

SUPREME COURT OF NOVA SCOTIA

Citation: *Estey v. Attorney General (Nova Scotia)*, 2025 NSSC 368

Date: 20251107

Docket: Hfx No. 514712

Registry: Halifax

Between:

Isai Estey, by his litigation guardian, E. Anne MacRae

Plaintiff

v.

The Attorney General of Nova Scotia
Representing his Majesty the King
in Right of the Province of Nova Scotia

Defendant

DECISION

Judge: The Honourable Associate Chief Justice Darlene A. Jamieson

Heard: November 7, 2025, in Halifax, Nova Scotia

Oral Decision: November 7, 2025

Written Decision November 20, 2025

Counsel: John McKiggan, KC, Brian Hebert, James Sayce and Jamie Shilton
for the Plaintiff

Alison W. Campbell and Kevin A. Kindred, KC for the Attorney
General

By the Court:

Background

[1] In this motion, the Representative Plaintiff, Mr. Isai Estey, by his litigation guardian, E. Anne MacRae, ("Mr. Estey" and "Ms. MacRae"), seeks approval of a class proceeding proposed settlement (the "Settlement") valued at up to \$34 million. The Representative Plaintiff says the settlement will provide significant compensation for the harm caused by the discrimination that people with disabilities who were eligible for social assistance under the *Social Assistance Act*, R.S.N.S. 1989, c. 432 (the "*SAA*") have endured.

[2] The Motion further seeks: to approve the form, content and manner of distribution of the proposed notice of approval of the Settlement; to appoint Deloitte LLP as the claims administrator for the Settlement; and to approve an honorarium of \$15,000 for Mr. Estey

[3] There is also before me a second motion to approve Class Counsel's fees and disbursements; and that Hereford Litigation Finance 1 Limited be paid the Reimbursement and Commission under, and as defined in, the Litigation Funding Agreement (the "LFA").

[4] I do not intend to set out the lengthy litigation history of this matter as it is contained in the written submissions filed by Class Counsel; however, the following is a brief summary. This action was commenced on May 4, 2022, wherein the Plaintiff alleges that the Defendant has violated ss. 7 and 15(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 and has been systemically negligent, in its administration of social assistance for people with disabilities under the *SAA*.

[5] The parties state that this class action has always been separate and distinct from the *Disability Rights Coalition* litigation. However, many of the same facts form the basis of this class proceeding. The *Disability Rights Coalition* matter began in 2014, when three individuals and the Disability Rights Coalition sought recourse under the *Human Rights Act*, R.S., c. 214, s. 1, alleging that Nova Scotia's system of Disability Assistance discriminated against people with disabilities. As Class

Counsel have described in the materials, the remedy under the *Disability Rights Coalition* litigation does not include compensation for people with disabilities affected by systemic discrimination, although two individual applicants were awarded damages (Shilton Settlement Approval Affidavit at para. 77).

[6] The Plaintiff and Class Counsel executed a Litigation Funding Agreement (the "LFA") with Hereford Litigation Finance 1 Limited which was approved by an order of this court and issued on August 19, 2024. The action was certified as a class proceeding on consent by order of Hoskins, J. dated June 21, 2024. Negotiations between the parties resulted in the proposed settlement that is the subject of this motion.

[7] In support of the settlement negotiations, the Province disclosed various documents relating to class size data. Class Counsel undertook a detailed analysis of this data to generate estimates of the number of claims and the Defendant's total liability.

[8] The parties participated in settlement discussions both in person and virtually over many months. On April 4, 2025, the parties executed a Term Sheet. Additional negotiations over the content of the Settlement Agreement took place after the Term Sheet was executed. On August 20, 2025, the parties executed the proposed Settlement.

[9] By Court order dated September 9, 2025, notice to the Class of the certification of the action as a class proceeding (and of the right to opt out of the Class), as well as of the hearing for approval of the Settlement was directed. There is evidence before me to indicate that each of Class Counsel, the Defendant, and the Notice Administrator complied with their obligations under the Phase I Notice Plan.

[10] It can be said that the Phase I Notice campaign has been successful to date. As of October 22, 2025, 391 persons had registered for updates with the settlement website created by the Notice Administrator. As of today's date that number has increased to 494 people. There have been no objections to the Settlement, and no persons have opted out of the Settlement.

