the Claimant may dispute the Application Summary and denial of the claim by notifying the Claims Administrator within sixty (60) days.

25. If a Claimant is assessed as eligible in respect of Category 1 Durations, the Claimant may:

- a. Accept the assessed Category 1 Durations by notifying the Claims Administrator within sixty (60) days, in which case the Application is an Approved Category 1 Application;
- b. Dispute the assessed Category 1 Durations by notifying the Claims Administrator within sixty (60) days; or
- c. Do nothing, in which case the Claimant will be deemed to have accepted the assessed Category 1 Durations after sixty (60) days, in which case the Application is an Approved Category 1 Application.

26. If a Claimant is assessed as eligible in respect of Category 2 Durations, the Claims Administrator will notify the Claimant that the Claimant must establish legal incapacity in accordance with Part F of this Compensation Protocol to be awarded compensation and the Claimant may:

- a. Accept the assessed Category 2 Durations by, within sixty (60) days, notifying the Claims Administrator and indicating that they intend to establish legal incapacity in accordance with Part F of this Compensation Protocol;
- b. Dispute the assessed Category 2 Durations by, within sixty (60) days, notifying the Claims Administrator and indicating that they intend to establish legal incapacity in accordance with Part F of this Compensation Protocol; or
- c. Do nothing, in which case no compensation will be awarded in respect of Category 2 Durations, and the Application will be denied if the Claims Administrator has not also assessed the Claimant as eligible in respect of Category 1 Durations.

Part E: Disputing an Assessment

27. To dispute their assessment by the Claims Administrator, or to dispute the denial of their Application under paragraph 21 of this Compensation Protocol, a Claimant must, within sixty (60) days of the Claims Administrator's notice or assessment, as applicable, file a Dispute Form and supporting documentation, which may include correspondence and/or other records arising from the DSP.

28. The Claimant's Dispute Form shall include the Claimant's position on their Durations as a member of the Waitlist Class, Institution Class, Hospital Class, and/or Nursing Home Class.

29. The Claims Administrator shall forward each Dispute Form and supporting documentation to the Defendant upon receipt from the Claimant.
30. The Defendant may, within sixty (60) days of receipt of a Dispute Form and supporting documentation, file any documents from the Claimant's DSP records in response, or may notify the Claims Administrator that the Defendant accepts some or all of the Claimant's position.
 - a. If the Claimant has also notified the Claims Administrator that they intend to establish legal incapacity and the criteria in paragraph 39 have not been satisfied, the deadline for the Defendant's response pursuant to this paragraph will be the deadline specified in paragraph 44, or if the Claimant has initiated a Special Proof Assessment, the deadline specified in paragraph 50(f).
31. Where the Defendant has accepted the Claimant's position in the Dispute Form in whole or in part, the Application shall be approved to the extent of the Defendant's acceptance (subject to a determination on legal incapacity in accordance with Part F of this Compensation Protocol, where necessary).
32. Unless the Defendant has accepted the Claimant's position in whole, upon the deadline specified in paragraph 30, the Claims Administrator shall forward the Application, Application Summary (where applicable), Dispute Form and supporting documentation, and responding documents submitted by the Defendant, to the Claims Adjudicator.
33. Within thirty (30) days of receipt of the materials referred to in paragraph 32, the Claims Adjudicator shall make a determination as to the Claimant's Category 1 Durations and Category 2 Durations, as applicable, and shall forward their determination to the Claims Administrator.
 - a. If a dispute as to the Claimant's legal incapacity has also been referred to the Claims Adjudicator, the Claims Adjudicator will also determine that issue at the same time.
34. Upon receipt of a determination by the Claims Adjudicator under paragraph 33, the Claims Administrator shall deliver the determination to the Claimant and Defendant.
35. Where a Claimant has notified the Claims Administrator that they intend to dispute their assessment, but does not submit a Dispute Form with any supporting documentation before the deadline specified in paragraph 27, the Claims Administrator will determine the Application as if the Claimant had done nothing as set out in paragraphs 25 and 26.

