

**Jane Doe (#7), John Doe (#10) and John Doe (#11) v. Her Majesty in Right of
Newfoundland and Labrador**

SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

GENERAL DIVISION File No. 2017 01G 2568 CP

Proceeding Under *The Class Actions Act*, S.N.L. 2001, c. C-18.1

SETTLEMENT AGREEMENT

Made as of March 28, 2022

Between

JANE DOE (#7),

JOHN DOE (#10) AND JOHN DOE (#11)

(herein the "**Plaintiffs**")

and

Her Majesty in Right of Newfoundland and Labrador

(herein the "**Defendant**")

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RECITALS

WHEREAS the Plaintiffs commenced the Action by issuing the Statement of Claim on July 7, 2017;

AND WHEREAS the Plaintiffs filed an Amended Statement Claim on September 10, 2019;

AND WHEREAS the Statement of Claim pleads that the Defendant owed and was in breach of non-delegable, fiduciary, statutory and common law duties to the Class Members in relation to the operation, management, supervision, administration, control, and maintenance of youth secure custody facilities (defined below as the “Institutions”);

AND WHEREAS the Statement of Claim and the Amended Statement of Claim plead that the Province is liable for sexual abuse inflicted on residents of the Institutions by staff, volunteers, and other residents;

AND WHEREAS the Supreme Court of Newfoundland and Labrador certified the Action as a class proceeding in an order dated October 1, 2019, on consent of the Parties;

AND WHEREAS the Defendant filed a Statement of Defence on January 31, 2020 denying liability;

AND WHEREAS the Parties have contemplated in this Settlement Agreement the resolution of the claims of all Class Members in connection with sexual misconduct at the Institutions during the Class Period;

AND WHEREAS the Defendant denies liability and does not admit, by the execution of this Settlement Agreement or otherwise, any allegation of unlawful or wrongful conduct and otherwise denies all liability under any pleaded or possible cause of action and asserts that it has complete defences in respect of the merits of the Action;

AND WHEREAS the Plaintiffs brought an application for summary trial to obtain judgment on certain common issues, and the Defendant brought a cross-application for summary trial to dismiss the Action in its entirety;

AND WHEREAS the Parties, through their counsel, engaged in arm’s-length settlement negotiations with a view to resolving the Action;

AND WHEREAS the Parties have reached this Settlement and they have entered into this Settlement Agreement, which embodies all of the terms and conditions of the Settlement between the Defendant and the Plaintiffs, both individually and on behalf of the Class Members, subject to the approval of the Court;

AND WHEREAS the Defendant is entering into this Settlement Agreement in order to achieve a final resolution of all claims by Class Members in connection with sexual misconduct at the Institutions during the Class Period, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

AND WHEREAS Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Action, including the time, risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Class Members;

AND WHEREAS the Parties wish to and hereby finally resolve the Action as against the Defendant, together with any parallel claims against the Defendant for vicarious liability, all without admission of liability, and without any admission by the Defendant that Class Members are entitled, at law, to any compensation;

AND WHEREAS the Parties acknowledge that the Settlement is contingent on approval by the Court as provided for in this Settlement Agreement, and the Parties entered into the Settlement Agreement with the express understanding that this Settlement shall not derogate from the respective rights of the Parties relating to the Action in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

AND WHEREAS the Plaintiffs and the Defendant agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against, the Defendant, or evidence of the truth of any of the Plaintiffs' allegations, which allegations are expressly denied by the Defendant;

AND WHEREAS the parties concluded a Settlement Agreement dated March 10, 2022 and this Settlement Agreement agreement supersedes and replaces that earlier agreement;

NOW THEREFORE, in consideration of the covenants, agreements and releases set out in this Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action shall be settled and dismissed with prejudice, subject to the approval by the Court, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement, including the Recitals hereto:

- (1) **“Action”** means the action styled Jane Doe (#7), John Doe (#10) and John Doe (#11) v. Her Majesty in Right of Newfoundland and Labrador, and bearing Supreme Court of Newfoundland and Labrador General Division File No. 2017 01G 2568 CP, and pleaded in the Statement of Claim and the Amended Statement of Claim;
- (2) **“Administration Costs”** means the fees and disbursements of the Claims Administrator, inclusive of all applicable taxes.
- (3) **“Amended Statement of Claim”** means the Amended Statement of Claim in the Action that the Plaintiffs filed on September 10, 2019;
- (4) **“Claims Period”** means the period ending twelve (12) months after the Effective Date;
- (5) **“Claims Administrator”** means Trilogy Class Action Services;
- (6) **“Class”** and **“Class Members”** means all persons, except Excluded Persons, who were subjected to misconduct of a sexual nature by a Delegate or a fellow resident of the Institutions while the Class Member was resident at, or attended for any period of time, one or more of the Institutions during the Class Period. The Class includes the Plaintiffs;
- (7) **“Class Counsel”** means Morris Martin Moore Lawyers of Mount Pearl;
- (8) **“Class Counsel Disbursements”** means the disbursements incurred by Class Counsel in the prosecution of the Action, as approved by the Court, inclusive of any applicable taxes, interest, or charges, but less any amounts paid by the Defendant for the distribution of notice to Class Members;
- (9) **“Class Counsel Fees”** means the legal fees of Class Counsel, as approved by the Court, inclusive of any applicable taxes, interest, or charges;

- (10) “**Class Period**” means May 1, 1973 to June 28, 1989;
- (11) “**Class Actions Act**” means the *Class Actions Act*, S.N.L. 2001, c. C-18.1;
- (12) “**Court**” means the Supreme Court of Newfoundland and Labrador General Division;
- (13) “**Delegates**” mean the officers, employees, servants, contractors, agents, and volunteers of, or affiliated with, the Defendant, including but not limited to the officers, employees, servants, contractors, agents, and volunteers of the Institutions;
- (14) “**Distribution Protocol**” means the protocol for the distribution of the Net Settlement Funds that is approved by the Court. The Parties’ proposed form of Distribution Protocol is attached hereto as Schedule “A”. The costs of the Distribution Protocol will be paid from the Settlement Funds.
- (15) “**Effective Date**” means the date upon which the Court order approving the Settlement Agreement becomes a Final Order;
- (16) “**Excluded Persons**” means:
- (a) all persons who have executed a release to the benefit of the Defendant for any of the claims asserted in the Action;
 - (b) all persons who, as of the date of the Certification Order, did not make their primary residence in the Province of Newfoundland and Labrador, and who did not opt into the Action in accordance with the Certification Order;
 - (c) all persons who opted out of the Action in accordance with the Certification Order; and
 - (d) all persons who died before March 10, 2022.
- (17) “**Execution Date**” means the date on which the last of the Parties signs this Settlement Agreement;
- (18) “**Final Order**” means the time to appeal an order has expired without any appeal being commenced, or if an appeal was commenced, all appeals have been resolved and any time period for a further appeal has expired without any appeal being commenced;

(19) **“Honoraria”** means the amount, if any, up to \$25,000, inclusive of taxes and interest, approved by the Court for payment by the Defendant to each of the Plaintiffs Jane Doe (#7), John Doe (#10), and John Doe (#11) for their services to the Class as representative plaintiffs;

(20) **“Institutions”** means the following facilities, which housed minors and were operated by the Defendant in the Province of Newfoundland and Labrador during part or all of the Class Period:

- (a) the facility known as the “Whitbourne Training School” and also known as, *inter alia*, the “Whitbourne Youth Center,” “the Boys’ Home,” “the Boys’ Home and Training School,” and “the Whitbourne School for Boys” and which was, at different times, located at the Town of Whitbourne, in the Province of Newfoundland and Labrador;
- (b) the facility known as “the Pleasantville Training School,” and also known as, *inter alia*, “the Girl’s Home,” “the Girls’ Home and Training School,” and “the Pleasantville School for Girls” and which was, at different times located at the Town of Torbay and the City of St. John’s, in the Province of Newfoundland and Labrador; and
- (c) the facility known as the “St. John’s Youth Centre,” which was located in the City of St. John’s, in the Province of Newfoundland and Labrador.