[11] The magnitude of this proposed Settlement ranks among the largest in the history of Nova Scotia. The \$32 to \$34 million settlement fund is designed to pay for the following items:

- (a) compensation to Class Members;

- (b) the costs associated with administration of notice and of the claims process;
- (c) an honorarium of \$15,000 payable to the Representative Plaintiff, Mr. Estey; and
- (d) Class Counsel's fees and disbursements, as well as the levy set out in the LFA.

Issues

[12] The issues on this motion are:

1. Should the proposed Settlement be approved?
2. Should an honorarium to the Representative Plaintiff be approved?
3. Are the proposed fees and disbursements requested reasonable and should they be approved?
4. Should Deloitte LLP be appointed the Claims Administrator?

The Law and Analysis

Settlement Approval

[13] Section 38(1)(a) of the *Class Proceedings Act*, S.N.S. 2007, c. 28 (the "*Act*") provides that court approval is required to settle a class proceeding:

- 38 (1) A class proceeding may be settled or discontinued only
- (a) with the approval of the court; and
 - (b) on the terms or conditions the court considers appropriate.
- (2) A settlement in relation to the common issues affecting a subclass may be concluded only
- (a) with the approval of the court; and
 - (b) on the terms or conditions the court considers appropriate.
- (3) A settlement under this Section is not binding unless approved by the court.

...

[14] The law concerning the test for approval of a class proceeding settlement is well established and is whether the settlement is fair and reasonable, and in the best interests of the class as a whole. The following is a non-exhaustive list of the factors for consideration when determining whether to approve a settlement:

- The likelihood of recovery or success;
- The amount and nature of discovery evidence;
- Settlement terms and conditions;
- The recommendation and experience of counsel involved;
- Future expense and likely duration of litigation;
- Recommendation of neutral parties, if any;
- The number and nature of objections;
- Presence of good faith and the absence of collusion;
- Degree and nature of communications by counsel with class members;
- The dynamics of, and positions taken during the negotiations; and
- The risk of not unconditionally approving the settlement.

(See, for example, *Gallant v. The Roman Catholic Episcopal Corporation of Halifax*, 2022 NSSC 347 at para. 8; *Doucet v. The Royal Winnipeg Ballet*, 2022 ONSC 976 at para. 48; *Anderson v. Canada (Attorney General)*, 2016 NLTD(G) 179 at para. 39; *Dufault v. The Toronto-Dominion Bank*, 2024 ONSC 961 at para. 20).

[15] As Brothers, J. said in *Gallant v. The Roman Catholic Episcopal Corporation of Halifax*, 2022 NSSC 347 these factors are not necessarily given the same weight and not all factors must be present:

[9] In assessing the reasonableness of the settlement, the above factors are not necessarily given equal weight, and not all enumerated factors need to be present in each case. As the court noted at para. 73 in *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.):

[T]he settlement approval exercise is not merely a mechanical seriatim application of each of the factors listed above. These factors are, and should be, a guide in the process and no more. Indeed, in a particular case, it is likely that one or more of the factors will have greater significance than others and should accordingly be attributed greater weight in the overall approval process.

[10] Settlements must fall within a "zone of reasonableness", and "reasonableness allows for a range of possible resolutions" (*Anderson et al. v. Canada (Attorney General)*, 2015 NLTD(G) 167, at para. 81). *Settlements do not need to be perfect to be approved.* As stated in *Ainslie v. Afexa Life Science Inc.*, 2010 ONSC 4294:

[31] The "zone of reasonableness" concept is helpful in guiding the exercise of the court's supervisory jurisdiction over the approval of a settlement of class actions. It is not the court's responsibility to determine whether a better settlement might have been reached. Nor is it the responsibility of the court to send the parties back to the bargaining table to negotiate a settlement that is more favourable to the class. Where the parties are represented - as they clearly are in this case - by highly reputable counsel with expertise in class action securities litigation, the court is entitled to assume, in the absence of evidence to the contrary, that it is being presented with the best reasonably achievable settlement and that class counsel is staking his or her reputation and experience on the recommendation.