Part F: Proving Legal Incapacity

36. To be eligible for compensation in respect of Category 2 Durations, a Claimant must establish that they were legally incapable of bringing a claim continuously from the beginning of the Claimant's earliest Category 2 Duration to May 4, 2020 (the "**Capacity Period**").
37. The Claims Adjudicator's determinations as to capacity will reflect the principle that all people are presumed to have capacity until it is determined otherwise.
38. Any determinations as to legal capacity or legal incapacity pursuant to this Compensation Protocol are for the purposes of this Compensation Protocol alone. Any such determinations shall not be construed as evidence or proof of capacity or incapacity for any other purpose, in any other context.
39. Upon being notified that a Claimant is seeking to establish legal incapacity in respect of Category 2 Durations, the Claims Administrator shall notify the Defendant, which shall review the Claimant's ICM System profile. A Claimant will be considered to have been legally incapable during the Capacity Period if the Defendant's ICM System indicates "yes" in the field "Legal Order Exists" and identifies the Claimant's Legal Decision Maker.
40. Within ten (10) days of receiving the notification referred to in paragraph 39, the Defendant shall either:
 - a. Notify the Claims Administrator that the Claimant is considered to have been legally incapable during the Capacity Period based on the review contemplated in paragraph 39, in which case the Application shall be an Approved Category 2 Application; or
 - b. Notify the Claims Administrator that the Claimant is not considered to have been legally incapable during the Capacity Period based on the review contemplated in paragraph 39, in which case the Claims Administrator shall notify the Claimant.
41. Upon being notified that a Claimant is not considered to have been legally incapable during the Capacity Period based on the review contemplated in paragraph 39, the Claimant may, within sixty (60) days or by the Claims Deadline, whichever is later, request a review of the Claimant's complete DSP file for the following evidence of incapacity, and/or provide evidence of any of the following to the Claims Administrator to establish incapacity during the Capacity Period:
 - a. The Claimant was a client of the Nova Scotia Public Trustee;

- b. The Claimant was determined to have been an "adult in need of protection" pursuant to the *Adult Protection Act*, R.S.N.S. 1989, c. 2;
 - c. The Claimant was subject to a representation order under the *Adult Capacity and Decision-making Act*, 2017, c. 4;
 - d. The Claimant was determined to be an "incompetent person" pursuant to the *Incompetent Persons Act*, R.S.N.S. 1989, c. 218;
 - e. A pre-existing Form 1 completed by a Physician pursuant to the *Personal Directives Act*, S.N.S. 2008, c. 8;
 - f. The Claimant had been declared not to have capacity or competency in accordance with s. 53 of the *Hospitals Act*, R.S.N.S. 1989, c. 208;
 - g. The Claimant had been admitted to a psychiatric facility as an involuntary patient pursuant to the *Involuntary Psychiatric Treatment Act*, S.N.S. 2005, c. 42; or
 - h. Any other court or legal authority of competent jurisdiction had determined that the Claimant lacked competency or capacity to deal with their property or personal affairs.
42. If requested to review a Claimant's DSP file, the Defendant shall complete its review of the file within sixty (60) days of the Claimant's request, and deliver any of the evidence listed in paragraph 41 to the Claims Administrator or, where there is no such evidence, notify the Claims Administrator accordingly.
43. The Claims Administrator shall forward any evidence of legal incapacity submitted by the Claimant pursuant to paragraph 41 to the Defendant within fifteen (15) days.
44. The Defendant may, within thirty (60) days of receipt of a Claimant's evidence of legal incapacity, file any documents from the Claimant's DSP file in response, or may, at any time, notify the Claims Administrator that the Defendant accepts that the Claimant was legally incapable during the Capacity Period.
45. If the Defendant accepts that a Claimant was legally incapable during the Capacity Period, the Application shall be an Approved Category 2 Application.
46. Upon the expiry of the deadline in paragraph 42 where the Claimant has not provided additional evidence or upon the expiry of the deadline in paragraph 44 where the Claimant has provided additional evidence, the Claims Administrator shall forward to the Claims Adjudicator the Application, Application Summary, evidence of legal incapacity provided by the Claimant and/or by the Defendant

based on the Claimant's DSP file, and any responding documentation provided by the Defendant.