(21) **“Net Settlement Funds”** means the Settlement Funds less Class Counsel Fees, Class Counsel Disbursements, Administration Costs, costs of the Notice Plan that are not paid out of the Notice Administration Fund, costs of the Distribution Protocol, and any other expenses that are approved by the Court.

(22) **“Notice”** means the form or forms of notice, substantially as agreed to by the Parties and approved by the Court, which inform(s) the Class Members of:

- (a) the principal elements of the Settlement;
- (b) the date and location of the hearing of the Settlement Approval Application;
- (c) the Class Counsel Fees and Class Counsel Disbursements to be requested by Class Counsel; and
- (d) the process for objecting to the Settlement should any Class Member(s) wish to do so.

(23) **“Notice Administration Fund”** means a maximum of \$250,000, inclusive of taxes and interest, that the Defendant will reimburse Class Counsel for the reasonable costs of implementing the Notice Plan;

(24) **“Notice Approval Application”** means the application for an Order:

- (a) approving the Notice;
- (b) approving the Notice Plan; and
- (c) such other relief as the Parties may request.

(25) **“Notice Plan”** means the manner in which the Court orders that Class Counsel are to distribute Notice and Settlement Approval Notice and it shall constitute adequate notice to Class Members of the hearing of the Settlement Approval Application and the approval of the Settlement. The Parties’ proposed Notice Plan is attached hereto as Schedule "B". The costs of the Notice Plan will be paid first from the Notice Administration Fund, and thereafter as Settlement Administration Expenses.

(26) **“Parties”** means the Plaintiffs and the Defendant, each being a party to this Settlement Agreement;

(27) **“Released Claims”** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, representative or otherwise in nature, whether personal or subrogated, damages of any kind including compensatory, punitive or other damages, whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers’ fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or at equity, that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct, at any time, relating to the subject matter of the Action, or which could have been alleged in respect of the subject matter in the Action, including, without limitation, any such claims which have been asserted, or could have been asserted, directly or indirectly, as a result of or in connection with any sexual misconduct related to the Institutions during the Class Period, directly or indirectly, including claims for vicarious liability, or any concealment of such claims. The Released Claims do not include the Defendant’s obligations to make payment under this Settlement Agreement;

(28) **“Releasees”** means, jointly and severally, individually and collectively, the Defendant and its respective present and former, direct and indirect, ministries, departments, divisions, affiliates, Delegates, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, employees, agents, employed or retained lawyers, servants and representatives; and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing;

(29) **“Releasors”** means, jointly and severally, individually and collectively, the Plaintiffs and the Class Members and their respective successors, heirs, executors, administrators, trustees, assigns, and any person entitled to claim damages as a family member of any of the foregoing;

(30) **“Settlement”** means the settlement provided for in this Settlement Agreement;

(31) **“Settlement Agreement”** means this agreement, including the Recitals hereto;

(32) **“Settlement Approval Application”** means the application to the Court for an order:

- (a) approving the Settlement;
- (b) approving the manner of distribution of the Settlement Funds;
- (c) dismissing the Action with prejudice and without costs;
- (d) determining the amount of Class Counsel Fees and Class Counsel Disbursements payable;
- (e) determining the amount and recipient(s) of the Honoraria, if any; and
- (f) such other relief as the Court may deem just.

(33) **“Settlement Approval Notice”** means the form or forms of notice, substantially as approved by the Court, which inform(s) the Class Members of:

- (a) the principal elements of the Settlement;
- (b) the manner in which they can make a claim on the Net Settlement Funds;
- (c) the Claims Period and the deadline to make a claim on the Net Settlement Funds;
- (d) the contact information of Class Counsel.

The Parties shall agree on the forms of Settlement Approval Notice, subject to Court approval, and failing agreement the Court will order the forms of Settlement Approval Notice;

(34) **“Settlement Funds”** means \$12,500,000, inclusive of interest, taxes, and any other charges;

(35) **“Statement of Claim”** means the statement of claim issued by the Court in the Action on July 7, 2017.

(36) **“Trust Funds”** means the Settlement Funds, the Notice Administration Fund, and \$75,000 for the payment of any Honoraria, all of which was paid by the Defendant to Class Counsel and held in trust by Class Counsel to be distributed in accordance with this Settlement Agreement.

SECTION 2– PAYMENT AND ADMINISTRATION

2.1 The Settlement Funds

(1) Class Counsel acknowledge that the Defendant has paid the Trust Funds to Class Counsel, in trust, to be distributed in accordance with this Settlement Agreement.

2.2 No Further Payments

(1) Subject to the Defendant’s obligations in furtherance of the approval and implementation of this Settlement Agreement, as set out herein, the Releasees shall have no obligation to pay any amount in addition to the Trust Funds, for any reason, including pursuant to or in furtherance of this Settlement Agreement.

2.3 Reversion

(1) The Trust Funds will automatically revert to the Defendant in accordance with s. 7.4 of this Settlement Agreement without any further order of the Court.

SECTION 3– NOTICE APPROVAL APPLICATION

3.1 Materials

(1) As soon as reasonably practicable after the Execution Date, Class Counsel will bring the Notice Approval Application before the Court.

(2) The Notice Approval Application shall seek approval of the forms of Notice agreed to by the Parties and approved by the Court.

3.2 Where Consent Required

(1) Upon agreement by the Parties to the terms of a draft order to be proposed to the Court, the Defendant shall consent to the Notice Approval Application for the purposes of implementing the Settlement.

(2) If this Settlement is not approved by the Court or it is terminated in accordance with its terms, the Parties shall consent to an order of the Court vacating and setting aside any relief granted by the Court on the Notice Approval Application.

3.3 Costs

(1) Each Party shall bear its own costs of the Notice Approval Application.

3.4 Pre-Application Confidentiality

(1) Until the Notice Approval Application is filed with the Court, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of the Parties, except as required for the purposes of financial reporting, communications with insurers and auditors, and/or the preparation of financial records (including tax returns and financial statements), as necessary, or as otherwise required by law.

SECTION 4– NOTICE OF SETTLEMENT APPROVAL HEARING

4.1 Manner of Distribution of Notice

(1) The Notice shall be distributed substantially in accordance with the Notice Plan as soon as reasonably practicable following the issuance of the order allowing the Notice Approval Application.

4.2 Funding of Notice

(1) The cost of implementing the Notice Plan and disseminating the Notice will be funded first from the Notice Administration Fund, and thereafter from the Settlement Fund. If any funds remain in the Notice Administration Fund following the implementation of the Notice Plan, said funds shall revert to the Defendant immediately and without further order of the Court.

SECTION 5 – SETTLEMENT APPROVAL

5.1 The Settlement Approval Application

(1) As soon as reasonably practicable, Class Counsel shall bring the Settlement Approval Application.

5.2 Where Consent Required

(1) The Parties shall consent to the approval of the Settlement and the dismissal of the Action without costs. The Parties agree that the Defendant's consent shall not be taken to be an admission of liability or legal responsibility for the pleaded damages and losses.

(2) Class Counsel shall propose the amount of the Class Counsel Fees, Class Counsel Disbursements, and Honoraria to be awarded by the Court on the Settlement Approval Application. The Defendant shall not oppose Class Counsel's request for Class Counsel Fees, Class Counsel Disbursements, and Honoraria, as approved by the Court.

5.3 Form of Order Approving Settlement

(1) On the Application for Settlement Approval the Parties shall file with the Court a draft order or draft orders giving effect to the Settlement, and the Court's order approving the Settlement shall reflect this Settlement Agreement.

5.4 Date Upon Which Settlement Is Final

(1) This Settlement shall become final on the Effective Date. Notwithstanding the finality of the Settlement, the Parties may agree to amend the Settlement after the Effective Date, but such amendment will only be effective upon approval by the Court.

5.5 Costs

(1) Each Party shall bear its own costs of the Settlement Approval Application and any other application, if necessary, contemplated in this section.

5.6 Dismissal of Action

(1) On the Effective Date Class Counsel shall take such steps as may be required by the Court to effect the dismissal of the Action, including having the Court's order dismissing the Action issued and entered by the Court.

