

**CITATION:** Francis v. Ontario, 2023 ONSC 5355  
**COURT FILE NO.:** CV-18-591719-00CP  
**COURT FILE NO.:** CV-20-641003-00CP  
**DATE:** 20230922

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
 **CONREY FRANCIS** )  
 Plaintiff )  
 ) *James Sayce, Jamie Shilton and Judith*  
 **- and -** ) *Manger for the Plaintiffs*  
 )  
 **HIS MAJESTY THE KING IN RIGHT** )  
 **OF ONTARIO** )  
 )  
 Defendant ) *Alexandra Clark, Victoria Yankou, Calie*  
 ) *Adamson, and Karlson Leung for the*  
 **AND BETWEEN:** ) *Defendant*  
 )  
 **ADRIAN CHANDRA** )  
 )  
 Plaintiff )  
 )  
 **- and -** )  
 )  
 **HIS MAJESTY THE KING IN RIGHT** )  
 **OF ONTARIO** )  
 ) **HEARD:** September 22, 2023  
 Defendant )  
 )  
 Proceedings pursuant to the *Class*  
 *Proceedings Act, 1992* )

**PERELL, J.**

**REASONS FOR DECISION**

**A. Introduction**

[1] Pursuant to the *Class Proceedings Act, 1992*,<sup>1</sup> in *Francis v. Ontario*, Conrey Francis sued

---

<sup>1</sup> S.O. 1992, c. 6.

the Government of Ontario on behalf of inmates of Ontario correctional facilities who had been placed in administrative segregation during January 1, 2009 to September 18, 2018. In *Chandra v. Ontario*, Adrian Chandra sued the Government of Ontario on behalf of inmates of Ontario correctional facilities who were placed in administrative segregation during September 19, 2018 to August 18, 2021.

[2] In these two actions, there are two motions now before the court. The motion in *Chandra v. Ontario* is for approval of a settlement and for approval of the *Francis/Chandra* Claims Protocol. The motion in *Francis v. Ontario* is for approval of the *Francis/Chandra* Claims Protocol, which is to be implemented for the class members in both actions.

[3] For the reasons that follow, the motions are granted. Counsel on both sides are to be commended for their diligent and exemplary work in pursuit of access to justice.

## **B. Factual Background**

[4] On **April 20, 2017**, Mr. Francis commenced his action against the Government of Ontario.

[5] Mr. Francis' lawyer of record was and is Koskie Minsky LLP, one of Canada's preeminent class action firms, which along with several other preeminent firms, were retained to act as Class Counsel in other actions involving the federal and provincial governments' use of administrative segregation in correctional facilities.

[6] In this regard, Koskie Minsky was Class Counsel in *Brazeau v. Canada* and co-Class Counsel in *Reddock v. Canada*. Koskie Minsky and these other firms also had considerable experience in the prosecution of other institutional abuse class actions. As the description below will reveal, this background fact is significant because the law firm's experience and expertise was a valuable resource in developing the *Francis/Chandra* Protocol.

[7] Similarly, the Government of Ontario's lawyers' experience and expertise in defending several cases involving the use of administrative segregation and several institutional abuse cases was a valuable resource in developing the *Francis/Chandra* Protocol.

[8] On **September 18, 2018**, on consent, Mr. Francis' action was certified on behalf of a class of (a) current and former inmates with specific mental illnesses who had been placed in administrative segregation; and (b) current and former inmates who had been placed in administrative segregation for 15 or more consecutive days.

[9] On **April 20, 2020**, I granted Mr. Francis and the class members a summary judgment.<sup>2</sup> The class was awarded \$30 million in aggregate damages, without prejudice to the class members' rights to claim additional damages through a court-approved protocol. After deductions for counsel fee, honourarium, and the Class Proceedings Fund Levy, approximately \$20 million was available for distribution to class members.

[10] On **May 14, 2020**, Mr. Chandra commenced a proposed class action that was similar to *Francis v. Ontario* but with a class period from September 19, 2018 to the date of certification.

[11] On **March 31, 2021**, the Court of Appeal affirmed the summary judgment in *Francis v. Ontario*.<sup>3</sup>

---

<sup>2</sup> *Francis v. Ontario*, 2020 ONSC 1644.