47. Within sixty (60) days of receipt of the materials referred to in paragraph 46, the Claims Adjudicator shall decide, on a balance of probabilities, whether the Claimant was legally incapable during the Capacity Period, and shall forward their determination to the Claims Administrator.
 - a. If a dispute as to the Claimant's Application Summary has also been referred to the Claims Adjudicator, the Claims Adjudicator will decide both issues together.
48. Upon receipt of a determination by the Claims Adjudicator under paragraph 47, the Claims Administrator shall deliver the determination to the Claimant and the Defendant.
49. If the Claims Adjudicator determines that a Claimant was legally incapable during the Capacity Period, the Application shall be an Approved Category 2 Application.
50. Where a Claimant seeks to establish legal incapacity in respect of Category 2 Durations, but the criteria in paragraph 39 are not satisfied and the Claimant is not able to provide evidence in the nature set out in paragraph 41, the Claimant may initiate a further assessment of legal incapacity during the Capacity Period based on historical medical records (a "**Special Proof Assessment**"). The process for Special Proof Assessments shall be as follows:
 - a. After being notified that the criteria in paragraph 39 are not satisfied, the Claimant may, within sixty (60) days, by the Claims Deadline, or within fifteen (15) days of the receipt of any evidence from the Claims Administrator in accordance with paragraph 43, whichever is later, notify the Claims Administrator that the Claimant wishes to initiate a Special Proof Assessment.
 - i. Notwithstanding subparagraph 50(a), if the Claimant requests a review of their DSP file under paragraph 41, a Special Proof Assessment may be requested within thirty (30) days of receipt of the Defendant's provision of evidence or notification that no evidence exists in accordance with paragraph 42, or by the Claims Deadline, whichever is later.
 - b. Medical records provided by a Claimant in accordance with this paragraph include any records prepared by a physician, psychologist, nurse, or other regulated medical professional which tend to establish that the Claimant was legally incapable during the Capacity Period.

- c. On a Special Proof Assessment, the medical records provided by the Claimant must arise from the Capacity Period.
- d. For the avoidance of uncertainty, a new retrospective opinion from a medical professional, or any other records or documents not arising from the Capacity Period, shall not be accepted as evidence on a Special Proof Assessment.
- e. Within nine (9) months of providing the notification referred to in subparagraph 50(a), the Claimant shall deliver to the Claims Administrator copies of the medical records the Claimant wishes to be considered on a Special Proof Assessment, and the Claims Administrator shall forward such records to the Defendant.
 - i. A Claimant who fails to deliver medical records within nine (9) months may, within three (3) months of that deadline, request that the Claims Administrator grant an extension of time to deliver the medical records. The Claims Administrator may grant the extension if it is satisfied that the Claimant has provided an explanation demonstrating that the delay is due to reasons outside of the Claimant's control.
 - ii. For the avoidance of uncertainty, under no circumstances shall the Claims Administrator accept medical records delivered more than three (3) months after the deadline in subparagraph 50(e).
- f. The Defendant may, within sixty (60) days of receipt of a Claimant's medical records, file any documents from the Claimant's DSP file in response, or may notify the Claims Administrator that the Defendant accepts that the Claimant was legally incapable during the Capacity Period and the Application shall be an Approved Category 2 Application.
- g. Unless the Defendant has notified the Claims Administrator that it accepts that the Claimant was legally incapable during the Capacity Period, upon the expiry of the deadline in subparagraph 50(f), the Claims Administrator shall forward to the Claims Adjudicator the Application, Application Summary, the Claimant's medical records, and any responding documentation provided by the Defendant.
- h. Within sixty (60) days of receipt of the materials referred to in subparagraph 50(g), the Claims Adjudicator shall decide, on a balance of probabilities, whether the Claimant was legally incapable during the Capacity Period, and shall forward their determination to the Claims Administrator.