SECTION 6– NOTICE OF SETTLEMENT APPROVAL

6.1 Manner of Distribution of Notice of Settlement Approval

(1) The parties shall make reasonable efforts to agree on the forms of Notice of Settlement Approval, subject to Court approval. Failing agreement, the Court shall order the form of Notice of Settlement Approval.

(2) The Notice of Settlement Approval shall be distributed in accordance with the Notice Plan, attached hereto as Schedule "B", as soon as reasonably practicable following the issuance of the order approving the Settlement.

6.2 Funding of Notice of Settlement Approval

(1) The cost of implementing the Notice Plan and disseminating the Settlement Approval Notice will be funded first from the Notice Administration Fund, and thereafter from the Settlement Fund. If any funds remain in the Notice Administration Fund following the implementation of the Notice Plan, said funds shall revert to the Defendant immediately and without further order of the Court.

SECTION 7 – DISTRIBUTION OF SETTLEMENT FUNDS

7.1 Distribution of Settlement Funds

(1) Class Members shall be eligible to claim on the Net Settlement Funds in accordance with the Distribution Protocol, attached as Schedule "A", which assesses the strength of Class Members' claims and the magnitude of their damages relative to other Class Members.

(2) The costs of the Distribution Protocol, inclusive of all applicable taxes, will be paid out of the Settlement Funds and the Defendant will not be liable for these costs.

(3) The Parties acknowledge that the allocation of compensation pursuant to the Settlement is without any admission of liability by the Defendant, and without any admission by the Defendant that Class Members are entitled, at law, to compensation or payment for any of the losses and damages alleged in the Action.

7.2 Defendant's Participation in the Distribution Protocol

(1) In accordance with the Distribution Protocol, the Defendant shall make reasonable efforts to confirm whether any person who claims on the Net Settlement Amount in accordance

with the Distribution Protocol was resident at, or attended for any period of time, one of the Institutions during the Class Period.

(2) Other than the Defendant's obligations under s. 7.2(1), none of the Releasees shall have any obligation to assist or participate in the distribution of the Notice or the Settlement Approval Notice, in identifying or communicating with Class Members, administering the Settlement Agreement, or in producing any documents regarding Class Members or the subject matter of the Action.

7.3 Class Counsel's Fees and Disbursements and the Honoraria

(1) Class Counsel shall seek approval of Class Counsel Fees, Class Counsel Disbursements, and the Honoraria on the Settlement Approval Application.

(2) Class Counsel Fees and Class Counsel Disbursements shall be paid out of the Settlement Funds as ordered by the Court.

(3) Any Honoraria ordered by the Court shall be paid out of the Trust Funds to a maximum of \$75,000.

(4) Any order in respect of Class Counsel Fees, Class Counsel Disbursements, or Honoraria, or any appeal from any order relating thereto or any modification thereof, shall not operate to terminate or cancel this Settlement Agreement or affect or delay the Settlement of the Action as provided herein. Neither the Settlement, nor approval of the Settlement Agreement, depends on the approval of any Class Counsel Fees, Class Counsel Disbursements, or Honoraria in any amount.

7.4 Mechanics of Reversion to Defendant

(1) If this Settlement Agreement is terminated in accordance with s. 11.1, or the Court has not allowed the Settlement Approval Application within 1 year of the Effective Date, Class Counsel shall immediately pay the Trust Funds to the Defendant, less any amount spent on the reasonable costs of distributing the Notice in accordance with the Notice Plan.

(2) If any Honoraria ordered by the Court are less than \$75,000 in the aggregate, Class Counsel shall pay the difference from the Trust Funds to the Defendant on the Effective Date.

(3) If the cost of implementing the Notice Plan is less than \$250,000 in the aggregate, Class Counsel shall pay the difference from the Trust Funds to the Defendant within 60 days of the Effective Date.

(4) If the Settlement Approval Application is allowed and any of the Settlement Funds have not been distributed within 1 year of the conclusion of the Claims Period, such funds shall automatically revert to the Defendant without further order of the Court. Class Counsel shall pay such funds to the Defendant from the Trust Funds if Class Counsel continue to hold them in trust, or such funds shall be paid to the Defendant by any other party that has possession of the Settlement Funds, including but not limited to the Claims Administrator.

SECTION 8- STEPS TO EFFECTUATE SETTLEMENT AGREEMENT

8.1 Reasonable Efforts

(1) The Parties shall take all reasonable steps to effectuate this Settlement Agreement and to secure its approval and the prompt, complete and final dismissal with prejudice of the Action.

(2) The Parties agree that, if necessary to give effect to this Settlement Agreement in provinces outside of Newfoundland and Labrador, they will co-operate in preparing and concluding such further documentation and agreements using language as required to effect the outcome of the Settlement Agreement, and applying to the Court for directions as necessary.

(3) Each Party shall bear its own costs in relation to any steps contemplated in or taken in accordance with this section.

8.2 Mechanics of Administration

(1) Except to the extent provided for in this Settlement Agreement, including the Schedules hereto, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by agreement between the Parties, each acting reasonably, or by the Court on applications brought by any Party where necessary.

8.3 Action in Abeyance

(1) Until the Parties have obtained a Final Order approving this Settlement Agreement or this Settlement Agreement is terminated in accordance with its terms, whichever occurs first, the Parties agree to hold in abeyance all other steps in the Action other than the Notice Approval Application and the Settlement Approval Application contemplated by this Settlement

Agreement and such other matters required to implement the terms of this Settlement Agreement, unless otherwise agreed in writing by the Parties.

SECTION 9 – RELEASES AND DISMISSALS

9.1 Release of the Releasees

(1) Upon the Effective Date, and in consideration of payment of the Trust Funds and for other valuable consideration set forth in this Settlement Agreement, the sufficiency of which is acknowledged by the Plaintiffs and Class Counsel, the Releasors forever and absolutely release, relinquish and forever discharge the Releasees from the Released Claims in relation to the subject matter of this Action, that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, excepting the obligations created by this Settlement Agreement. The Releasors' release of the Released Claims shall be effective regardless of whether any Releasor receives any distribution of the Net Settlement Funds.

(2) The Plaintiffs, the Class Members, and Class Counsel acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is the intention of the Plaintiffs and the Class Members, on their own behalf and on behalf of the Releasors, to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of new or different facts pertaining to the subject matter of this Action, provided that, this section will provide no defence if the Plaintiffs prove that the Defendant obtained the Settlement by fraud.

9.2 No Further Claims

(1) Upon the Effective Date, neither the Releasors nor Class Counsel shall now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Newfoundland and Labrador or elsewhere, on his, her, their, or its own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand against the Releasees, or any other person who may claim contribution or indemnity, or other claims over, relief from the Releasees, whether pursuant to statute or at common law or equity, in respect of any Released Claim.

(2) Upon the Effective Date, each Class Member shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her, their or its Released Claims.

9.3 Material Term

(1) Without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms, the releases contemplated in this section shall be considered a material term of the Settlement Agreement, and the failure of the Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to s. 11 of the Settlement Agreement.

SECTION 10 – EFFECT OF SETTLEMENT

10.1 No Admission of Liability or Concessions

(1) The Plaintiffs and the Defendant expressly reserve all of their rights if the Settlement is not approved, is terminated or otherwise fails to take effect for any reason.

(2) This Settlement Agreement, whether or not it is implemented, anything contained in it, any and all negotiations, discussions, documents, and communications associated with this Settlement Agreement, and any action taken to implement this Settlement Agreement, shall not be deemed, construed, or interpreted to be:

- (a) an admission or concession by any Defendant of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made or which could have been made against it in the Action, or of the application of any of the pleaded statutes to any of the claims made in the Action, or of the entitlement of any Class Member to compensation or payment for any of the losses and damages alleged in the Action; or
- (b) an admission or concession by the Plaintiffs, Class Counsel or the Class of any weakness in the claims of the Plaintiffs and the Class, or that the consideration to be given hereunder represents the amount that could or would have been recovered from the Defendant or any one of them after the summary trial or trial of the Action.