[Emphasis added]

[16] Settlements are products of compromise. They should not be held to a standard of perfection in the eyes of the court. I must show deference to the process that resulted in the resolution between the parties. There is a presumption of fairness when experienced counsel have negotiated at arms length. (See *Baxter v. Canada (Attorney General)*, [2006] OJ No 4968 (S.C.) at para. 9, relying on *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.) at para. 77; and *Manuge v. Canada*, 2013 FC 341 at para. 6).

[17] I am satisfied this was an arms length settlement negotiated by experienced counsel for both the Representative Plaintiff and the Attorney General. I note in *Manuge, supra*, the Federal Court stated as follows:

[6] It will always be a particular concern of the Court that an arms-length settlement negotiated in good faith not be too readily rejected. The parties are, after all, best placed to assess the risks and costs (financial and human) associated with taking complex class litigation to its conclusion. The rejection of a multi-faceted settlement like the one negotiated here also carries the risk that the process of negotiation will unravel and the spirit of compromise will be lost.

[Emphasis added]

[18] This settlement occurred a number of years into the litigation process and at a stage where the knowledge base of counsel was very high. As stated in *Klegg v. HMQ Ontario*, 2016 ONSC 2662, at para. 34:

Their [the parties'] knowledge base going into the mediation was as high as it ever would be, short of completing the trial and reading the reasons of the trial judge. In short, the mediation that led to this settlement was based on layers and layers of actual, and not just imagined, information about the risks and rewards of further litigation.

[19] As I have noted the monetary value of the proposed Settlement is among the largest class proceeding settlements in Nova Scotia. Counsel advise that it is also one of the largest settlements of a claim primarily based on s. 15(1) of the *Charter* in any Canadian jurisdiction.

[20] The Plaintiff estimates that there are 2642 Class Members who may be eligible to participate in this Settlement. With respect to the calculation of compensation, the materials describe it as follows:

- (a) Waitlist Class: Class Members who met the Waitlist Class definition for at least six months will be eligible for a base payment of \$5,000. Those who continued to meet the Waitlist Class definition will be eligible for a further \$500 for each additional twelve-month duration as a member of the Waitlist Class.
- (b) Institution Class: Class Members who met the Institution Class definition for at least three months will be eligible for a base payment of \$15,000. Those who continued to meet the Institution Class definition will be eligible for a further \$1,500 for each additional twelve-month duration as a member of the Institution Class.
- (c) Nursing Home Class: Class Members who met the Nursing Home Class definition for at least three months will be eligible for a base payment of \$15,000. Those who continued to meet the Nursing Home Class definition will be eligible for a further \$1,500 for each additional twelve-month duration as a member of the Nursing Home Class.
- (d) Hospital Class: Class Members who met the Hospital Class Definition for at least one (1) month will be eligible for \$1,500 for each whole month as a member of the Hospital Class.

(Shilton Settlement Approval Affidavit, Exhibit "A": Settlement Agreement, August 20, 2025, Schedule A -Compensation Protocol, paras. 51-53.)

[21] I note as well that compensation can be stacked. In other words, it is possible for a class member to be eligible for compensation as a member of more than one of the above Classes. There is no cap on compensation which may be approved for an individual Claimant. In addition, the claims process includes several rounds of payments to approved Class Members avoiding waiting until the conclusion of all claims before payments commence.

[22] If the amount approved for class members is more than what is available under the Settlement, claims awards will be reduced on a pro rata basis. Conversely, if more money is available under the Settlement than has been approved, at the end of the claims process any surplus can be paid out as additional compensation. If it is not economically feasible to pay out any surplus as additional compensation, for example, where it would be financially inefficient to distribute a small sum to the Class, the surplus will be paid to a community organization, agency, or charity which advocates for and/or supports people with disabilities in Nova Scotia. This is subject to court approval.

[23] In addition to the above, I now turn to various other factors I have considered. Together, all of the factors I have considered lead me to conclude that the proposed settlement is fair and reasonable and is in the best interests of the Class.