- i. Upon receipt of a determination by the Claims Adjudicator under subparagraph 50(h), the Claims Administrator shall deliver the determination to the Claimant.
- j. If the Claims Adjudicator determines that a Claimant was legally incapable during the Capacity Period, the Application shall be an Approved Category 2 Application.

Part G: Calculating Compensation

51. A Claimant is eligible for compensation if they were a member of the Waitlist Class for at least six (6) months and their Award shall be calculated as follows:

- a. A Claimant determined to have been a member of the Waitlist Class for at least six (6) months shall be entitled to a common experience payment of \$5,000, subject to the possibility of a *pro rata* reduction in accordance with subparagraphs 57(a), 58(a), and 59(a).
- b. A Claimant determined to have been a member of the Waitlist Class for at least six (6) months shall be entitled to a further \$500 for each additional twelve (12) month duration as a member of the Waitlist Class, subject to the possibility of a *pro rata* reduction in accordance with subparagraphs 57(a), 58(a), and 59(a).

52. A Claimant is eligible for compensation if they were a member of the Institution Class or Nursing Home Class for at least three (3) months, and their Award shall be calculated as follows:

- a. A Claimant determined to have been a member of the Institution Class or Nursing Home Class for at least three (3) months shall be entitled to a common experience payment of \$15,000, subject to the possibility of a *pro rata* reduction in accordance with subparagraphs 57(a), 58(a), and 59(a).
- b. A Claimant determined to have been a member of the Institution Class or Nursing Home Class for at least three (3) months shall be entitled to a further \$1,500 for each additional twelve (12) month duration as a member of the Institution Class or Nursing Home Class, subject to the possibility of a *pro rata* reduction in accordance with subparagraphs 57(a), 58(a), and 59(a).

53. A Claimant is eligible for compensation if they were a member of the Hospital Class for at least one (1) month, calculated as follows:

- a. A Claimant determined to have been a member of the Hospital Class for at least one (1) month shall be entitled to \$1,500 for each whole month as a

member of the Hospital Class, subject to the possibility of a *pro rata* reduction in accordance with subparagraphs 57(a), 58(a), and 59(a).

54. For the avoidance of uncertainty, the compensation calculated under this Part may "stack", such that a Claimant may be eligible for compensation as a member of more than one Class.

Part H: Payment of Compensation Awards

55. Awards under this Compensation Protocol shall be paid in at least three stages:

- a. First, compensation payable in respect of Approved Category 1 Applications, which shall be payable from the Post-Limitation Fund;
- b. Second, compensation payable in respect of Approved Category 2 Applications, other than claims advanced for Special Proof Assessment, which shall be payable from the Pre-Limitation Fund;
- c. Third, compensation payable in respect of Approved Category 2 Applications determined by Special Proof Assessment, which shall be payable from the Special Proof Fund.

56. For greater clarity, a single Claimant may be considered to have both an Approved Category 1 Application and an Approved Category 2 Application, and may receive more than one payment.

57. Within thirty (30) days of the completion of determinations on all Applications in respect of Category 1 Durations, the Claims Administrator shall calculate the amounts awarded for Approved Category 1 Applications in accordance with Part G of this Compensation Protocol.

- a. If the total compensation awarded for all Approved Category 1 Applications exceeds the amount in the Post-Limitation Fund, then each Award shall be reduced on a *pro rata* basis.
- b. Upon determination of the amount to be paid to each Claimant with an Approved Category 1 Application, the Claims Administrator shall notify these Claimants as to the amount of their Awards, and shall pay such amounts.

