

2011

Hfx. No. 343536

**SUPREME COURT OF NOVA SCOTIA**

**SUPREME COURT  
OF NOVA SCOTIA**  
  
JUL 11 2013  
  
HALIFAX, N.S.

BETWEEN:

JUNE ELWIN, HARRIET JOHNSON, and DEANNA SMITH

PLAINTIFFS



- AND -

THE NOVA SCOTIA HOME FOR COLORED CHILDREN, a body corporate and  
THE ATTORNEY GENERAL OF NOVA SCOTIA, representing Her Majesty the  
Queen in right of the Province of Nova Scotia

Sgd.  
AJL  
J

DEFENDANTS

**ORDER – SETTLEMENT APPROVAL**

**UPON HEARING** Ray Wagner, Q.C. and Michael Dull, solicitors for the Plaintiffs;

**AND UPON HEARING** John Kulik, QC, Jane O'Neill, and Ward Branch, solicitors for the Defendant Nova Scotia Home For Colored Children (hereinafter the "NSHCC" or the "Settling Defendant");

**AND UPON HEARING** Catherine Lunn, solicitor for the Defendant Attorney General of Nova Scotia (hereinafter the "Non Settling Defendant");

**IT IS ORDERED THAT:**

**General**

1. This Order adopts and incorporates the defined terms as set out in the Settlement Agreement, dated June 10, 2013, and attached to this Order as Schedule "A".

## Certification

2. This Action is certified for settlement purposes as a class action as against the Settling Defendant pursuant to the *Class Proceedings Act*;
3. The classes are defined as:
  - a. Former residents who, as wards of the Province, were placed in the NSHCC as residents. Former residents who resided in the NSHCC but who were not wards of the Province.
4. June Elwin, Harriet Johnson, and Deanna Smith are appointed as Representative Plaintiffs for the Class.
5. The common issues are:
  - a. What was the legal relationship and the extent of the obligations owed by the NSHCC to the former residents who comprise each of the two Classes?
  - b. Did the NSHCC owe a duty of care to the former residents who comprise each of the two Classes?
  - c. If the answer to (b) is yes, did the NSHCC breach its duty of care?
  - d. Did the agents, employees and staff of the NSHCC owe a fiduciary duty to the former residents who comprise each of the two Classes?
  - e. If the answer to (d) is yes, did the agents, employees and staff of the NSHCC breach their fiduciary duty?
  - f. Is the NSHCC vicariously liable for any aforementioned breaches of fiduciary duty by their agents, employees and staff?
6. Within 14 days of the date of this Order, Class Counsel will deliver the Approval Notice to the Class Members by:
  - a. Mailing the Approval Notice to the most recent address of the Class Members in the possession of Class Counsel;
  - b. Causing the Notice to be published once in the Provincial editions of the Chronicle Herald and Metro in a size no less than 1/8th of a page; and

- c. Posting the Notice on Wagners' website at [www.wagners.co](http://www.wagners.co).
7. Costs of the Approval Notice will be paid by Class Counsel as a disbursement.
8. Class Members may opt out of the Action by mailing a signed request to Class Counsel before the Opt Out Date.

### **Settlement Agreement**

9. The Settlement Agreement is approved as fair, reasonable, and in the best interests of the Class.
10. The Settlement Agreement is binding upon the Representative Plaintiffs, the members of the Class, and the Settling Defendant.

### **Bar Order**

11. As of the Effective Date, the Bar Order set out in Schedule "F" to the Settlement Agreement is approved and binding on the Representative Plaintiffs, the Class Members, Class Counsel, the Settling Defendant, and the Non-Settling Defendants both in this Action and in the Other Actions.
12. The Court shall determine in this Action and the Other Actions whether there would otherwise be a right of contribution and indemnity owed by the Settling Defendant to the Non-Settling Defendants absent the Bar Order, and the fault allocation that would accrue to the Settling Defendant absent the Bar Order

### **Release**

13. As of the Effective Date, all Class Members who have not opted out before the Opt Out Date are deemed to have granted the following release to the Settling Defendants:


Upon the Effective Date, the Plaintiffs and all Class Members forever release the Settling Defendant from the Released Claims. The Plaintiffs and all Class Members agree not to make any new claim arising out of or relating in any way to the subject matter of the Released Claims, and agree to limit any ongoing claims relating in any way to the subject matter of the Released

Claims in the manner required by the Bar Order.

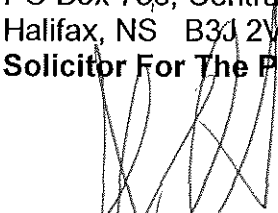
**Dismissal**

14. As of the Effective Date, this Action and the Other Actions brought by Class Members who have not opted out of this Action are dismissed as against the Settling Defendants.

