

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

Date

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

NOVA SCOTIA DEPARTMENT OF JUSTICE

Date

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

SCHEDULE "A" – COMPENSATION PROTOCOL