58. Within thirty (30) days of the completion of determinations on all Applications in respect of Category 2 Durations (excluding claims advanced for Special Proof Assessment), the Claims Administrator shall calculate the amounts awarded for Approved Category 2 Applications in accordance with Part G of this Compensation Protocol.

- a. If the total compensation awarded for all Approved Category 2 Applications exceeds the amount in the Pre-Limitation Fund, then each Award shall be reduced on a *pro rata* basis.
 - b. Upon determination of the amount to be paid to each Claimant with an Approved Category 2 Application, the Claims Administrator shall notify these Claimants as to the amount of their Awards, and shall pay such amounts.
59. Within thirty (30) days of the completion of determinations on all claims advanced for Special Proof Assessments, the Claims Administrator shall calculate the additional amounts awarded for Approved Category 2 Applications in accordance with Part G of this Compensation Protocol.
 - a. If the total additional compensation awarded for Approved Category 2 Applications following Special Proof Assessments exceeds the amount in the Special Proof Fund, then each Award shall be reduced on a *pro rata* basis.
 - b. Upon determination of the amount to be paid to each Claimant with an Approved Category 2 Application based on a Special Proof Assessment, the Claims Administrator shall notify these Claimants as to the amount of their Awards, and shall pay such amounts.
60. If there are amounts remaining in the Post-Limitation Fund after compensation is distributed under paragraph 57, such amounts will be held back pending determination of all Applications in respect of Category 2 Durations.
61. If the aggregate compensation calculated under paragraph 58 exceeds the amount in the Pre-Limitation Fund (including the Additional Funds, if applicable), any residue of the Post-Limitation Fund will be applied toward payment of the Approved Category 2 Applications (excluding claims advanced for Special Proof Assessment) as is required to pay the Approved Category 2 Applications in full and the balance, if any, of the Post Limitation Fund shall be further held back pending determination of the claims advanced for Special Proof Assessment.
62. If there are funds remaining in the Pre-Limitation Fund (including the Additional Funds, if applicable) after compensation is distributed under paragraph 58, such amounts will be held back pending determination of the claims advanced for Special Proof Assessment.
63. If the aggregate compensation calculated under paragraph 59 exceeds the amount in the Special Proof Fund, any residue of the Post-Limitation Fund and the Pre-Limitation Fund (including the Additional Funds, if applicable) will be applied

toward payment of the Approved Category 2 Applications based on Special Proof Assessments.

64. If there are funds remaining after compensation is distributed under paragraphs 56-59, the Claims Administrator will make a further distribution to Approved Claimants, if economically feasible, on a *pro rata* basis, or as otherwise directed by the Plaintiff.
65. If the Claims Administrator determines that funds cannot be economically allocated among Approved Claimants, the Plaintiff shall seek Court approval for payment of the balance of funds to a community organization, agency, or charity which advocates for and/or supports people with disabilities in Nova Scotia.

Part I: Applications on Behalf of Deceased Class Members

66. An Application under this Compensation Protocol may be submitted or continued in respect of a deceased Class Member if the Class Member was alive as of May 4, 2022 and if the Application satisfies the requirements of this Part.
67. For greater clarity, no Application under this Compensation Protocol may be submitted in respect of a Class Member who died before May 4, 2022.
68. Payment if Deceased: Grant of Authority or the Like
 - a. If a Claimant has died after filing an Application or an Application is submitted in respect of a Class Member who died on or after May 4, 2022 (in either case a “**Deceased Claimant**”), the executor, administrator, trustee, or liquidator of such Deceased Claimant’s estate (the “**Estate Executor**”) may submit or continue an Application, as the case may be, in respect of the Deceased Claimant upon providing the Claims Administrator with the following, before the Claims Deadline:
 - i. An Application, if an Application was not submitted by such Deceased Claimant or in respect of the Deceased Claimant;
 - ii. Evidence that such Deceased Claimant is deceased and of the date on which such Deceased Claimant died; and
 - iii. Evidence in the following form identifying the Estate Executor as having the legal authority to receive compensation on behalf of the estate of the Deceased Claimant:

1. If the claim is based on a will or other testamentary instrument or on intestacy, a copy of a grant of probate or a grant and letters testamentary or other document of like import or a grant of letters of administration or other document of like import, purporting to be issued by any court or authority in Canada; or
 2. If the claim is based on a Quebec notarial will, an authenticated copy thereof.
- b. The Claims Administrator shall pay the Estate Executor any amounts to which the Deceased Claimant was entitled under this Compensation Protocol, with such payment made payable to "the estate of" such Deceased Claimant.