Dated \_\_\_\_\_, 2013

  
\_\_\_\_\_  
**RAYMOND F. WAGNER, Q.C.**

Wagner & Associates  
1869 Upper Water Street  
PO Box 756, Central RPO  
Halifax, NS B3J 2V2  
**Solicitor For The Plaintiffs**

  
\_\_\_\_\_  
**JOHN KULIK, QC, JANE O'NEILL**

McInnes Cooper  
1300-1969 Upper Water Street  
Halifax, NS B3J 2V1

  
\_\_\_\_\_  
**WARD BRANCH**

Branch MacMaster LLP  
1410-777 Hornby Street  
Vancouver, BC V6Z 1S4  
**Solicitors For The Defendant The  
Nova Scotia Home For Colored Children**

Consenting as to form

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**CATHERINE LUNN**

Department of Justice (NS)

5151 Terminal Road

Halifax, NS B3J 2L6

**Solicitor For The Defendant**

**The Attorney General Of Nova Scotia**

**SCHEDULE "A"**

2011

Hfx. No. 343536

**SUPREME COURT OF NOVA SCOTIA**

BETWEEN:

JUNE ELWIN, HARRIET JOHNSON, and DEANNA SMITH

PLAINTIFFS

- AND -

THE NOVA SCOTIA HOME FOR COLORED CHILDREN, a body corporate and  
THE ATTORNEY GENERAL OF NOVA SCOTIA, representing Her Majesty the  
Queen in right of the Province of Nova Scotia

DEFENDANTS

Proceeding under the *Class Proceedings Act*, SNS 2007, c 28

**SETTLEMENT AGREEMENT**

Dated April 12, 2013

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## Definitions

1. For the purpose of this agreement, defined terms have the following meanings:
  - a. **"Action"** means the proposed class action started by the Plaintiffs in the Supreme Court of Nova Scotia bearing file number Hfx. No. 343536.
  - b. **"Administrator"** means a third party appointed by the Court to manage the Settlement Fund and to implement the Settlement Agreement.
  - c. **"Administration Fees"** means the Court approved fees and disbursements of the Administrator.
  - d. **"Approval Motion"** means a motion to the Court for the Approval Order.
  - e. **"Approval Notice"** means notice of the Approval Order in the form attached as Schedule "D" to the Settlement Agreement.
  - f. **"Approval Order"** means an order issued by the Court in substantially the form attached as Schedule "B" to the Settlement Agreement:
    - i. conditionally certifying the Action as a class action as against the Settling Defendant for the purpose of approving the Settlement Agreement;
    - ii. approving the Settlement Agreement; and
    - iii. approving the Bar Order.
  - g. **"Bar Order"** means an order issued by the Court in substantially the form attached as Schedule "F" to the Settlement Agreement.
  - h. **"Class Counsel"** means Wagners Law Firm.

- i. **“Class Members”** means former residents of the Nova Scotia Home for Colored Children, including the plaintiffs in the Other Actions.
- j. **“Cooperation Agreement”** means the Settling Defendant’s cooperation with the Plaintiffs and Class Counsel, as set out in Schedule “G” to the Settlement Agreement.
- k. **“Court”** means the Supreme Court of Nova Scotia.
- l. **“Counsel Fees”** means the Court approved fees, costs, taxes, and disbursements payable from the Settlement Fund to Class Counsel.
- m. **“Effective Date”** means 56 days after the Approval Order is issued, if the Termination Right has not been exercised.
- n. **“Final Judgment”** means final judgment in the Action as against the Settling Defendant and Non-Settling Defendant.
- o. **“Non-Settling Defendant”** means the Attorney General of Nova Scotia.
- p. **“Opt Out Date”** means 42 days after the Approval Order.
- q. **“Other Actions”** means the actions identified in Schedule “E” to the Settlement Agreement.
- r. **“Other Defendants”** mean defendants in the Other Actions, but does not include the Settling Defendant and the Non-Settling Defendant.
- s. **“Plaintiffs”** means June Elwin, Harriet Johnson, and Deanna Smith.
- t. **“Preliminary Approval Motion”** means a motion to the Court for the Preliminary Approval Order.
- u. **“Preliminary Approval Order”** means an order issued by the Court in substantially the form as that attached as Schedule “A” to the Settlement Agreement approving the content and means of delivery of Preliminary Notice.



- v. **“Preliminary Approval Notice”** means preliminary notice of the Settlement Agreement and the Approval Motion in the form attached as Schedule “C” to the Settlement Agreement.
- w. **“Released Claims”** means all manner of claims, complaints, demands, actions, suits, liabilities, statutory liabilities, or other causes of action, alleged or which could have been asserted in the Action, whether presently known or unknown, direct or indirect, for any order, relief, declaration, or damages of any nature whatsoever that the Plaintiffs or Class Members had or may have against the Settling Defendant up to the date of execution of the Settlement Agreement.
- x. **“Settlement Agreement”** means this agreement, dated April 12, 2013.
- y. **“Settlement Fund”** means \$5,000,000 paid in trust to Class Counsel by the Settling Defendant, to be distributed in accordance with the terms of a distribution plan to be later approved by the Court and the Settlement Agreement.
- z. **“Settling Defendant”** means the Nova Scotia Home For Colored Children.
- aa. **“Termination Right”** means the ability of the Settling Defendant to unilaterally terminate this Settlement Agreement in certain circumstances, as set out in the Settlement Agreement, by giving written notice to Class Counsel.