10.2 Agreement Not Evidence or Presumption

(1) This Settlement Agreement, whether or not it is implemented, and anything contained herein, and any and all negotiations, discussions, documents, communications, and proceedings associated with this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, quasi-criminal, criminal or administrative action or disciplinary investigation or proceeding in any jurisdiction:

- (a) against the Defendant, as evidence, or a presumption of a concession or admission of anything set out in s. 10.1(2)(a); or
- (b) against the Plaintiffs, Class Counsel, or the Class, as evidence, or a presumption, of a concession or admission of anything set out in s. 10.1(2)(b).

(2) Notwithstanding s. 10.2(1), this Settlement Agreement may be referred to or offered as evidence to obtain the orders or directions from the Court contemplated by this Settlement Agreement, in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as may be necessary, or as otherwise required by law.

SECTION 11 – TERMINATION

11.1 Right of Termination

- (1) In the event that:
- (a) the Court declines to approve this Settlement Agreement or any material part hereof and the refusal becomes a Final Order;
 - (b) the Court issues an order approving this Settlement Agreement that is materially inconsistent with the terms of the Settlement Agreement; or
 - (c) an Order approving this Settlement Agreement is reversed on appeal and the reversal becomes a Final Order;

the Plaintiffs and the Defendant shall each have the right to terminate this Settlement Agreement by delivering a written notice within thirty (30) days following an event described above, subject to the Parties using best efforts and good faith to attempt to resolve any issues in furtherance of resolution of the Action on such modified terms as may be required to obtain the Court's approval, except that the Defendant shall have no

obligation to negotiate any increase to any payments set out in this Settlement Agreement.

- (2) Any order, ruling or determination made or rejected by the Court with respect to Class Counsel Fees, Class Counsel Disbursements, Honoraria, or the recipient of the Settlement Funds shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide a basis for the termination of this Settlement Agreement.
- (3) Except as provided for in ss. 11.1(2) and 11.4(2), if the Plaintiffs or the Defendant exercise the right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

11.2 Steps Required on Termination

- (1) If this Settlement Agreement is terminated after the Court has heard or decided any application in the settlement approval process, the Defendant or the Plaintiffs shall, as soon as reasonably practicable after termination, bring a joint application to the Court for orders:
 - (a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions of those sections listed in ss. 11.1(2) and 11.4(2); and
 - (b) setting aside and declaring null and void and of no force or effect, *nunc pro tunc*, all prior orders or judgments sought from and entered by the Court in accordance with the terms of this Settlement Agreement.
- (2) Subject to s. 11.4(2), the Parties shall consent to the order(s) sought in any application made under s. 11.2(1).

11.3 Notice of Termination

- (1) If this Settlement Agreement is terminated, a notice of the termination will be given to the Class Members, the form and content of which notice is to be agreed upon by the Parties and approved by the Court, or failing that, as ordered by the Court.
- (2) The notice of termination, if necessary, shall be distributed in a manner agreed upon by the Parties and approved by the Court, or failing that, as ordered by the Court.
- (3) The Parties shall agree on payment of the costs of distributing any notice of termination, failing which the costs shall be paid as ordered by the Court.

11.4 Effect of Termination

- (1) In the event this Settlement Agreement is terminated in accordance with its terms:
 - (a) the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided for herein;
 - (b) the Parties will cooperate in seeking to have all prior orders or judgments sought from and entered by the Court in accordance with the terms of this Settlement Agreement set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise;
 - (c) this Settlement Agreement will have no further force or effect and no effect on the rights of the Parties except as specifically provided for herein; and
 - (d) this Settlement Agreement will not be introduced into evidence or otherwise referred to in any litigation against the Defendant.
- (2) Notwithstanding the provisions of s. 11.2, if this Settlement Agreement is terminated, the provisions of ss. 3.3, 5.5, 10.1, 10.2, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 12.8, 12.9, 12.10, 12.12, 12.13, 12.14, 12.15, 12.16, and the definitions applicable thereto (but only for the limited purpose of the interpretation of those sections), shall survive termination and shall continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

11.5 Disputes Relating to Termination

- (1) If there is a dispute about the termination of this Settlement Agreement, the Parties agree that the Court shall determine the dispute on an application made by a Party or Parties on notice to the other Party or Parties.

11.6 Handling of Confidential Information in the Event of Termination

- (1) In the event of a valid termination, it is understood and agreed that all documents and information exchanged by the Parties during the settlement process are subject to settlement privilege, except to the extent that the documents or information were, are or become publicly available.
- (2) In the event of termination, within thirty (30) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Defendant or

containing or reflecting information derived from such documents for the purposes of implementing this Settlement. Nothing contained in this section shall be construed as requiring Class Counsel to destroy any of their work product. However, any documents or information provided by the Defendant in connection with the negotiation, administration and termination of this Settlement Agreement may not be disclosed to any person in any manner, or used, directly or indirectly, by Class Counsel or any other person in any way for any reason, including the prosecution of the Action, without the express prior written permission of the Defendant. Class Counsel shall take reasonable steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel that discloses such documents and information.

(3) Nothing in this Settlement Agreement shall be construed as releasing any Party from its deemed undertaking in respect of documents produced on discovery, and the Parties acknowledge that their deemed undertaking remains in effect.

SECTION 12 – MISCELLANEOUS

12.1 Applications for Directions

(1) Any of the Parties may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All applications contemplated by this Settlement Agreement shall be on notice to the Parties.

12.2 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement;
- (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” “hereto,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement; and

- (c) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

12.3 Computation of Time

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Schedule D, the act may be done on the next day that is not a holiday.

12.4 Ongoing Jurisdiction

(1) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement.

12.5 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of Newfoundland and Labrador and the laws of Canada applicable therein.

12.6 Severability

(1) Any provision hereof that is held to be inoperative, unenforceable or invalid shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

12.7 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior

obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein, subject to s. 12.15(1)(d).

12.8 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of the Parties, and Court approval is required for any such modification or amendment after the Settlement Agreement has been approved by the Court.

12.9 Binding Effect

(1) If the Settlement is approved by the Court and the order approving the Settlement becomes a Final Order, this Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Class Members, the Defendant, the Releasees and the Releasors or any of them, and all of their respective heirs, executors, predecessors, successors, administrators, trustees, and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every obligation owed to the Defendant shall benefit all Releasees.

12.10 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

12.11 Survival

(1) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

12.12 Negotiated Agreement

(1) This Settlement Agreement and the underlying Settlement have been the subject of arm's-length negotiations and discussions among the Parties and counsel. Each of the Parties has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement

Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

12.13 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.*

12.14 Recitals

(1) The recitals and schedules to this Settlement Agreement are true, constitute material and integral parts hereof and are fully incorporated into, and form part of, this Settlement Agreement.

12.15 Acknowledgements

- (1) Each Party hereby affirms and acknowledges that:
- (a) they or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has reviewed this Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to them or the Party's representative by their counsel;
 - (c) they or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
 - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement, except the Parties rely on each other's representation that they complied with their obligations to make documentary production in the Action.

12.16 Authorized Signatures

(1) Each of the undersigned represents that they are fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

12.17 Notice

(1) Any notice, instruction, application for court approval or application for directions or court orders sought in connection with this Settlement Agreement or any other report or document to be given by any Party to any other Party shall be in writing and delivered by email, facsimile or letter by overnight delivery to:

For the Plaintiffs, the Class and Class Counsel:

Morris Martin Moore

Lawyers

184 Park Avenue

Mount Pearl, NL A1N 1K8

Lynn Moore/ Andrew Martin/James Locke

Tel: (709) 747-0077

Email: lmoore@mmmlawyers.com

For the Defendant:

Department of Justice and Public Safety

4th Floor, East Block Confederation Building

P.O. Box 8700

St. John's, NL A1C 4J6

Don Anthony, Q.C. and David Rodgers

(709) 729-6402

Email: donanthony@gov.nl.ca

and

McCarthy Tétrault LLP

Barristers and Solicitors

66 Wellington Street West, Suite 5300

Toronto, ON M5K 1E6

Michael Rosenberg

Tel: (416) 601-7831

Email: mrosenberg@mccarthy.ca

IN WITNESS OF WHICH the Parties and Class Counsel have executed this Settlement Agreement this 28th day of March, 2022.