69. Payment if Deceased: No Grant of Authority or the Like

- a. If no Estate Executor has submitted or continued an Application pursuant to paragraph 68, then any relative of a Deceased Claimant (a "**Next of Kin Representative**") may submit or continue an Application, as the case may be, in respect of the Deceased Claimant. The Application will be for the benefit of the Deceased Claimant's Nearest Relative as defined in subparagraph 69(e). The Next of Kin Representative must submit to the Claims Administrator evidence:
- i. that the Next of Kin Representative is a relative of the Deceased Claimant;
 - ii. identifying the Deceased Claimant's heirs, including whether any heir is a minor or person incapable of managing their financial affairs;
 - iii. proving that the heirs were notified of the intention of the Next of Kin Representative to submit or continue an Application in respect of the Deceased Claimant, and
 - iv. confirming that no heir opposes the Next of Kin Representative submitting or continuing an Application,
- all in accordance with subparagraph 69(d) (in totality, a "**Next of Kin Claim**"), before the Claims Deadline.
- b. If more than one Next of Kin Claim has been submitted to the Claims Administrator in respect of a Deceased Claimant on or prior to the Claims

Deadline, the first Next of Kin Claim filed that meets all of requirements of this subparagraph 69 shall be accepted and all other Next of Kin Applications shall be denied.

- c. If an Application is submitted to the Claims Administrator by, or on behalf of, a Claimant who subsequently dies and no Estate Executor continues the Application and no one has initiated a Next of Kin Claim in accordance with subparagraph 69(a) at least thirty (30) days before the Claims Deadline, the Claims Administrator shall make reasonable efforts to send a notice to the last known addresses of the Deceased Claimant, any Estate Executor, if known, and any known heirs of such Deceased Claimant, advising of the process for continuing the Application on behalf of the Deceased Claimant. If no Estate Executor or Next of Kin Representative applies to the Claims Administrator to continue the Application in respect of the Deceased Claimant within ninety (90) days after the Claims Deadline, the claim of the Deceased Claimant shall be dismissed.
- d. In support of a Next of Kin Claim made pursuant to paragraph 69(a) of this Compensation Protocol, the Next of Kin Representative for the Deceased Claimant shall submit to the Administrator the following evidence, in each case in a form acceptable to the Claims Administrator:
 - i. A sworn declaration executed by the Next of Kin Representative, confirming that there is no Estate Executor for the estate of the Deceased Claimant and that no person has applied, or intends to apply, to be appointed the Estate Executor;
 - ii. An attestation signed by a licenced physician, licenced lawyer or licenced chartered professional accountant stating that they have known the Next-of-Kin Representative for at least 5 years and have no reason to believe that the information contained in the sworn declaration of the Next-of-Kin Representative is false.
 - iii. Proof of the relationship of such Next of Kin Representative to the Deceased Claimant in a form reasonably acceptable to the Claims Administrator;
 - iv. An attestation or declaration signed by the Next of Kin Representative, together with one other person who knew the Deceased Claimant personally:
 - 1. Identifying the Deceased Claimant's heirs and identifying any heir who is a minor or a person incapable of managing their own financial affairs and further identifying such minor's parents, legal custodians, or legal guardian, as the case may

be, or such person's representative under the ***Adult Capacity and Decision-making Act***,