### **Settlement Approval Process**

2. The Plaintiffs will bring the Preliminary Approval Motion to the Court seeking the Preliminary Approval Order within 21 days of the execution of the Settlement Agreement, or such later time as agreed by the Settling Defendant.
3. The Plaintiffs will bring the Approval Motion to the Court for the approval of the Settlement Agreement within 42 days of the Preliminary Approval Order, or such

later time as agreed by the Settling Defendant.

4. The Settling Defendant will support the Preliminary Approval Motion and the Approval Motion.
5. The Plaintiffs and the Settling Defendant will not seek costs of the Preliminary Approval Motion or the Approval Motion.
6. If the Settlement Agreement is not approved, it will be void and the parties will return to their original position as if the Settlement Agreement had never been negotiated or proposed to the Court.

#### **Notice**

7. Within 7 days of the Preliminary Approval Order, Preliminary Approval Notice will be provided to Class Members by:
  - a. Mailing the Preliminary Notice by regular mail to the Class Member's most recent address in the possession of Class Counsel;
  - b. Publishing the Preliminary Notice once in the Halifax editions of the *Chronicle Herald* and *Metro* in a size no less than 1/8th of a page; and,
  - c. Posting the Preliminary Notice on Wagners' website at [www.wagners.co](http://www.wagners.co).
8. Within 14 days of the Approval Order, Approval Notice will be provided to Class Members by:
  - a. Mailing the Approval Notice by regular mail to the Class Member's most recent address in the possession of Class Counsel;
  - b. Publishing the Approval Notice once in the Halifax editions of the *Chronicle Herald* and *Metro* in a size no less than 1/8th of a page; and,
  - c. Posting the Approval Notice on Wagners' website at [www.wagners.co](http://www.wagners.co)
9. Costs of the Preliminary Approval Notice and Approval Notice will be paid by

Class Counsel as a disbursement, which disbursement may be claimed pursuant to paragraph 11.

#### **Settlement Fund**

10. Within 7 days of the Effective Date, the Settling Defendant will pay the Settlement Fund to Class Counsel.

#### **Counsel Fees and Administration Fees**

11. Class Counsel is to bring a motion seeking the approval of disbursements payable from the Settlement Fund at the same time as the Approval Motion.
12. Class Counsel is to bring a motion seeking the approval of Counsel Fees payable from the Settlement Fund at the same time as the Motion for approval of the Settlement Fund distribution protocol.
13. The Administrator may bring a motion seeking the approval of Administration Fees from the Settlement Fund before the final distribution of the Settlement Fund.
14. The Settling Defendant will take no position on the motions for approval for disbursements, Counsel Fees or Administration Fees.
15. The Settlement Agreement is not dependent on the approval of any particular Counsel Fee or Administration Fee request.

#### **Distribution**

16. No amount will be paid from the Settlement Fund until the Effective Date has passed.
17. Disbursements may be paid from the Settlement Fund after the Effective Date and after the disbursements have been approved by the Court.
18. The balance of the Settlement Fund, after approved disbursements have been deducted, will be held in trust by Class Counsel for the benefit of Class Members until:

- a. the Action against the Non-Settling Defendant has resolved; or
  - b. a period of twelve months has expired and Class Counsel bring a motion for approval of a distribution protocol and such distribution protocol is approved by the Court.
19. If the Action against the Non-Settling Defendant is resolved while the balance of the Settlement Fund continues to be held by Class Counsel in trust, Class Counsel will bring a motion for approval of a distribution protocol applicable both to the Settlement Fund and any funds received from the Non-Settling Defendants through an adjudication of liability or a settlement of the action.
  20. Counsel Fees and Administration Fees may be paid from the Settlement Fund before final distribution of the Settlement Fund upon a motion to the Court by Class Counsel and the Administrator.

#### **Cooperation**

21. After the Effective Date, the Settling Defendant will cooperate with the Plaintiffs in the prosecution of this Action, or in any inquiry or review established by the Non-Settling Defendant, in accordance with the terms of the Cooperation Agreement.
22. The Cooperation Agreement will expire and all obligations will be deemed to have been fulfilled upon the date of Final Judgment, or issuance of any final report in any inquiry or review established by the Non-Settling Defendant.

#### **Opting Out and Termination**

23. Individuals who would otherwise be Class Members can opt out of the Action by delivering a written request by regular mail to Class Counsel before the Opt Out Date.
24. Within 7 days of the Opt Out Date, Class Counsel will deliver to the Settling Defendant a list of any individuals who have opted out of the Action.
25. If more than 5 Class Members have opted out of the Action, or if any Class

Member who resided at the Home at any time prior to 1979 opts out of the Action, then the Settling Defendant may exercise the Termination Right before the Effective Date.

26. If the Settling Defendant exercises the Termination Right:
- a. If the Class Members have been given Preliminary Notice or Approval Notice, notice of the termination will be provided to Class Members by:
    - i. Mailing the notice of termination by regular mail to the Class Member's most recent address in the possession of Class Counsel; and
    - ii. Publishing the notice of termination once in the Halifax editions of the *Chronicle Herald* and *Metro*;
  - b. The cost of such notice of termination will be paid by the Settling Defendant;
  - c. The Settlement Agreement will be void and of no binding effect. The parties will return to their original position as if the Settlement Agreement had never been negotiated or proposed to the Court;
  - d. Within 7 days of Class Counsel receiving notice of termination, the Settlement Fund will be repaid to the Settling Defendant in full, plus any interest that has accrued; and
  - e. The Plaintiffs will consent to an order decertifying this Action on a without costs basis, which consent shall be without prejudice their right to bring a fresh motion for certification.