The Plaintiffs on their own behalf and on behalf of the Class, by their counsel

Name of Authorized Signatory: Andrew J. Martin

Signature of Authorized Signatory: _____
Class Counsel on behalf of the Plaintiffs

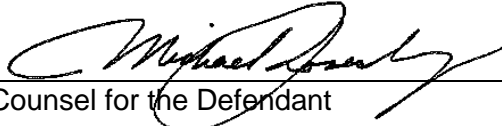
Class Counsel

Name of Authorized Signatory: Andrew J. Martin

Signature of Authorized Signatory: _____
Class Counsel

The Defendant, by its counsel

Name of Authorized Signatory Michael Rosenberg

Signature of Authorized Signatory 
Counsel for the Defendant

**SCHEDULE "A"
DISTRIBUTION PROTOCOL**

2017 01G 2568 CP

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

BETWEEN:

JANE DOE (#7), ~~JOHN DOE (#9)~~, (Discontinued)

JOHN DOE (#10) AND JOHN DOE (#11)

PLAINTIFFS

AND:

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND
AND LABRADOR**

DEFENDANT

Brought under the Class Actions Act, S.N.L. 2001, c. C-18.1

DISTRIBUTION PROTOCOL

1. PURPOSE

The Purpose of this Distribution Protocol is to provide for the distribution of the Net Settlement Funds to Abuse Claimants.

2. DEFINITIONS

All defined terms in the Settlement Agreement are applicable to the Distribution Protocol. In addition, the following definitions apply in the Distribution Protocol.

2.1 Defined Terms

- 2.1.1** “Abuse Claim” means a completed Claim Form.
- 2.1.2** “Abuse Claimant” means a person who submits a Claim Form to the Claims Administrator during the Claims Period.
- 2.1.3** “Abuse Claims Reviewer” or “ACR” means the person, or designee of such person, who is appointed by the Claims Administrator to administer the Distribution Protocol. The Claims Administrator has appointed Rhonda Fiander, R.S.W., M.S.W, of Conception Bay South, Newfoundland and Labrador, as the Abuse Claims Reviewer, subject to removal and replacement in accordance with the Distribution Protocol.
- 2.1.4** “Claim Form” means either a Track 1 Claim Form or a Track 2 Claim Form.
- 2.1.5** “Sexual Abuse” means non-consensual conduct of a sexual nature perpetrated by a Delegate or another resident of an Institution, which occurred while the Abuse Claimant was resident at, or attended for any period of time, one or more of the Institutions, and which violated the sexual integrity of the Abuse Claimant, including sexual battery and sexual assault. Sexual Abuse excludes conduct that was merely physical or psychological in nature, but not sexual.
- 2.1.6** “Track 1 Claim Form” means an attestation substantially in the form appended hereto at Schedule “A”, which states that the Abuse Claimant suffered Sexual Abuse during the Class Period while resident at an Institution.
- 2.1.7** “Track 2 Claim Form” means statutory declaration substantially in the form appended hereto at Schedule “B”, which describes Sexual Abuse that an Abuse Claimant suffered during the Class Period while resident at an Institution.

3. RULES OF INTERPRETATION AND GENERAL GUIDELINES

3.1 Sole and Exclusive Method

An Abuse Claim in accordance with this Distribution Protocol shall be the sole and exclusive method by which a Class Member may obtain any damages in connection with the Settlement

or participate in the distribution of the Net Settlement Funds. The determination of an Abuse Claim is not subject to reconsideration, appeal or review except in accordance with this Distribution Protocol.

3.2 Conflict with Settlement Agreement

The terms of the Settlement Agreement shall prevail if there is any discrepancy between the terms of this Distribution Protocol and the Settlement Agreement.

3.3 Withdrawal of Claims

An Abuse Claimant may irrevocably withdraw an Abuse Claim at any time on written notice to the Claims Administrator.

3.4 Effect of Decision

A decision rendered under this Distribution Protocol shall not be admissible in any other proceeding except as a determination that a person was a Class Member and a Releasor.

3.5 Confidentiality

All information that the Claims Administrator and ACR receive from any source about any Abuse Claimant shall be held in strict confidence. Notwithstanding the foregoing, the Claims Administrator and the ACR shall produce a copy of any Claim Form or Claims Administrator or ACR decision to Class Counsel or the Defendant, on request. The Claims Administrator and the ACR shall otherwise maintain the confidentiality of all information from any source about any Abuse Claimant absent an Order of the Court or the written consent of the Abuse Claimant or counsel acting for the Abuse Claimant.

4. CLAIMS ADMINISTRATOR

Trilogy Class Action Services will serve as the Claims Administrator for this Distribution Protocol, unless Trilogy Class Action Services is replaced by order of the Court.

4.1 Role of the Claims Administrator

4.1.1 Review for Completeness

The Claims Administrator shall review each claim form for completeness. If a Claim Form is incomplete, the Claims Administrator shall advise the Abuse Claimant within 10 business days

of receiving the Claim Form. If a person does not submit a completed Claim Form to the Claims Administrator before the end of the Claims Period, the Claims Administrator and the ACR will not consider a further Claim Form from that person, and that person will receive no benefit in connection with the Settlement, even if they are a Releasor.

4.1.2 Assessment of Eligibility of Abuse Claims

Within 45 business days, the Claims Administrator shall review each Claim Form submitted during the Claims Period, together with any supporting documents, and determine whether the Abuse Claimant is eligible for inclusion in the Class. To determine eligibility for inclusion in the Class, the Claims Administrator shall review the Claim Form to confirm that:

- (a) The Abuse Claimant is not an Excluded Person;
- (b) Either:
 - i. the Abuse Claimant was ordinarily resident in Newfoundland and Labrador as of the date of the Certification Order and did not opt-out of the class proceeding; or
 - ii. the Abuse Claimant was not ordinarily resident in Newfoundland and Labrador as of the date of the Certification Order but opted-in to the class proceeding; and
- (c) The Abuse Claimant claims to have suffered Sexual Abuse perpetrated by a Delegate or another resident of an Institution while the Abuse Claimant was resident or otherwise attending an Institution during the Class Period.

Additionally, the Claims Administrator shall ask the Defendant to confirm that: (a) the Abuse Claimant was a resident of an Institution during the Class Period; and (b) the Abuse Claimant has not executed a release for any Released Claim. The Defendant shall make reasonable efforts to respond to the Claims Administrator's request within 30 business days. The Defendant's failure to confirm the Abuse Claimant's residency at an Institution during the Class Period shall not be determinative of Class Membership. If there is no response from the Defendant, the Administrator is to evaluate the claim.

4.1.3 Notice of Ineligibility

If the Claims Administrator determines that an Abuse Claimant is not eligible for inclusion in the Class, the Claims Administrator shall provide notice to the Abuse Claimant within 45 days.

4.1.4 Request for Reconsideration

The Abuse Claimant shall have 30 days following receipt of the Claims Administrator's notice of ineligibility to submit a written request for reconsideration to the Claims Administrator, together with any additional documents. If the Abuse Claimant fails to submit a request for reconsideration within 30 days of receiving the notice of ineligibility, the Claims Administrator shall dismiss the Abuse Claim and shall not consider any further Abuse Claim from the Abuse Claimant.

4.1.5 Reconsideration

If an Abuse Claimant requests reconsideration in accordance with section 4.1.4, the Claims Administrator shall review the Abuse Claimant's request for Reconsideration, together with any accompanying documents, and determine whether the Abuse Claimant is eligible for inclusion in the Class. If the Claims Administrator determines that an Abuse Claimant is not eligible for inclusion in the Class, the Claims Administrator shall provide notice to the Abuse Claimant within 45 days, the Claims Administrator shall dismiss the Abuse Claim, and the Claims Administrator shall not consider any further Abuse Claim from the Abuse Claimant. The Administrator's determination is not subject to any further reconsideration, review, or appeal.

4.1.6 Eligible Abuse Claims

Once the Claims Administrator has determined that an Abuse Claimant is eligible for inclusion in the Class, the Claims Administrator shall compile a list of Abuse Claimants who submitted Track 1 Claim Forms. The Claims Administrator shall forward copies of the Track 2 Claim Forms to the Abuse Claims Reviewer for further assessment, as set out in sections 5, 6, and 7.