2. Identifying the Deceased Claimant's Nearest Relative as defined in paragraph 69(e);
 3. Proof that the Next of Kin Representative has notified each of the Deceased Claimant's heirs of their intention to continue or make an Application; and
 4. Proof that no heir has objected to the Next of Kin Representative continuing or making an Application in respect of the Deceased Claimant.
- e. The "**Nearest Relative**" means the closest heir of the Deceased Claimant determined in accordance with the with the following priority list of heirs from closest to most distant:
- i. Surviving spouse or common-law partner;
 - ii. Children, including step-children;
 - iii. Grandchildren, including children of step-children;
 - iv. Parents;
 - v. Grandparents;
 - vi. Siblings; and
 - vii. Children of siblings, including step-children of siblings,

and where two or more people share the same priority, they shall collectively be the Nearest Relative, and each shall be entitled to an equal share of any compensation awarded by the Claims Administrator in respect of the Deceased Claimant.

- f. Any compensation payable in respect of an Application continued or brought by a Next of Kin Representative shall be paid to the Nearest Relative, and where the Nearest Relative or any one of them is a minor or person incapable of managing their financial affairs, that Nearest Relative's share of the compensation shall be paid as follows:
- i. In the case of a minor, the first \$10,000 shall be paid to the parent, guardian, or person with legal custody of the minor, and in the absence of a parent, legal guardian or person with legal custody to the Public Trustee and any amounts over \$10,000 shall be paid to the Public Trustee; and
 - ii. in the case of a person incapable of managing their financial affairs, to a representative appointed under the ***Adult Capacity and***

Decision-making Act, and in the absence of an appointed representative, to the Public Trustee.

- g. Prior to the payment of any Award to or on behalf of the Nearest Relative, the Nearest Relative, the parent, guardian or person with custody of the Nearest Relative or the representative of the Nearest Relative, as the case may be shall sign a release and indemnity in a form satisfactory to the Claims Administrator and the Defendant, and the Claims Administrator will pay such person the Nearest Relative's share of the amount to which the Deceased Claimant would have been entitled under the Settlement Agreement had they survived and the estate of the Deceased Claimant shall have no further claim against the Settlement Funds.

Part J: Applications by Persons Under Disability

70. If a Class Member is or becomes someone who lacks capacity as defined in the *Adult Capacity and Decision-making Act*, S.N.S. 2017, c. 4, the person who is authorized to act on behalf of the Claimant by a court or other authority of competent jurisdiction (the "**Personal Representative**") may submit or continue an Application on behalf of a Claimant.

71. Any Award owing to a Claimant who lacks capacity shall be paid as follows:

- a. In the case of a minor, the first \$10,000 shall be paid to the parent, guardian, or person with legal custody of the minor, and in the absence of a parent, legal guardian or person with legal custody to the Public Trustee and any amounts over \$10,000 shall be paid to the Public Trustee; and
- b. in the case of a person incapable of managing their financial affairs, to a representative appointed under the ***Adult Capacity and Decision-making Act***, and in the absence of an appointed representative, to the Public Trustee.

Part K: General

72. The Claims Administrator shall ensure that Class Members may submit Applications via online form, fillable PDF, by email, by fax, and by any other method to which the parties agree in consultation with the Claims Administrator.

73. Except as provided for herein, the decisions of the Claims Administrator and Claims Adjudicator are final and are not subject to further review. The Claims Administrator and Claims Adjudicator are not required to give reasons for any decision, unless requested by the Plaintiff or Defendant.

74. Any requirement that the Claims Administrator give, provide or deliver something to a Claimant or notify or advise a Claimant, shall be satisfied by the Claims Administrator giving, providing or delivering the thing or notice to the Claimant at the address, virtual or physical as the case may be, provided by the Claimant in their Application, and for the purpose of this Compensation Protocol and any deadlines therein, the date of giving, providing, delivery, notifying or notice, and any like terms, by the Claims Administration shall be the date that the Claims Administrator states in the correspondence or other document giving, providing or delivering such thing or notice, notwithstanding that the Claimant may have received such thing or notice on a later date.