1. The Settlement is in the amount of \$32 million and potentially \$34 million. If there are more than 420 Claimants who have been determined to lack legal capacity and may therefore be eligible for compensation in respect of periods before May 4, 2020, the Defendant will pay an additional \$2 million toward the settlement funds, allocated proportionately between the Pre-Limitation Fund and the Special Proof Fund.

2. There were risks in proceeding to a common issues trial.

After hearing the extensive submissions of counsel on this factor, including from counsel for the Attorney General, I am satisfied there would have been significant legal issues to be resolved. The viability of the s. 15 *Charter* claim was very much a live issue. I give but one example of the potential risk associated with the s. 15 *Charter* claim. In the class proceeding, if the Plaintiff had succeeded in establishing discrimination contrary to s. 15(1) of the *Charter* and proceeded to a s.1 analysis, the Province would have been entitled to advance justificatory arguments that were not raised in the *Disability Rights*

Coalition matter. For example, it would have been open to the Province to argue that in light of the costs of eliminating the Waitlists, it was entitled to maintain the Waitlist as a reasonable limit on the s. 15(1) Rights of the Class. In other words, government financial and policy decisions taken on the basis of the prevailing economic situation could have been argued to be reasonable limits. I am of the view that the risks faced at a common issues trial, when considering the benefits available under the Settlement, weigh in favour of approval of the settlement.

Further, it is unlikely that a common issues trial would have resolved all matters. Individualized aspects of the Class members claims, at least to some extent, would need to be determined by individual causation and damages assessments. Individual assessments could take a very long time to complete and would present a considerable burden for members of this class.

3. The proposed paper-based claims process is user friendly. It is a streamlined, low-barrier process that recognizes the importance of accommodating and assisting Class Members as they come forward to present a claim. This reduces barriers that might otherwise prevent the most vulnerable members of the Class from pursuing their claims. I will speak more about this later.
4. This settlement provides timely payment for Class Members who would have had to wait for many years as this litigation worked its way through the courts.
5. There are non monetary provisions. The Province has agreed that amounts paid under the Settlement will not affect a successful Claimant's eligibility for benefits under the SAA and/or the *Employment Support and Income Assistance Act*, S.N.S. 2000, c. 27 (the "ESIA").
6. The Settlement has some very unique benefits such as enabling an authorized representative of a deceased Class Member to submit or continue an Application on behalf of the deceased Class Member.
7. I am satisfied that Class Counsel developed a fulsome understanding of the underlying facts and the circumstances of the claims (*Merlo v. Canada*, 2017 FC 51 at para.23). While the Settlement was reached before the commencement of the formal discovery process, Class

Counsel obtained and reviewed many of the relevant documents that would likely have been produced had the class proceeding moved to the discovery stage. The materials describe in detail the document review undertaken by Class Counsel (Representative Plaintiff's brief at paras. 108 to 113).

8. Class Counsel undertook a detailed analysis of the class size data produced by the Attorney General. Based on Class Counsel's best estimates, the funds available under the Settlement are sufficiently substantial as to allow for take-up which comfortably exceeds a range of "reasonableness" set out in the caselaw (see for example *Dufault v. The Toronto Dominion Bank*, 2024 ONSC 961 at para 32 where Akbarali J. of the Ontario Court commented that "settlements with a take-up rate of 30-40% are considered reasonable"). I am satisfied Class Counsel had an appropriate evidentiary basis to evaluate the settlement.
9. The Representative Plaintiff, Mr. Estey, through his litigation guardian, has expressed his support for the proposed settlement. In her affidavit Ms. Anne MacRae states:
 14. While there is no amount of money that can fully compensate a person who has been discriminated against on the basis of their disability when it comes to social assistance, I am gratified by the significant achievement for Class Members that this Settlement represents. Class Counsel kept me apprised of the Defendant's position throughout this litigation. Isai and I are proud of the role that Isai has played in this achievement.
 15. I know that some Class Members may not support this proposed Settlement. I understand that some people may prefer to have their 'day in court' or may believe they would get more money if they had started their own lawsuit. However, I take my responsibility to act in the best interests of all Class Members very seriously. I have had numerous conversations with Class Counsel about the proposed settlement. Having lived through this litigation process, I believe whole-heartedly that this Settlement is in the best interests of the Class as a whole.
10. The Settlement was negotiated by experienced counsel over multiple in-person and virtual meetings. I have no reason to believe that any party was acting in bad faith or collusion.
11. Notwithstanding the broad notice provided, no objections have been received and no one appeared at this hearing to oppose the motions. In my view an absence of any objections, in light of the notice plan

that has been completed, is a strong indication that the Class supports approval of the Settlement.