<sup>3</sup> *Francis v. Ontario*, 2021 ONCA 197.

[12] On **August 18, 2021**, the Government of Ontario amended R.R.O 1990, Reg. 778,<sup>4</sup> the general regulation under the *Ministry of Correctional Services Act*<sup>5</sup> to prohibit administration segregation of any inmate for more than 15 consecutive days and to prohibit segregation of inmates with specific mental illnesses for any time at all.

[13] In **October 2022**, the Honourable Todd L. Archibald presided at a four-day mediation session with respect to the outstanding issues in *Francis v. Ontario* and in *Chandra v. Ontario*. The parties reached an agreement in principle for a settlement of the *Chandra* action and for a claims protocol for both the *Chandra* action and the *Francis* action, the *Francis/Chandra* Protocol.

[14] On **March 4, 2022**, the parties signed the formal Settlement Agreement. For present purposes, the following provisions of the Settlement Agreement and the *Francis/Chandra* Protocol, several of which provisions were introduced in negotiations between September 2022 and August 2023 are particularly relevant:

- a. Under the Settlement, Ontario agreed to pay \$13 million for an aggregate damages award in *Chandra* without any deductions for legal fees or disbursements. (There was no Class Proceedings Fund support for the *Chandra* action and hence no levy to be paid.)
- b. The \$13 million from the *Chandra* settlement will be pooled with the funds from the *Francis* judgment to comprise a fund of approximately \$33 million to be distributed to the class members of both actions without prejudice to the class members' right to claim additional compensation at individual damages assessments in accordance with a claims protocol.
- c. The *Francis/Chandra* Protocol was derived from the protocol that was developed by the courts of Ontario and Québec in three class proceedings involving the use of administrative segregation in the federal government's correctional facilities; namely: *Brazeau v. Canada* and *Reddock v. Canada* in Ontario and *Gallone v. Canada* in Québec.
- d. The basic structure of the *Francis/Chandra* Protocol, which is elaborate and detailed in its design, is to establish a scheme to distribute the aggregate damages fund and to establish a three-track claims program.
  - i. Track 1: Claimants receive their *pro rata* shares of the pooled amount of available aggregate damages by establishing their class membership and release their claims.
  - ii. Track 2: Claimants may obtain individual damages according to a grid through a substantially paper-based process in which claims will be determined by referees.<sup>6</sup>
  - iii. Track 3: Claimants can seek uncapped *quanta* of damages, including punitive damages, via modified motions for summary judgment. Additionally, claimants seeking to rebut the presumptive limitations bar must do so through Track 3 claims.
- e. Upon the conclusion of the claims period, the Administrator will determine the

---

<sup>4</sup> ss. 28.2-28.3

<sup>5</sup> R.S.O. 1990, c. M.22

<sup>6</sup> In an enhancement from the the *Brazeau/Reddock/Gallone* Protocol, the compensation is twice as high for Track 2 claimants in the *Francis/Chandra* Protocol

quantum of the per-person shares of the aggregate damages fund based on a denominator which is the sum of (a) the total number of claimants determined to be eligible for a share of the aggregate damages fund, and (b) the number of claimants whose eligibility is still in issue at the time of the calculation. The claimants who had already been determined to be eligible will receive their shares of the aggregate damages fund, while the remainder of the fund will be held back. Claimants who are subsequently determined to be eligible will receive their shares on a rolling basis. Once all eligibility disputes have been resolved, any unallocated shares of the aggregate damages fund will be returned to Ontario.

f. In a revision to the original *Francis/Chandra* Protocol, payments of the aggregate damages fund will be made after the end of the claims period, rather than being delayed until claimants' Track 2 and 3 awards are issued. Since the payment of the aggregate damages award will be made earlier than an additional payment for an award under Track 2 or Track 3, the Proposed Protocol now also sets out the method to credit the payment of a share of the aggregate damages toward the award under Track 2 or Track 3. The Protocol also sets out how interest is calculated on the resulting award once the credit for the claimants' share of the aggregate damages fund has been applied.