#### **Release, Dismissal, and Bar Order**

27. All Class Members who have not opted out of the Settlement Agreement before the Opt Out Date are deemed to have granted the following release:

Upon the Effective Date, the Plaintiffs and all Class Members forever release

the Settling Defendant from the Released Claims. The Plaintiffs and all Class Members agree not to make any new claim arising out of or relating in any way to the subject matter of the Released Claims, and agree to limit any ongoing claims relating in any way to the subject matter of the Released Claims in the manner required by the Bar Order.

28. On the Effective Date, each Class Member who is a plaintiff in one of the Other Actions and who has not opted out of this Action will be deemed to have irrevocably consented to the dismissal of the Other Action in which they are a plaintiff against the Settling Defendant, with prejudice and on a without costs basis.
29. The Bar Order is a material term of the Settlement Agreement, approval of which can only be waived by the Settling Defendant. If the Court does not approve the Bar Order, the Settling Defendant may exercise the Termination Right within 7 days of the Order refusing to approve the Bar Order becoming a final order.

#### Miscellaneous

30. The Court retains jurisdiction over any disputes concerning the interpretation and implementation of the Settlement Agreement and Bar Order.
31. The headings used or previous drafts of the Settlement Agreement will not be used in the interpretation of the Settlement Agreement.
32. The Settlement Agreement may be executed in counterparts.

June 10  
~~April~~ \_\_\_\_\_, 2013

Raymond F. Wagner, Q.C.  
Counsel for the Plaintiff

John Kulik, Q.C.  
Counsel for the Settling Defendant

**Schedule "A" – Preliminary Approval Order**

2011

Hfx. No. 343536

**SUPREME COURT OF NOVA SCOTIA**

BETWEEN:

JUNE ELWIN, HARRIET JOHNSON, and DEANNA SMITH

PLAINTIFFS

- AND -

THE NOVA SCOTIA HOME FOR COLORED CHILDREN, a body corporate and  
THE ATTORNEY GENERAL OF NOVA SCOTIA, representing Her Majesty the  
Queen in right of the Province of Nova Scotia

DEFENDANTS

**ORDER – PRELIMINARY APPROVAL****UPON HEARING** Ray Wagner and Michael Dull, solicitors for the Plaintiffs;**AND UPON HEARING** John Kulik, QC, Jane O'Neill, and Ward Branch, solicitors for  
the Defendant Nova Scotia Home For Colored Children;**AND UPON HEARING** Catherine Lunn, solicitor for the Defendant Attorney General of  
Nova Scotia;**IT IS ORDERED THAT:**

1. This Order adopts and incorporates the defined terms as set out in the Settlement Agreement, dated April 12, 2013, and attached to this Order as Schedule "A".
2. Preliminary Notice in substantially the same form as that attached as Schedule "C" to the Settlement Agreement is approved.
3. Within 14 days of the date of this Order, Class Counsel will deliver the Preliminary Notice to the proposed Class Members by:

- a. Mailing the Preliminary Notice to the most recent address of the proposed Class Members in the possession of Class Counsel;
  - b. Causing the Preliminary Notice to be published once in the Halifax editions of the Chronicle Herald and Metro in a size no less than 1/8th of a page; and,
  - c. Posting the Preliminary Notice on Wagners' website at [www.wagners.co](http://www.wagners.co).
4. Costs of the Preliminary Notice will be paid by Class Counsel as a disbursement.

Dated \_\_\_\_\_, 2013

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RAYMOND F. WAGNER, Q.C.  
Wagner & Associates  
1869 Upper Water Street  
PO Box 756, Central RPO  
Halifax, NS B3J 2V2

**SOLICITOR FOR THE PLAINTIFFS**

---

JOHN KULIK, QC, JANE O'NEILL  
McInnes Cooper  
1300-1969 Upper Water Street  
PO Box 730  
Halifax, NS B3J 2V1

---

**WARD BRANCH**  
Branch MacMaster LLP  
1410-777 Hornby Street  
Vancouver, BC V6Z 1S4

**SOLICITORS FOR THE DEFENDANT THE  
NOVA SCOTIA HOME FOR COLORED CHILDREN**



---

**CATHERINE LUNN**  
Department of Justice (NS)  
5151 Terminal Road  
Halifax, NS B3J 2L6

**SOLICITOR FOR THE DEFENDANT THE  
ATTORNEY GENERAL OF NOVA SCOTIA**

**Schedule "B" – Approval Order**

2011

Hfx. No. 343536

**SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**JUNE ELWIN, HARRIET JOHNSON, and DEANNA SMITH**

**PLAINTIFFS**

**- AND -**

**THE NOVA SCOTIA HOME FOR COLORED CHILDREN, a body corporate and  
THE ATTORNEY GENERAL OF NOVA SCOTIA, representing Her Majesty the  
Queen in right of the Province of Nova Scotia**

**DEFENDANTS**

**ORDER – SETTLEMENT APPROVAL**

**UPON HEARING** Ray Wagner, Q.C. and Michael Dull, solicitors for the Plaintiffs;

**AND UPON HEARING** John Kulik, QC, Jane O'Neill, and Ward Branch, solicitors for the Defendant Nova Scotia Home For Colored Children (hereinafter the "NSHCC" or the "Settling Defendant");

**AND UPON HEARING** Catherine Lunn, solicitor for the Defendant Attorney General of Nova Scotia (hereinafter the "Non Settling Defendant");

**IT IS ORDERED THAT:**

**General**

1. This Order adopts and incorporates the defined terms as set out in the Settlement Agreement, dated April 12, 2013, and attached to this Order as Schedule "A".