[24] The claims process under the Compensation Protocol will be administered by Deloitte LLP as the Claims Administrator. In addition to the Claims Administrator, there will be a roster of Claims Adjudicators, to be agreed upon between the parties, who will be responsible for deciding certain contested issues.

[25] I wish to highlight further aspects of the claim process that will be of particular value to this class:

- (a) The proposed paper-based process is user friendly and recognizes the importance of accommodating and assisting Class Members as they come forward to present a claim.
- (b) The claim form will be provided in an accessible format.
- (c) The Protocol includes a requirement that the Claims Administrator "adopt procedures which reflect best practices for communicating with, supporting, and validating the autonomy of people with disabilities" and a requirement that the Compensation Protocol be interpreted and applied "in such a manner so as to render it accessible, low-barrier, confidential, user-friendly, and trauma-informed."
- (d) A Class Member may initiate the process by submitting an Application to the Claims Administrator prior to the Claims Deadline which is defined in the Settlement. The Class Member is only required to provide basic information about themselves, and is not required to provide documents or other evidence to establish that they were a recipient of Disability Assistance or that they underwent any particular adverse experiences. The Claims Administrator may contact a Claimant to request that they provide any missing information which is required to adjudicate the Application.
- (e) After receipt of a completed Application, the Province is responsible for reviewing the Claimant's Disability Assistance file and providing the dates during which the Claimant met the eligibility requirements for members of the Waitlist Class, Institution Class, Nursing Home Class, and Hospital Class. This review is conducted in accordance with rules set out in the Compensation Protocol and is subject to a requirement of good faith and has response timelines built in. I see there being several

benefits to this process - the costs of this review process will be borne by the Province and, therefore, so not deducted from the settlement funds. In addition, this process means that confidential information does not need to be transferred by the Province to the Claims Administrator.

- (f) The Compensation Protocol is sensitive to the access to justice needs of persons who have been or would have been determined to be legally incapable of commencing a proceeding before the presumptive limitation period. It contains three methods for establishing legal incapacity.
- (g) No class member is required to testify publicly and the claims process will be confidential.
- (h) All class members may avail themselves of legal assistance by contacting Class Counsel to assist in navigating the claims process to help with completing the claims forms or in obtaining documentation or with the adjudication/appeal process or with whatever is needed by an individual class member. This assistance throughout the claims process is at no extra charge to the fees being requested today.

(See the Compensation Protocol at paras. 2-21, 39-40, and 58 and Representative Plaintiff's brief at para. 50)

[26] I reiterate that after consideration of all of the factors, including those specifically noted above, I am of the view that the proposed settlement is fair, reasonable and in the best interests of the class. The Settlement is approved.

Honorarium

[27] Class Counsel have set out the contributions of Mr. Estey throughout this proceeding. (For example, see the summary at para. 123 of the brief). Counsel have stated that "without Mr. Estey's contributions and commitment, this class action could not have proceeded, and the Settlement could not be obtained."

[28] I note Wood, J.'s comments (as he then was) in *Sweetland v. Glaxosmithkline Inc.*, 2019 NSSC 136 at para. 42 that honoraria are justified where "representative plaintiffs have committed significant time to the litigation and suffered some degree of personal hardship or prejudice." I am of the view this is the case here.

[29] The amount sought for the honorarium of \$15,000 is in line with amounts awarded in similar cases. I agree completely with the statement of counsel that Mr.

Estey has bravely represented the interests of the Class in this multi-year litigation that has required him to disclose many sensitive personal details. His role in the Settlement means that hundreds or thousands of Class Members will be able to obtain compensation through an expedited, confidential process.

[30] I approve the proposed honorarium to Mr. Estey.

