


## SETTLEMENT AGREEMENT

1. Class members or their legal representative will have 12 months from the first date of publication of notice of court approval of this settlement to submit a written claim for compensation in a form to be agreed by the parties (the "Claim").
2. In order to be eligible for compensation, the claim must establish one or more of the following requirements:
  - a. The class member was the subject of misconduct of a sexual nature by a Woodlands employee, volunteer or, subject to paragraph 3, resident;
  - b. The class member was the subject of misconduct of a physical or psychological nature by a Woodlands staff member or volunteer;
  - c. The class member suffered physical or psychological injury reasonably attributable to negligence in the operations or management of Woodlands, where such injury is more than de minimis or trivial.
3. In order for a claim in relation to sexual misconduct by another resident to be eligible under section 2(a), it must be established by the Class Member that:
  - a. the Class Member:
    - i. was not legally capable of giving consent, or
    - ii. did not consent,to the misconduct of a sexual nature;
  - and
  - b. the misconduct of a sexual nature by the resident perpetrator is reasonably attributable to negligence in the operations or management of Woodlands
  - and
  - c. the injury is more than de minimis or trivial.

A Class Member will not be presumed to have lacked the ability to give consent, or to have not consented, by reason only of the fact that the Class Member was resident at Woodlands and had developmental disabilities.
4. The material provided by the Class Member in support of these requirements will be by way of documents, Woodlands files, expert reports, affidavits or other credible information.



5. The Province shall be provided with a copy of each Claim. The Province shall have 45 days after the date it receives the Claim (or such further time allowed by the Adjudicator on application of the Province), to provide a response (the "Response"). The Response shall include a brief attaching any documents, Woodlands files, expert reports, affidavits, or other credible information that the Province says disputes eligibility or assists in determining the amount payable under paragraph 14.
6. The Adjudicator may consider the materials provided to him or her whether or not such materials would be admissible in a court of law. The Adjudicator may grant extensions of the time to provide materials on the application of a party, except for the time limit established in paragraph 1.
7. Assessment of eligibility and entitlement shall be determined on a balance of probabilities and common law principles. The assessment shall be based on the materials provided pursuant to paragraphs 4 and 5 without a hearing, unless the Class Member elects to make a presentation under paragraph 18. If there is a presentation pursuant to paragraph 18, the Adjudicator may also rely on the presentation and any answers given to questions asked by the Adjudicator.
8. Eligibility and entitlement under this agreement shall be determined by an adjudicator (the "Adjudicator") The Adjudicator shall be one of two or more Judges of the Supreme Court of British Columbia appointed by the Chief Justice of the Supreme Court of British Columbia pursuant to ss. 27(1)(a) and (c) of the *Class Proceedings Act*. The Adjudicators may establish a process for management of the hearing of the Claims so as to ensure a fair, just and timely hearing of the Claims on the merits, and consistency in the application of paragraphs 14 and 15 of this Agreement. There shall be no appeal from the decision of an Adjudicator.
9. The Adjudicator may request further material from the Class Member or the Province at any time in the process, to be delivered within 45 days of such request being provided to the Party. If upon receipt of this additional material, the Adjudicator believes that it would be appropriate to request further material from the other Party, the Adjudicator may make such a request.
10. The Claim under paragraph 2 shall include the Class Member's assessment of their category and amount payable. The Province's Response shall include the assessment of the category and amount payable. If the Class Member is represented by counsel, and if the Province's designated amount payable is equal to or greater than that set out in the Claim, then the Adjudicator shall issue an award for that amount without reviewing the materials.
11. If the Class Member is represented by counsel, the Class Member and the Province may have negotiations about the amount payable at any time prior to the Adjudicator's issuance of a decision. If the Class Member and the Province are able to agree to the amount payable, the Adjudicator shall issue an award in the agreed amount without further review of the materials.



12. Notwithstanding any other provision of this Agreement, if the Adjudicator has concerns that the Claim submitted by the Class Member or the Class Member's legal representative is not in the Class Member's best interests, the Adjudicator may require that the Class Members obtain or the Class Member's legal representative obtain independent legal advice from Class Counsel. Subsequent to the independent legal advice, the Class Member may submit further material in support of the Claim within 60 days of receiving the independent legal advice, or will provide notice to the Province and Adjudicator that there is no further material forthcoming. If further material is provided by the Class Member, the Province shall be entitled to provide further material in response within 45 days of receipt of such further material.
13. The Adjudicator will make best efforts to render decision within 30 days of receipt of all materials and the oral hearing, whichever is later.
14. After a claim has been determined to be eligible, the Adjudicator shall use the following chart to determine the category of injury caused by the acts identified in paragraph 2 and, within the range provided for that category, the appropriate amount payable to each eligible class member. Where two types of injuries must have been caused by the acts identified in paragraph 2 in order to fit within a particular category, the two injuries must be of a different type (for example sexual and physical), arise from separate and distinct acts, and be separate in time:

CATEGORY	DESCRIPTION OF INJURIES	RANGE OF AWARDS	COUNSELLING
Category 1	Any combination of two Severe injuries	\$100- \$150,000	Payment for counselling required to address the harm up to \$10,000
Category 2	Any combination of a Severe injury and a Medium injury	\$80-125,000	Payment for counselling required to address the injury up to \$10,000
Category 3	Any combination of a Severe injury and a Minor injury	\$60,000- \$100,000	Payment for counselling required to address the injury up to \$10,000
Category 4	Severe Sexual	\$50,000- \$80,000	Payment for counselling required to address the harm up to \$10,000
Category 5	Severe Physical or Severe Psychological	\$25,000- \$80,000	Payment for counselling required to address the injury up to \$10,000
Category 6	Any combination of two Medium injuries	\$50,000- \$80,000	Payment for counselling required to address the injury up to \$7500
Category 7	Any combination of a Medium injury and a Minor	\$40,000-	Payment for

	injury	\$75,000	counselling required to address the injury up to \$7500
Category 8	Medium Sexual	\$22,500-\$75,000	Payment for counselling required to address the injury up to \$7500
Category 9	Any combination of two Minor injuries	\$5,000-\$50,000	Payment for counselling required to address the injury up to \$5000
Category 10	Medium Physical Injury or Medium Physical Injury and Sexual Interference Injury or Medium Psychological Injury	\$5,000-\$50,000	Payment for counselling required to address the injury up to \$5000
Category 11	Minor Sexual	\$5,000-\$35,000	Payment for counselling required to address the injury up to \$5000
Category 12	Minor Physical Injury Or Sexual Interference Or Minor Psychological	\$3,000-\$30,000	Payment for counselling required to address the injury up to \$5000

15. The category descriptions are defined below. The Adjudicator will consider the duration and number of incidents, or the presence of aggravating factors as defined below, in deciding the appropriate category for a claim and the amount to be awarded within the specified range for that particular category.

Injury	Description of Injury	Duration/Number of Incidents
Severe Sexual	Anal or vaginal sexual intercourse; or anal or vaginal penetration causing Severe Physical injury	persistent or chronic, or an incident accompanied by violence
Severe Physical	Physical assault or injury, with broken bones (i.e., nose, arm, etc.), or other serious trauma, with or without hands (i.e. objects) with evidence of hospitalisation or treatment, or permanent partial disability	persistent or chronic or characterized as severe
Severe Psychological	Severe psychological, mental or emotional injury reasonably foreseeable given the character of the particular class member. This does not include upset, disgust, anxiety, agitation, or other mental states that fall short of injury to the particular class member.	persistent or chronic

Medium Sexual	Anal or vaginal sexual intercourse, anal or vaginal penetration, oral intercourse, masturbation by or of another	one or more incidents
Medium Physical	Physical assault or injury with broken bones (i.e. nose, arm, etc.) or other serious physical trauma, with or without hands (i.e. objects) with evidence of hospitalisation or treatment if available.	one or more incidents
Medium Psychological	Moderate psychological, mental or emotional injury reasonably foreseeable given the character of the particular class member. This does not include upset, disgust, anxiety, agitation, or other mental states that fall short of injury to the particular class member.	one or more incidents
Minor Sexual	Fondling	one or more incidents
Minor Physical	Physical assault or injury, with or without hands (i.e. objects)	one or more incidents
Minor Psychological	Minor psychological, mental or emotional injury reasonably foreseeable given the character of the particular class member. This does not include upset, disgust, anxiety, agitation, or other mental states that fall short of injury to the particular class member.	one or more incidents
Sexual Interference	Watching, degrading sexual comments intimidation, sexual touching,	one or more incidents

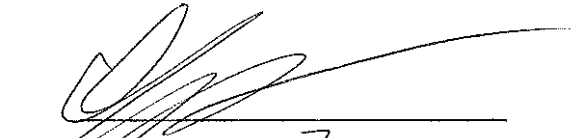
16. The aggravating factors may include verbal abuse, withholding medical treatment, solitary confinement, degrading treatment, threats, and intimidation.
17. If the claim is successful, the Adjudicator shall also award proven out of pocket expenses associated with making a claim (but not legal fees) to a maximum of the lesser of (1) 10% of the amount awarded or (2) \$3500.
18. If the Class Member elects to make an oral presentation to the Adjudicator prior to the determination of his or her entitlement, such presentation shall be limited to one hour in a private setting. The Adjudicator shall be entitled to ask questions after the Class Member's presentation. The Province shall be entitled to (1) receive not less than 15 days notice, (2) be present at the presentation, and (3) suggest areas of questioning and apply for the right to ask questions within those areas. A psychologist with experience with persons with intellectual and developmental disabilities will be present for these oral presentations to provide a supportive environment for the Class Member. The psychologist will be available to the Class Member 1 hour before and 1 hour after the oral presentation.




19. The costs of the mediation, Adjudicator, costs of notice, and other administration costs shall be paid by the Province.
20. The Province shall pay each award by the Adjudicator within 30 days of the award.
21. Any legal fees or disbursements payable, including payable to Class Counsel, shall be paid from the amount awarded to each Class Member. Class Counsel will seek approval for any payment structure at the settlement approval hearing. The Province shall not take any position on this application.
22. The eligibility criteria and injuries that are the basis of the claim must have occurred on or after August 1, 1974.
23. The Province shall produce any updated contact information for Class Members from the prior provision of such information within one month of court approval of the settlement.
24. The Province shall produce the balance of Class Member files to Klein Lyons within 6 months of the date of court approval of this settlement. Files will be produced on a regular basis during this 6 month period.
25. Any release provided in the settlement approval order shall be limited to acts that occurred on or after August 1, 1974.
26. The Province shall not include any amounts received in this settlement in any calculation of assets or income for purposes of the calculation of social services benefits.
27. This agreement is subject to formal approval by the Deputy Attorney General, Treasury Board and Cabinet, and will remain confidential until that time.
28. Should this agreement not be approved by the Court, the parties will be restored to the position they were in prior to the execution of this agreement.

DATED THIS 9<sup>TH</sup> DAY OF OCTOBER, 2009

For the Province of British Columbia

  
D. Clifton  
Counsel for HMEBC

For the Plaintiff

  
David Klein  
Counsel for the  
Representative Plaintiffs