## Certification

2. This Action is certified for settlement purposes as a class action as against the Settling Defendant pursuant to the *Class Proceedings Act*;
3. The classes are defined as:
  - a. Former residents who, as wards of the Province, were placed in the NSHCC as residents. Former residents who resided in the NSHCC but who were not wards of the Province.
4. June Elwin, Harriet Johnson, and Deanna Smith are appointed as Representative Plaintiffs for the Class.
5. The common issues are:
  - a. What was the legal relationship and the extent of the obligations owed by the NSHCC to the former residents who comprise each of the two Classes?
  - b. Did the NSHCC owe a duty of care to the former residents who comprise each of the two Classes?
  - c. If the answer to (b) is yes, did the NSHCC breach its duty of care?
  - d. Did the agents, employees and staff of the NSHCC owe a fiduciary duty to the former residents who comprise each of the two Classes?
  - e. If the answer to (d) is yes, did the agents, employees and staff of the NSHCC breach their fiduciary duty?
  - f. Is the NSHCC vicariously liable for any aforementioned breaches of fiduciary duty by their agents, employees and staff?
6. Within 14 days of the date of this Order, Class Counsel will deliver the Approval Notice to the Class Members by:
  - a. Mailing the Approval Notice to the most recent address of the Class Members in the possession of Class Counsel; and
  - b. Causing the Preliminary Notice to be published once in the Halifax editions of the Chronicle Herald and Metro in a size no less than 1/8th of a page.

7. Costs of the Approval Notice will be paid by Class Counsel as a disbursement.
8. Class Members may opt out of the Action by mailing a signed request to Class Counsel before the Opt Out Date.

### **Settlement Agreement**

9. The Settlement Agreement is approved as fair, reasonable, and in the best interests of the Class.
10. The Settlement Agreement is binding upon the Representative Plaintiffs, the members of the Class, and the Settling Defendant.

### **Bar Order**

11. As of the Effective Date, the Bar Order set out in Schedule "F" to the Settlement Agreement is approved and binding on the Representative Plaintiffs, the Class Members, Class Counsel, the Settling Defendant, and the Non-Settling Defendants both in this Action and in the Other Actions.
12. The Court shall determine in this Action or the Other Actions whether there would otherwise be a right of contribution and indemnity owed by the Settling Defendant to the Non-Settling Defendants absent the Bar Order, and the fault allocation that would accrue to the Settling Defendant absent the Bar Order

### **Release**

13. As of the Effective Date, all Class Members who have not opted out before the Opt Out Date are deemed to have granted the following release to the Settling Defendants:

Upon the Effective Date, the Plaintiffs and all Class Members forever release the Settling Defendant from the Released Claims. The Plaintiffs and all Class Members agree not to make any new claim arising out of or relating in any way to the subject matter of the Released Claims, and agree to limit any ongoing claims relating in any way to the subject matter of the Released Claims in the manner required by the Bar Order.

**Dismissal**

14. As of the Effective Date, this Action and the Other Actions brought by Class Members who have not opted out of this Action are dismissed as against the Settling Defendants.

Dated \_\_\_\_\_, 2013

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**RAYMOND F. WAGNER, Q.C.**  
Wagner & Associates  
1869 Upper Water Street  
PO Box 756, Central RPO  
Halifax, NS B3J 2V2  
**Solicitor For The Plaintiffs**

---

**JOHN KULIK, QC, JANE O'NEILL**  
McInnes Cooper  
1300-1969 Upper Water Street  
PO Box 730  
Halifax, NS B3J 2V1

---

**WARD BRANCH**  
Branch MacMaster LLP  
1410-777 Hornby Street  
Vancouver, BC V6Z 1S4  
**Solicitors For The Defendant The  
Nova Scotia Home For Colored Children**

**Consenting as to form**

---

**CATHERINE LUNN**  
Department of Justice (NS)  
5151 Terminal Road  
Halifax, NS B3J 2L6  
**Solicitor For The Defendant The  
Attorney General Of Nova Scotia**

## **Schedule "C" – Preliminary Approval Notice**

### **Nova Scotia Home for Colored Children - Proposed Settlement Agreement**

*Elwin et al v The Nova Scotia Home for Colored Children and The Attorney General of Nova Scotia*, Supreme Court of Nova Scotia, Hfx. No. 343536

#### **What is this notice?**

A proposed class action lawsuit was started on behalf of former residents of the Nova Scotia Home for Colored Children (the "Home") regarding allegations of abuse suffered by former residents of the Home. If you are a former resident, you may be a member of the class. Your legal rights may be affected by this settlement.