5. ABUSE CLAIMS REVIEWER

5.1 Role of the Abuse Claims Reviewer

The ACR shall evaluate each Track 2 Claim Form in accordance with the guidelines set forth in sections 5, 6, and 7. The ACR shall allot a point value to each Track 2 Claim in accordance

with section 7. The ACR's evaluation of each Track 2 Claim Form shall be final and subject to review or reconsideration only as set forth in section 8.

5.2 Appointment of Abuse Claims Reviewer

The ACR shall have the authority to employ qualified assistants and consultants as they deem appropriate.

5.3 Change or Removal of Abuse Claims Reviewer

Should Rhonda Fiander, MSW, RSW be unable or unwilling to serve as the Abuse Claims Reviewer, the Claims Administrator shall solicit suggested replacements from Class Counsel and then shall appoint a new Abuse Claims Reviewer.

6. DETERMINATION OF NATURE OF ABUSE CLAIMS

6.1 Track 1 Claims

A Track 1 Claim Form will attest, under penalty of perjury, that the Abuse Claimant was subjected to Sexual Abuse during the Class Period. If the Administrator is satisfied that the Abuse Claimant is eligible for inclusion in the Class and the Administrator has no credible and reliable evidence to refute the attestation in the Track 1 Claim Form, the Claims Administrator will allot 10 points to the Track 1 Abuse Claim.

6.2 Track 2A and Track 2B Claims

The ACR shall evaluate each Track 2 Claim Form and assign it to either Track 2A or Track 2B. Abuse Claims alleging Sexual Abuse that includes oral, vaginal or anal penetration will be assigned to Track 2B, as will those Abuse Claims which, in the discretion of the ACR, warrant an interview.

The ACR will assess all Track 2A Abuse Claims on the information provided in the Track 2 Claim Form and any accompanying documents. The ACR will assess all Track 2B Abuse Claims on the information provided in the Track 2 Claim Form, any accompanying documents, and a mandatory interview with the Abuse Claimant. Should an Abuse Claimant refuse an interview or decline to participate, their Abuse Claim will be reassigned to Track 2A.

6.3 Monetary distributions on account of Abuse Claims

The ACR shall allot points to Track 2A and Track 2B Abuse Claims accordance with the guidelines and procedures set out in Section 7.

7. PROCEDURE FOR ALOTTING POINTS TO TRACK 2 ABUSE CLAIMS

7.1 Assessment by ACR

The ACR shall consider all of the facts and evidence presented by the Abuse Claimant. However, it is recognized that many Abuse Claimants may not have been involved in the litigation process before the filing of the class action and may not have documents such as medical or counseling records or expert reports. The ACR may, at their discretion, distinguish between the weight given to different kinds of evidence in support of the Abuse Claim, but the ACR shall not give undue emphasis to medical or counseling records or expert opinions over client testimony concerning damages. The presence or absence of medical or counseling records or expert opinions shall not, alone, advantage or disadvantage an Abuse Claimant if the information in support of the Abuse Claim is otherwise credible and reliable.

7.2 Proof of Abuse

7.2.1 Intention of Claims Process

The claims process under this Distribution Protocol is intended to be expeditious, cost effective, user friendly, and trauma-informed. One of the central goals of the Distribution Protocol is to minimize the burden on Abuse Claimants. The Claims Administrator shall, in the absence of evidence to the contrary, assume Abuse Claimants are acting honestly and in good faith. With this said, the claims process is also intended to prevent fraud and abuse. If the Claims Administrator or the ACR believes that the Abuse Claim is fraudulent or contains intentional errors that would materially overstate the value of the Abuse Claim, then the Claims Administrator or the ACR has the discretion to dismiss the Abuse Claim or reduce the Abuse Claim to cure the defect.

7.2.2 Supplementary Evidence

Any Abuse Claimant who wishes to supplement the information provided in the Claim Form shall do so within 60 days of the date upon which the Abuse Claim was submitted. Thereafter, the Claims Administrator and the ACR shall not consider any further information supplied by the

Abuse Claimant unless the Claims Administrator or the ACR, in their discretion, grants an extension of time on a showing of good cause by the Abuse Claimant.

7.3 Guidelines for Allocation/Monetary Distribution for Abuse Claims

7.3.1 Initial Evaluation

Before allotting points to an Abuse Claim, the ACR shall consider the degree to which the Abuse Claimant has established that the Sexual Abuse occurred. The ACR should consider the coherence, credibility and consistency of the Abuse Claimant's accounts of the abuse and should consider any and all evidence that may enhance or diminish the overall reliability of such claims. If the ACR considers that the Abuse Claimant likely did not suffer Sexual Abuse they may allot no points to an Abuse Claim.

7.3.2 Evaluation Factors

Each Track 2A and 2B Abuse Claim will be evaluated by the ACR. Each Claim will be scored according to the following system.

A Nature of the Sexual Abuse: **MAXIMUM 50 POINTS**

The ACR shall consider each of the factors below in assessing the severity of the Sexual Abuse and assign a point total as appropriate.

- a. Duration;
- b. Frequency/number of instances;
- c. Degree of intrusiveness into child's body (e.g., clothed/unclothed, oral, anal, vaginal);
- d. Level or severity of force/violence/coercion/threats;
- e. Control of environment (e.g., solitary confinement, Isolated on a field trip, etc.);
- f. Number of Delegates that abused the Claimant;
- g. Reported sexual abuse to an authority figure; and/or
- h. Presence and extent of grooming.

B Impact of Abuse: **MAXIMUM 40 POINTS**

The ACR shall consider whether the Abuse Claimant experienced any of the following impacts because of the Sexual Abuse.

- a. Behaviour problems;

- b. Academic problems;
- c. Loss of faith;
- d. Damage to family relationships/interpersonal difficulties;
- e. Mental health symptoms, including:
 - (i) Depression;
 - (ii) Suicide attempt and suicidal ideation;
 - (iii) Anxiety;
 - (iv) Substance abuse;
 - (v) Sexual acting out;
 - (vi) Runaway;
 - (vii) Flashbacks; or
 - (viii) Nightmares; or
- f. Adult and current functioning:
 - (i) Underemployment/unemployment
 - (ii) Relationship problems; or
 - (iii) Substance abuse.

In assessing the impacts of the Sexual Abuse, the ACR shall also consider whether the Abuse Claimant was predisposed to more serious impacts on account of risk factors, in which case the impact of the Sexual Abuse may be diminished. Risk factors include, but are not limited to:

- (i) Childhood of poverty;
- (ii) Family breakdown;
- (iii) Exposure to substance in home;
- (iv) Absence of parental supervision; and/or
- (v) Being the victim of sexual or physical child abuse by someone other than a Delegate or witnessing sexual or physical child abuse of a third person.

C Pre-judgment Interest MAXIMUM 5 POINTS

If the Abuse Claimant was subjected to Sexual Abuse after December 20, 1983, then they are assigned 5 points.

D Other Factors: **MAXIMUM 5 POINTS**

- a. Incarceration history after leaving the Institutions, with the absence of incarceration serving to increase the point allocation.
- b. A non-abused sibling with a consistent work history of 20 years or more will increase point allocation.

7.4 Monetary Distribution

7.4.1 Point Value Calculation

Where the Claims Administrator determines that a Track 1 Abuse Claimant is a Class Member, it shall allot 10 points to the Abuse Claim. The ACR will determine the point allotment for each Track 2A and 2B Abuse Claimant in accordance with section 7.3.2. Each point will be valued at \$5,000, subject to the *pro rata* reduction described in section 7.4.2. An Abuse Claim that is allotted the maximum of 100 points will be valued at \$500,000, subject to the *pro rata* reduction described in section 7.4.2. No Abuse Claim shall be valued at more than \$500,000, all inclusive.

7.4.2 Pro Rata Point Reduction

The value of each point shall be reduced *pro rata* in the event that the Net Settlement Funds are insufficient to pay \$5,000 per point. In that case, the value of each point will be determined by dividing the Net Settlement Funds by the number of points that have been allotted to the Class. For example, if the Net Settlement Funds are \$8 million and the Class has been allotted 4,000 points in the aggregate, each point would be valued at \$2,000 rather than \$5,000.