Approval of Class Counsel Legal Fees and Disbursements

[31] The *Act*, at section 41, addresses agreements respecting fees and disbursements. For example, it states an agreement respecting fees and disbursements between a solicitor and a representative party is not enforceable unless approved by the court. While fee agreements should not be blindly accepted by the court, they are a starting point for the court's consideration as to whether the fees are fair and reasonable.

[32] Pursuant to the terms of the Retainer Agreement between Class Counsel and the Representative Plaintiff, Class Counsel seek approval of fees of \$8,000,000 which represent 25% of the initial \$32 million Settlement. I note that the terms of the Retainer Agreement provide for a 30% fee at this stage of the proceeding. With respect to the total settlement of up to \$34 million the fee request represents 23.5%. When looking at the 30% set out in the Retainer Agreement, the fee request by Class Counsel represents an approximate reduction in fees of up to \$2.2 million.

[33] In deciding whether to approve Class counsel legal fees, I am to determine whether they are "fair and reasonable" in all the circumstances. The caselaw indicates the following factors should be considered: the risks undertaken; the results achieved; the complexity of the issues; the importance of the litigation to the plaintiffs; the degree of responsibility assumed by counsel; the quality and skill of counsel; the expectation of the plaintiff; the ability of the class to pay; the time expended; and fees in similar cases (*Heyder v. Canada (Attorney General)*, 2019 FC 1477 at para. 108).

[34] These are not exhaustive factors. They will be weighed differently in different cases. Each case will turn on its unique facts. Risk and result are the two main factors for consideration (*Condon v. Canada*, 2018 FC 522 at para 83).

[35] As set out above, I am of the view there were risks in proceeding to a common issues trial with the claims advanced under s. 15 of the *Charter*. Other factors include that the terms of the proposed settlement are quite favourable to the Class Members

in all of the circumstances; and the extensive experience of Class Counsel in class proceedings which is detailed in the Affidavit of Mr. Shilton at paras. 64 through 72.

[36] Further, the affidavit of the Litigation Guardian, Ms. Anne MacRae, speaks to the importance of this litigation to Mr. Estey and the Class Members. The issues raised in this class proceeding are of immense importance to the Class Members. The Representative Plaintiff unreservedly supports the fee request.

[37] The Representative Plaintiff would not have been able to advance this claim without Class Counsel taking the matter on a contingency fee basis. Litigation Guardian, Ms. Anne MacRae, makes this clear in her affidavit sworn on October 23, 2025 (para. 20). She says that without this proceeding her family, on behalf of Mr. Estey, would not have been able to access the justice system. The Class Members, by definition, have to meet the financial eligibility requirements for Disability Assistance and were unlikely to have had the means to fund this litigation.

[38] As discussed above, the Settlement and Compensation Protocol contains a number of features which were specifically designed to meet the needs of the Class, including a low barrier claims process. Details are succinctly summarized in the fee approval brief at para. 50. Further, Class Counsel have advised that:

In designing the Settlement and Compensation Protocol, there were no precedents on which Class Counsel could draw. Unlike class actions of an established type - e.g. securities misrepresentation cases, defective medical device cases, or abuse cases - this is, to Class Counsel's knowledge, the first settlement to provide compensation for delayed access to services due to systemic discrimination, with the quantum of compensation corresponding principally with the duration of the delay. The Settlement and Compensation Protocol had to be designed from scratch to meet this purpose.

[39] Class counsel devoted a significant amount of time to this litigation. With respect to the time expended by Class Counsel, over the course of almost four years, Class Counsel's lawyers, students and clerks devoted approximately 2,288.90 hours to this case. As of October 20, 2025, Class Counsel have, so far, incurred time with a value of \$1,697,521.50 (excluding taxes). (Shilton Fee Approval Affidavit at para. 19.)

[40] The amount of time docketed does not account for all of the additional hours Class Counsel expended preparing for this settlement approval motion after October 20, 2025. In addition, Class Counsel will spend significant time, at no extra cost, during the implementation stage of the Settlement, including providing assistance to

class members during the claims process, when needed. Class Counsel estimate that an additional \$1,250,000 of counsel time will be incurred during the post-settlement and implementation phase. I refer to paragraphs 24 to 26 of the fee approval affidavit of Mr. Shilton that sets out the future work in detail.