The lawsuit was filed by June Elwin, Harriet Johnson, and Deanna Smith, the representative plaintiffs, against both the Home and the Province of Nova Scotia. The Home has reached an agreement to settle the lawsuit. The lawsuit will continue against the Province of Nova Scotia. The settlement agreement must now be approved by the court.

#### **What are the terms of the settlement?**

Under the settlement agreement, the Home will pay \$5,000,000 into a trust account. That money will be held in trust by the lawyers for the settling class until the lawsuit against the Province has resolved. If the lawsuit against the Province remains ongoing 12 months after the settlement money from the Home has been received, lawyers for the settling class may seek Court approval of a plan to distribute the settlement money received by the Home.

The Home has also agreed to cooperate with the representative plaintiffs as they continue their lawsuit against the Province.

You can read the full settlement agreement online at: [www.wagners.co](http://www.wagners.co)

#### **What are the next steps?**

The lawyers for both sides will ask the court to approve the settlement agreement at a hearing in the Nova Scotia Supreme Court, 1815 Upper Water Street, Halifax, on June 10, 2013 at 9:30 a.m. You can attend but you do not have to. If you want to object to the settlement agreement, you must send your objection in writing to the lawyers for the settlement class by May 31, 2013.

#### **Do I have to do anything right now?**

There is nothing you need to do right now. When the court approves a plan to distribute the settlement money, another notice will be published giving you reasonable notice of what steps you should take to make a claim at that time.

**Will I have to pay anything?**

You do not have to pay anything out of your own pocket. The lawyers for the class will eventually ask the court to approve legal fees, disbursements and taxes payable out of the settlement fund. This will happen when they seek Court Approval of a plan to distribute the settlement money. Any fees have to be approved by the court as fair and reasonable.

**How can I get more information?**

For more information, contact the lawyers for the settlement class:

Raymond Wagner, Q.C.

**Wagners**

1869 Upper Water Street, 3<sup>rd</sup> Floor

Halifax, NS B3J 1S9

Tel: (902) 425-7330

Fax: (902) 422-1233

## **Schedule "D" – Approval Notice**

### **Nova Scotia Home for Colored Children - Settlement Agreement Approved by Court**

*Elwin et al v The Nova Scotia Home for Colored Children and The Attorney General of Nova Scotia*, Supreme Court of Nova Scotia, Hfx. No. 343536

#### **What is this notice?**

A lawsuit was started on behalf of former residents of the Nova Scotia Home for Colored Children (the "Home") regarding allegations of abuse suffered by former residents of the Home. If you are a former resident, you may be a member of the class. Your legal rights may be affected by this settlement.

The lawsuit was filed by June Elwin, Harrier Johnson, and Deanna Smith, the representative plaintiffs, against both the Home and the Province of Nova Scotia. The Home has reached an agreement to settle the lawsuit. The lawsuit will continue against the Province of Nova Scotia. The settlement has now been approved by the court.

#### **What are the terms of the settlement?**

Under the settlement agreement, the Home will pay \$5,000,000 into a trust account. That money will be held in trust by the lawyers for the settling class until the lawsuit against the Province has resolved. If the lawsuit against the Province remains ongoing 12 months after the settlement money from the Home has been received, lawyers for the settling class may seek Court approval of a plan to distribute the settlement money received by the Home. The Home has also agreed to cooperate with the representative plaintiffs as they continue their lawsuit against the Province.

You can read the full settlement agreement online at: [www.wagners.co](http://www.wagners.co)

#### **What are the next steps?**

The lawsuit will continue against the Province of Nova Scotia. You will receive another notice if the case is certified as a class action against the Province of Nova Scotia.

#### **Do I have to do anything right now?**

There is nothing you need to do right now. When the court approves a plan to distribute the settlement money, another notice will be published giving you reasonable notice of what steps you should take to make a claim at that time.



**What if I do not want to take part?**

If you do not want to take part in the lawsuit, you have to opt out by sending a written declaration to the lawyers for the class at the address below before DATE, 2013. If you opt out, you will not get anything under the settlement agreement but you can sue the Home on your own.

**Will I have to pay anything?**

You do not have to pay anything out of your own pocket. The lawyers for the class will eventually ask the court to approve legal fees, disbursements and taxes of payable out of the settlement fund. This will happen when they seek Court Approval of a plan to distribute the settlement money. Any fees have to be approved by the court as fair and reasonable.

**How can I get more information?**

For more information, contact the lawyers for the settlement class:

Raymond Wagner, Q.C.