8. REQUEST FOR RECONSIDERATION AND APPEAL

The Claims Administrator shall provide notice on a rolling basis to Abuse Claimants as their Abuse Claims are allotted points. If the Administrator or the ACR concludes that the Abuse Claimant is not a Class Member, no points shall be allotted to the Abuse Claim and the Abuse Claimant shall receive no portion of the Net Settlement Funds. There shall be no reconsideration of the points allotted to a Track 1 Abuse Claim. The points allotted to a Track 2 Abuse Claim in the notice from the Claims Administrator shall be final 30 days after receipt of the notice unless the Abuse Claimant writes to the Claims Administrator to request reconsideration. The Claims Administrator will consider the request for reconsideration and any

accompanying documents and determine the allotment of points to the Abuse Claim. The Claims Administrator's determination of the request for reconsideration shall be final and it shall not be subject to any further reconsideration, review or appeal.

9. FINANCIAL ADMINISTRATION

9.1 Distribution of Trust Funds

Class Counsel shall pay the Net Settlement Funds to the Claims Administrator in trust and the Claims Administrator shall pay Abuse Claims in accordance with this Distribution Protocol. Within 60 days of determining the last of the Abuse Claims and any requests for reconsideration, the Claims Administrator shall prepare a report on the distribution of the Net Settlement Funds, which will be provided to the parties and filed with the Court. Upon filing its report with the Court, the Claims Administrator shall pay any remaining portion of the Net Settlement Funds in accordance with the Settlement Agreement.

SCHEDULE "A"

TRAINING SCHOOL SEXUAL ABUSE CLASS ACTION ATTESTATION

I _____, of the [City/Town] of _____,
[Full Name] [City/Town]

in the Province of _____ hereby swear, under Penalty of Perjury,
[Province]

that I was subjected to sexual misconduct while resident at _____
[Institution]

during _____.
[Date(s)]

My date of birth is _____. My place of birth is _____.
[Date of Birth] [Place of Birth]

Formerly, I was named _____ [if applicable].
[Former Name]

DECLARED BEFORE ME at the City
of _____, in the Province
of _____, this _____
day of _____, 20____.

WITNESS

ATTESTOR

SCHEDULE "B"

Training School Sexual Abuse Class Action Claim for Compensation

**2017 01G 2568 CP
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

BETWEEN:

JANE DOE (#7), ~~JOHN DOE (#9)~~, (Discontinued)

JOHN DOE (#10) AND JOHN DOE (#11)

PLAINTIFFS

AND:

HER MAJESTY IN RIGHT OF NEWFOUNDLAND

AND LABRADOR

DEFENDANT

Brought under the Class Actions Act, S.N.L. 2001, c. C-18.1

**STATUTORY DECLARATION
(Track 2)**

I, _____
[Full Name]

of the City or Town of _____
[City/Town]

in the Province of _____, **DO SOLEMNLY DECLARE**
[Province]

**THAT THE ANSWERS AND INFORMATION THAT I HAVE GIVEN BELOW ARE
TRUE:**

PART I: BACKGROUND INFORMATION

1. What is your full name?

2. What is your date of birth?

3. Where were you born? (Please provide city, province and country)

4. What is your current residential address? (Please provide street address, city, province, country and postal code/zip code)

5. Please list the mailing address you want us to use, if it is different than the address listed in question 4 above. (Please provide street address, city, province, country and postal code/zip code)

6. What is your highest educational achievement?

7. At which Institution(s) did you reside?

8. Please list the years that you resided at the Institution(s)?

9. What is your current employer or Vocation? (if applicable)

10. What is your current employer's address (if any)?

11. What is your yearly income?

12. Have you reported the income above to CRA?

PART II: PARTICULARS OF THE ABUSE

13. State the names and positions, if able, of the people who committed acts of sexual misconduct against you:

14. Describe what sexual abuse occurred and approximately when; including the number of times or, if unable to say what number of times, with what frequency:

15. Do you wish to say anything else about the sexual abuse?

17. How has the abuse effected you (if any)?

a. Educationally: _____

b. Vocationally: _____

c. Personal Relationships: _____

d. Mental Health: _____

e. Overall well-being: _____

18. Have you received treatment for the above impact?

19. If you have received treatment, from whom:

I MAKE THIS SOLEMN DECLARATION believing it to be true and knowing that it is of the same force and effect as if made under oath. I understand that the information given may affect my rights as against the Defendant and am prepared to be bound by these answers in any proceeding involving my claims for compensation from the Defendant.

DECLARED BEFORE ME at the City
of _____, in the Province
of _____, this _____
day of _____, 20__.

WITNESS

CLAIMANT

SCHEDULE "B"- NOTICE PLAN

The Claims Administrator will disseminate the Notice of Settlement Hearing (the "First Settlement Notice" or "First Notice") and the Notice of Settlement Approval Notice Plan (the "Second Settlement Notice" or "Second Notice", and together with the First Settlement Notice, the "Notices"), based on a modified version of the Certification Notice Plan. The Parties will agree on the content of the Notices, which will include short form and long form versions, and failing agreement, the Court will determine the content of the Notices.

The Claims Administrator will not disseminate the First Settlement Notice or the Second Settlement Notice outside Newfoundland and Labrador except by Direct Notice to the sixteen (16) Class Members who opted into the Class as part of the Non-Resident Subclass as defined in paragraph 3 of the Certification Order.

Claims Administration Infrastructure

- 1) The Claims Administrator established the designated website, <https://www.nfldsexabuseclassaction.ca>. The designated claims administration website shall provide relevant Court Orders and documents, Settlement Agreement, Distribution Protocol, claims deadlines, Claim Forms and link to the online claims administration portal, Notices, Definitions, frequently asked questions, and contact information for the Claims Administrator, Class Counsel and Abuse Claims Reviewer;
- 2) The Claims Administrator has established a toll-free telephone number at 1-877-400-1211;
- 3) The Claims Administrator will continue to maintain the post office box for any Class Member who wishes to continue to communicate or send documentation regarding this class action; Newfoundland and Labrador Sex Abuse Class Action address located at: 117 Queen Street, P.O. Box 1000, Niagara-on-the-Lake, Ontario, L0S 1J0;
- 4) The Claims Administrator will continue to maintain designated fax service at 416-342-1761;

Translation

- 5) The Notices, as well as the Press Release, will be translated into French, Innu-aimun, and Inukitut.

6) The Notices shall be provided to the Innu Nation, the Nunatukavut Government, and the Nunatsiavut Government.

Press Release

7) Claims Administrator shall format and issue a press release based on the Long-Form Notice through Businesswire to news media and online audiences throughout Canada in English, French, Innu-aimun, and Inuktitut. The press release will be issued broadly to over 1,000 media outlets, including newspapers, magazines, television, radio and online media across Canada.

Search Engine Optimization (SEO) Website

8) The Claims Administrator will utilize sponsored programmatic advertising tools to serve advertisements relating to the Notice of Settlement Hearing and the Notice of Settlement Approval to residents of Newfoundland and Labrador and former residents of Newfoundland and Labrador who may “cluster” in other parts of Canada;

9) When Class Members are active on search engine platforms such as Google, (including mobile, tablet and desktop devices) common words and terms related to “training schools, “Newfoundland and Labrador”, “sex abuse” and/or “sexual abuse”, “Morris Martin Moore”, “Pleasantville”, “Whitbourne”, “Waterford Bridge Road”, “boys home”, “girls home”, etc., will trigger a sponsored programmatic advert and link directing users to the designated www.NFLDsexabuseclassaction.ca website;

10) The Claims Administrator’s highly targeted and tiered “new media” program monitors and quantifies reach and penetration in each component of the Notice Plan during the Claims Period based on performance data. Claims Administrator’s digital partners and managers closely monitor impressions and click-through rates to quantify reach and to adjust the implementation and strategy to enhance take-up rates;