[41] I have reviewed numerous cases to assess the fees claimed here as compared to similar cases and I find them comparable to the fees approved in connection with other recent class proceeding settlements in Atlantic Canada. Many of the cases are set out at para. 64 of the Plaintiff's fee approval brief.

[42] I am also of the view that it is appropriate to examine the reasonableness of the percentage-based fee measured against the actual time incurred. Counsel say they spent 2,288.90 hours to October 20 which represents a fee of \$1,697,521.50 (before taxes). The total of the time expended by Class Counsel through to October 20, 2025, plus the future time which Class Counsel expect to expend to implement the Settlement Agreement is approximately \$2.95 million. The \$8 million fee represents an approximate multiplier of 2.7 of the total expected fees. I agree with counsel that the 2.7 multiplier is within an accepted range in the jurisprudence. (See for example, *Osmun v. Cadbury Adams Canada Inc.*, 2010 ONSC 2752 at para. 31; and *Kaplan v. PayPal CA Limited*, 2021 ONSC 1981 at para. 91.)

[43] Finally, in considering the reasonableness of the fees and disbursements, I am mindful of the goals of class proceedings, being judicial economy, access to justice and behaviour modification. Contingency fee arrangements are a key part of the infrastructure of class proceedings. I adopt Brothers, J.'s comments in *Gallant*, *supra*, at para. 63:

The objectives of judicial economy, access to justice and behaviour modification were all advanced by class counsel's decision to bring this proceeding, and the fees sought are sufficient to reward them for their efforts and to encourage counsel to continue to take on complex and risky class action litigation. Without counsel willing to take on these cases, meritorious claims like these could languish and vulnerable people in our society would not have an opportunity to obtain access to justice. In addition, these types of claims advance behaviour modification, not just for individuals, but for institutions and organizations as well. ...

[44] Class Counsel legal fees and disbursements are approved.

Appointment of a Claims Administrator

[45] Class counsel received 4 quotes in total for the claims administration work and while the Deloitte LLP ("Deloitte") quote was not the least expensive, I agree that their expertise is a consideration.

[46] Deloitte was selected as the Claims Administrator for their commitment to a trauma-informed approach and for their extensive experience in acting on other large-scale class actions. Their experience acting in this capacity is set out in the affidavit of Mr. Guillaume Vadeboncoeur. Class Counsel also say Deloitte was selected based on their demonstrated commitment to optimizing accessibility for people with disabilities and the sophistication of their technological solutions, including web-based claims portals. Deloitte have also set out their commitment to accessibility including through the establishment of an Accessibility Advisory Board to, for example, assist in developing accessible notices, claims forms, reviewing technology options for compatibility with assistive technologies, and adherence to accessibility standards.

[47] I approve the appointment of Deloitte LLP as the Claims Administrator.

LFA Levy

[48] By Order of August 19, 2024, Hoskins, J. approved the Litigation Funding Agreement between the Plaintiff and Hereford Litigation Finance 1 Limited. Pursuant to that agreement, I approve the 8.5% levy on the settlement funds as described in the Agreement. The 8.5% of the settlement fund is net of:

- Class Counsel Fees and taxes thereon;
- Disbursements funded by the Funder and taxes thereon;
- Disbursements not funded by the Funder and taxes thereon; and
- Estimated costs of the Claims Administrator and Claims Adjudicator.

[49] I note that the 8.5% is less than the automatic 10% levy owed to the Ontario Class Proceedings Fund (regardless of the stage of the proceeding) under their statutory regime.

Conclusion

[50] I find that the proposed settlement is fair, reasonable and in the best interests of the class as a whole and is approved. Further, I approve the form, content and

manner of distribution of the proposed Notice of Approval of the Settlement. The honorarium of \$15,000 proposed for Mr. Estey is also approved.

[51] Class Counsel legal fees and disbursements are approved as requested. Pursuant to that LFA, I approve the payment of the 8.5% levy on the settlement funds as described in the Agreement. Further, I approve the appointment of Deloitte LLP as the Claims Administrator.

[52] Class Counsel are to contact my office by no later than May 29, 2026, to schedule an appearance to provide the court with an update on the progress of the claims process. This direction is to be included in the Settlement Approval Order.

Jamieson, ACJ