**Wagners**

1869 Upper Water Street, 3<sup>rd</sup> Floor

Halifax, NS B3J 1S9

Tel: (902) 425-7330

Fax: (902) 422-1233

## Schedule "E" – Other Actions

Number	Action	Hfx. Number
1.	Theresa Joanne Allison and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	170150
2.	Robert Armstrong and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Kings County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	170095
3.	Rodney Carl Barkhouse and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	190912
4.	Stacey Eugene Beals and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	169218
5.	Krista Lee Borden and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax, a body corporate, and The Children's Aid Society of Colchester County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	169249
6.	Robert Lawrence Borden and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Colchester County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	168101
7.	Phyllis Jean Bridgeman and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Pictou County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	190915

Number	Action	Hfx. Number
8.	Margaret Brown and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society & Family Services of Colchester County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	190931
9.	Donna Campbell and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	190913
10.	Paul Edward Carvery and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192131
11.	Miles Alfred Chandler and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	220733
12.	Roland Anthony Clyke and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Colchester County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	168790
13.	Pauline Jennie Comeau and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and Family & Children's Services of Annapolis County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	190916
14.	Elizabeth Theresa Criss and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192125

Number	Action	Hfx. Number
15.	Candace Desmond and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Pictou County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	192145
16.	Carol Beatrice Desmond and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Pictou County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	192006
17.	Gerald Howard Desmond and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Pictou County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	169248
18.	Jean Valerie Desmond and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Pictou County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	170143
19.	James Arthur Dorrington and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Colchester County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	169219
20.	Lizette Denise Dorrington and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax, a body corporate, and The Children's Aid Society of Colchester County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	169250
21.	Tracey Lynn Dorrington-Skinner and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Colchester County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	176137
22.	Kathleen Marguerite Elliot and The Attorney General of Nova	191752

Number	Action	Hfx. Number
	Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and Family & Children's Services of Annapolis County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	
23.	Marcus Gerald Estwick and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	170147
24.	Gifford George Farmer and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Shelburne County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	170148
25.	Ann Mary Fear and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and Family & Children's Services of Hants County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	192130
26.	Steve Mike George and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192126
27.	Timothy Richard Gogan and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	190933
28.	Everett Bevington Hall and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and Family & Children's Services of Annapolis County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	192117

Number	Action	Hfx. Number
29.	Sarah Lillian Izzard Hayward and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Colchester County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	205070
30.	David Clayton Harris and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	190934
31.	Hughes Joseph Izzard and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Pictou County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	191751
32.	Janice Marie James and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	169217
33.	Darlene Kane and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192143
34.	Mary Theresa MacLean and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and Family & Children's Services of Annapolis County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	190930
35.	Rita Julia McIntyre and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	190935
36.	Rudolph Hartlin "Junior" McIntyre and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	190937

Number	Action	Hfx. Number
37.	Timothy Sinclair McIntyre and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192014
38.	Shirley Melanson and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Annapolis County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	170149
39.	Harold Middleton and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192119
40.	Raymond Middleton and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192129
41.	Ruby Eleanor Middleton and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192120
42.	Elizabeth Ann Milbury and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and Family & Children's Services of Annapolis County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	192144
43.	Gordon Ronald Morash and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	191990
44.	Gerald Allan Morrison and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192118

Number	Action	Hfx. Number
45.	Zachery Daniel Scott Newcombe and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	170145
46.	Sheri Lynn Poole and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192127
47.	Lawyer Pendant Rand Jr. and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	190938
48.	Eugene Walter Russell and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192013
49.	Marilyn Geraldine Scott and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	211586
50.	Carl Steven Silvea and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and Family & Children's Services of Cumberland County, a body corporate and The Nova Scotia Home for Colored Children, a body corporate.	191753
51.	Gordon Ronald Morash and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	191990
52.	Peter Smith, Garnet Smith, Gordon Smith, Edgar Smith and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Children's Aid Society of Shelburne County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192123



Number	Action	Hfx. Number
53.	Star-Ann Smith and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	190929
54.	Leanne Marie White and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192011
55.	Helen Doris Williams and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	202072
56.	Lena May Williams and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax County, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	192128
57.	Leonard Anthony Smith and The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and The Children's Aid Society of Halifax, a body corporate, and The Nova Scotia Home for Colored Children, a body corporate.	169719

## Schedule "F" – Bar Order

### Contribution and Indemnity

1. In the event the Court ultimately determines that there is a right of contribution and indemnity owed by the Settling Defendants to the Non-Settling Defendant or the Other Defendants, the Plaintiffs in the Action and Class Members who have not opted out of the Action and Plaintiffs in the Other Actions (the "Other Plaintiffs") will restrict their claims against the Non-Settling Defendant or Other Defendants such that the Plaintiffs and Class Members will be entitled to claim and recover from the Non-Settling Defendant or Other Defendants only the damages, interest and costs, if any, arising from the conduct of the Non-Settling Defendant or Other Defendants.

### Bar Order

2. The Plaintiffs in the Action and the Other Plaintiffs agree to the approval of a bar order from the Court to be issued along with the motion for settlement approval of the Action providing for the following, effective on the Effective Date:
  - a. all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the claims covered by the Release, which were or could have been brought in the Action or the respective Other Action or otherwise, by the Non-Settling Defendant, the Other Defendants, or any other person or parties, against the Settling Defendant, or by the Settling Defendant against the Non-Settling Defendant or any other person or party, are barred, prohibited and enjoined in accordance with the terms of this Bar Order (unless such claim is made in respect of a claim by an individual who has opted out of this Action);
  - b. the Non-Settling Defendant or an Other Defendant may, upon motion, seek an order from the Court providing for discovery from the Settling

Defendant as deemed appropriate by the Court. The Settling Defendant may oppose any such motion. ; and

- c. the Non-Settling Defendant and Other Defendants may effect service of any motions referred to in section 2.b. of the Bar Order by service on counsel of record for the Settling Defendant.