11) The Claims Administrator has the ability to quantify how many people click onto the Notice, the average time Class Members visit the designated website, how many pages Class Members viewed, which pages they viewed and if they filed a Claim Form. The Claims Administrator will adjust the format or key messaging, if necessary, to retarget the sponsored programmatic advertising to increase efficiency and effectiveness of the Notice Plan. Based on

the information received, the Claims Administrator will change either: graphics, (pictures, content, colour, font, etc.) and/or key words (headline, content);

Digital Online Banner Display Advertisements

12) The Claims Administrator will design, publish and monitor digital banner adverts with a click-through function directly to the designated website

www.NFLDsexabuseclassaction.ca/notice of the Notice of Settlement Hearing and the Notice of Settlement Approval on the following news websites in Newfoundland and Labrador:

- i. VOCM.com
- ii. Thetelegram.com (St. John's)
- iii. Thewesternstar.com (Corner Brook)
- iv. Cbncompass.ca (Avalon Peninsula)
- v. Thepacket.ca (Clareville)
- vi. Gazette.mun.ca (Memorial University)
- vii. Thecentralvoice.ca (Gander)
- viii. K-ROCK radio station website
- ix. HOT 99.1 St. John's - radio station website
- x. Big Land-Labrador - radio station website
- xi. New Country NL - radio station website

A combined total number of impressions targeted within Newfoundland and Labrador are to be allocated in proportion to the First Settlement Notice and the Second Settlement Notice budgets;

Radio Advertising in Newfoundland and Labrador

13) The Claims Administrator shall have produced radio advertisements, the content to be approved by the Court and recorded by Lynn Moore, Class Counsel at Morris Martin Moore.

These radio advertisements shall air on the VOCM Network across Newfoundland and Labrador during the Claims Period:

VOCM Network (7 stations)

VOCM-St. John's and area

VOCM-Marystown

VOCM-Clareville

VOCM-Gander

VOCM-Grand Falls-Windsor

VOCM-Corner Brook

VOCM-Stephenville

K-ROCK Network (4 stations)

K-ROCK-St. John's/Clareville and area

K-ROCK- Gander

K-ROCK- Grand Falls-Windsor

K-ROCK-Corner Brook/Stephenville

HOT 99.1 (1 station with a larger female demographic) St. John's and area

New Country Network (3 stations)

New Country- St. John's

New Country-Carbonear

New Country- Clareville

Big Land Labrador (FM)

14) The radio advertisements for the First Settlement Notice shall be produced to include 200 30-second commercials and recorded by Lynn Moore, Class Counsel at Morris Martin Moore, and played on the VOCM Network during the period between shortly after the publication of the First Settlement Notice and shortly before the publication of the Second Settlement Notice;

15) The Claims Administrator, for the First Settlement Notice, shall implement a broad rotator sequence (also referred to as ¼ reach) because it is the most common airtime chosen for cost effectiveness and efficiency. The First Notice commercials are to be played or rotated during the

four key time blocks of the programming day - morning drive (6am), midday, afternoon drive and evening. The Claims Administrator shall place extra radio commercials on Fridays which is the busiest day of the week for listening. No radio spots will be aired after midnight to 6 am. There will be no commercials on Sunday;

16) The radio advertisements for the Second Notice shall be produced to include three (3) different recordings for the three (3) phases of the twelve (12) month Claims Period. The Claims Administrator shall implement one-third of the radio commercials per each phase of the Claims Period:

- i) the initial announcement of the settlement approval – four (4) months;
- ii) advertisements during the middle time frame of the Claims Period – four (4) months;
- iii) reminder announcements of the pending claims deadline – four (4) months;

17) The Claims Administrator, for the Second Settlement Notice, shall implement a broad rotator sequence (also referred to as ¼ reach, which is the most common airtime chosen for cost effectiveness and efficiency). The Second Notice commercials are to be played or rotated during the four key time blocks of the programming day - Morning drive 6am, midday, afternoon drive and evening. Claims Administrator shall place extra radio commercials on Fridays There will be no commercials on Sundays;

Social Media – Facebook (Meta)

18) The Claims Administrator shall design banner advertisements and post them on the Claims Administrator's Facebook business page at www.facebook.com/TrilogyClassActionServices for distribution through social media to increase the dissemination of the Notice. The Facebook page shall allow clicked-throughs to the designated link to the Notice page on the designated website www.NFLDsexabuseclassaction.ca/notice;

19) Similar to the strategy with regards to the radio advertisements, there will be three phases for the dissemination of the Notice.

20) A combined total number of paid banner advertisements targeted within Newfoundland and Labrador are to be allocated in proportion to the First Settlement Notice and the Second Settlement Notice budgets;

Social Media – Twitter

21) The Claims Administrator shall design, publish and monitor digital banner adverts with a click-through function directly to the Notice page on the designated website. Similar to the strategies implement for Facebook, there will be three phases for the dissemination of the Notice.

22) The Claims Administrator will adjust the format or key messaging, if necessary, to retarget the sponsored programmatic advertising to increase efficiency and effectiveness of the notice program. Based on the information received, Claims Administrator will change either: graphics, (pictures, content, colour, font, etc.); key words (headline, content); or location. The Claims Administrator shall evolve the notice program as required based on the success rate of conversions from quantified data provided by the multiple platforms.

23) A combined total number of paid banner advertisements targeted within Newfoundland and Labrador are to be allocated in proportion to the First Settlement Notice and the Second Settlement Notice budgets.

Newspapers – Newfoundland and Labrador

24) The Claims Administrator shall publish the Short-Form Notice in ¼ page black and white advertisement format in the following print newspapers in the corresponding Saturday weekend editions and designated weekly publications;

- i. The Telegram (Saturday)
- ii. Western Star (Saturday)
- iii. Compass (Wednesday)
- iv. Southern Gazette (Tuesday)
- v. Packet (Thursday)
- vi. Central Voice (Wednesday)

- vii. Gulf News (Monday)
- viii. Northern Pen (Wednesday)
- ix. Labradorian (Monday)
- x. Aurora (Monday)

Direct Notice

25) The Claims Administrator, appointed by the Court to implement the Certification Notice Plan to disseminate the Notice to putative Class Members in this litigation and to administer the Opt Out and Opt In Forms from Class Members, built a database of all who registered for future communication. The Claims Administrator kept this database for the dissemination of the Notice of Settlement and Notice of Settlement Approval, if approved.

26) For the First Settlement Notice Plan, the Claims Administrator shall send the Long-Form Notice of Settlement Hearing or First Settlement Notice to inform the sixteen (16) Class Members who opted into the class action by direct email and/or courier if address available and/or with a follow-up phone call;

27) For the Second Settlement Notice Plan, the Claims Administrator shall send the Long-Form Notice of Settlement Approval or Second Settlement Notice to inform the sixteen (16) Class Members who opted into the class action by direct email and/or courier if address available and/or with a follow-up phone call;

28) For the Second Settlement Notice Plan, the Claims Administrator shall send the Long-Form Notice of Settlement Approval Notice or the Second Settlement Notice to any Class Member who inquired with Claims Administrator as a result of the First Settlement Notice Plan;

Indirect Notice

29) The Claims Administrator shall send the Long-Form Notice of Settlement Hearing or First Settlement Notice and the Long-Form Notice of Settlement Approval or Second Settlement Notice and the press release to the following list of sexual abuse support agencies and organizations for circulation to their members, clients and affiliates in the Province of Newfoundland and Labrador and other organizations outside the province;

- i. Ending Violence Association of Canada

- ii. Pathways Foundation
- iii. Newfoundland and Labrador Association of Social Workers
- iv. Newfoundland and Labrador Sexual Assault Crisis and Prevention Centre (NLSACPC)
- v. Rape, Abuse and Incest National Network (RAINN)
- vi. Status of Women Centres
- vii. Association of Psychology Newfoundland and Labrador and
- viii. Newfoundland and Labrador Medical Association.

Objectors

30) Any Class Member wishing to object to the Settlement Agreement, Class Counsel Fees, Class Counsel Disbursements, or the Honoraria, will be directed to advise the Claims Administrator in writing of the nature of the objection and whether they wish to be heard at the settlement approval hearing. Notices of objection must be received no later than 7 days before the hearing of the Settlement Approval Application. The Claims Administrator will communicate any notices of objection to counsel for the Parties and the Court, together with contact information for any objector.