## Schedule "G" – Cooperation Agreement

### Extent of Cooperation

1. The Settling Defendant agrees to provide cooperation to the Plaintiffs and Class Counsel in accordance with this Cooperation Agreement and the Settlement Agreement.
2. The cooperation provided by the Settling Defendant in the Action will be limited to the allegations made in the Second Amended Notice of Action filed in this Action on February 22, 2013.
3. A material factor in the Settling Defendant's decision to enter into the Settlement Agreement is to limit the burden and expense of the Action. Class Counsel and the Plaintiffs agree to exercise good faith in seeking cooperation from the Settling Defendant, and will not seek information that is unnecessary, cumulative, or duplicative. Class Counsel and the Plaintiffs agree to take steps to avoid imposing undue or unreasonable burden or expense on the Settling Defendant.

### Cooperation Documents

4. On the date of the Preliminary Approval Order, the Settling Defendant will preserve all documents or records that could be used to prove or disprove a material fact in the Action and that the Settling Defendant would otherwise have been required to produce to the Plaintiffs in accordance with Rules 15, 16, and 17 of the *Nova Scotia Civil Procedure Rules* (the "Cooperation Documents").
5. Any reasonable costs incurred by the Settling Defendant in producing any additional Cooperation Documents or copies of the same shall be borne by Class Counsel and may be claimed as a disbursement. The Cooperation Documents and all copies of the same will be returned to the Settling Defendant within 28 days of Final Judgment in the Action.

## Confidentiality and Privilege

6. The Cooperation Documents may be used in connection with the investigation, prosecution, and settlement of the claims in this Action against the Non-Settling Defendant.
7. The Plaintiffs agree that any Cooperation Documents which have not already been produced to other parties in the Action or Other Actions will be held and treated in strict confidence, and will not be disclosed to any person in any manner, directly or indirectly, by the Plaintiffs or Class Counsel, except in accordance with this Cooperation Agreement, and as required to be produced to the Non-Settling Defendant in the Action and the Other Defendants in the Other Actions pursuant to the *Nova Scotia Civil Procedure Rules*.
8. Upon disclosure of Cooperation Documents by the Plaintiffs or Class Counsel to the Non-Settling Defendant, the Court, Other Defendants, the Class Members, or other entities, Class Counsel will provide the Settling Defendant with an advance written description of the Cooperation Documents that will be provided within a reasonable amount of time before the proposed disclosure.
9. The Cooperation Agreement will not compel the Settling Defendant to disclose or produce any documents or information in breach of any order, privacy law or rule, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction, or subject to solicitor-client privilege, litigation privilege, attorney-client privilege, work product doctrine, common interest privilege, joint defence privilege or any other privilege (collectively, "**Privileged Material**").
10. If Privileged Material is accidentally or inadvertently disclosed by the Settling Defendant, the Plaintiffs and Class Counsel will promptly return all copies of the Privileged Material to the Settling Defendant. Privileged Material will not be disclosed or used, directly or indirectly, without the express prior written consent of the Settling Defendant. Production of the Privileged Material will in no way constitute a waiver of privilege or protection by the Settling Defendant.

### No Other Disclosure or Discovery

11. The terms of this Cooperation Agreement are the only means by which the Plaintiffs, Class Counsel, or the Class Members can obtain discovery or document disclosure from the Settling Defendant.
12. The Plaintiffs, Class Counsel, and the Class Members shall pursue no other means of discovery or disclosure as against the Settling Defendant in connection with this Action.
13. Nothing in the Cooperation Agreement shall limit the right of the Plaintiffs from seeking discovery from former employees or officers of the Settling Defendant through the *Nova Scotia Civil Procedure Rules*.
14. Nothing in this Cooperation Agreement (Schedule G) or the Bar Order (Schedule F) derogates from the rights of Non-Settling Defendant in the Action and the Other Defendants in the Other Actions from seeking discovery and document disclosure from the Plaintiffs in the Action and the Other Actions, pursuant to any avenue under which they are entitled under the *Nova Scotia Civil Procedure Rules*.
15. Any production by the Settling Defendant to the Plaintiffs that has been made, or will be made pursuant to this Cooperation Agreement, that would have also been made to the Non-Settling Defendant or the defendants in the Other Actions had the Settling Defendant remained a party to the Action or Other Actions, will be provided by the Plaintiffs to the relevant defendant within 30 business days of the production being made to the Plaintiffs, or within 30 days of this Settlement become effective, whichever is later.

**Inquiry or Review**

16. If the Non-Settling Defendant creates a process that will review issues raised in the Action (the "Inquiry"), the Settling Defendant agrees to participate in such a process to a reasonable extent, and to the extent allowed by the terms of the process, but only if the Non-Settling Defendant provides sufficient funding to cover the Settling Defendant's costs relating to its participation including its legal costs.

**Direction from the Court**

17. The Plaintiffs or the Settling Defendant may seek orders from the Court regarding the interpretation and implementation of this Cooperation Agreement if the Plaintiffs, Class Counsel, or the Settling Defendant do not act reasonably with respect to their obligations under the Cooperation Agreement.