g. From the Plaintiffs' perspective, the potential for a reversion to Ontario is offset by the enhanced procedural protections of the Aggregate Damages Eligibility Assessment, and by the structure of the Track 2 and Track 3 processes. For class members who succeed on Track 2 or Track 3 claims, their shares of the aggregate damages fund are only downpayments toward awards which are ultimately determined based on formulae/grids (Track 2) or judicial assessments (Track 3).

h. Under Track 2, certain class members may be awarded up to \$40,000 in damages by a simple administrative calculation. This was a recently negotiated revision to provide an efficient formula for calculating damages for class members with a Serious Mental Illness ("SMI").

i. In a similar way Track 3 utilizes a *per diem* grid for calculating damages for enumerated mental health conditions. The result of these revisions is a streamlined process for narrowing issues in dispute. Compensation formulae have been adopted for Track 2, Box 2, through which SMI class members can seek compensation for placements in Administrative Segregation while they suffered from a serious mental health issue, as well as Track 2, Box 3, through which class members can seek compensation for listed psychological injuries. This will simplify the adjudicative process and enhance the predictability of awards made under the Protocol.

j. It is anticipated that the vast majority of Track 2, Box 1 claims (now merged with Track 1 claims for aggregate damages) will be decided solely on the basis of records maintained by Ontario, without the need for a claimant to take any steps beyond the submission of their claim form. The improvements to this process will reduce the litigation costs borne by all parties, will limit adjudication costs only to those necessary to resolve claims over which there are material disputes, and will reduce the incentive for claimants to opt for the more complex and costly Track 3 summary judgment claims, thereby reducing the burden on the court.

k. The revised *Francis/Chandra* Protocol streamlines Track 2, Box 3 claims. A Referee determines whether, within one year before, during, or one year after the

placement in Administrative Segregation, the claimant suffered from a Box 3 Condition. This will be proven where a Claimant was diagnosed with any of the Box 3 Conditions for which a medical diagnosis may be available, or by a written record of conduct consistent with any of the Box 3 Conditions for which medical diagnoses may not be given. If a Box 3 Condition is established, the claimant receives an award based on a *per diem* grid that can be applied consistently and cost effectively. Class members benefit from a number of procedural advantages, including Ontario's forgoing of the right to challenge causation or argue failure to mitigate.

l. Differing from the *Brazeau/Reddock/Gallone* Protocol, the *Francis/Chandra* Protocol includes a procedure for the resolution of disputes arising where a claimant alleges that he or she experienced placements in administrative segregation that are not reflected in records maintained by Ontario. This new procedure is responsive to issues with record-keeping and tracking of segregation placements acknowledged by this Court in its summary judgment decision in *Francis*.

m. In the event of an inconsistency between claimed placements and Ontario's records, the Protocol provides that the court-appointed and legally-trained Referee will determine the class member's eligibility on the basis of the evidence of the class member and any records from Ontario that contain information relevant to the Class Member's declared placements. The same process will be followed for disputes regarding placement dates that do not impact eligibility but may impact a Track 2 award.

n. The *Francis/Chandra* Protocol establishes a procedure for contesting Track 2 determinations. Ontario or a claimant may oppose confirmation of a Track 2 award by filing brief written argument and the evidence that was before the Referee. The Court will review the Referee's determination for error, and will then either confirm the determination, revise the determination, or remit the determination for reconsideration by the Referee.

o. Under the revised Protocol, estate claimants who take certain steps to obtain the authority to make a claim on behalf of a deceased Class Member are entitled to up to \$1,000 in costs incurred in connection with obtaining that authority, where less than \$10,000 is ultimately awarded on the claim or the claim is unsuccessful in its entirety, and the estate claimant would not otherwise have needed to obtain that authority.

p. The revised *Francis/Chandra* Protocol adds procedures for early resolution and narrowing issues in dispute.

q. Class Counsel, who have forgone a fee for the *Chandra* action, receive automatic payment of legal fees on claims for which compensation is awarded following Ontario's acceptance of all or part of a Track 2 claim.

r. The Administrator is Epiq Class Action Services Canada ("Epiq"). Epiq is the Court-appointed Administrator under the *Brazeau/Reddock/Gallone* Protocol. Epiq will maintain a similar administration platform to the one it has developed and is implementing for the *Brazeau/Reddock/Gallone* Protocol.

s. Ontario is responsible for costs associated with notifying the class members of their right to make a claim, as well as the costs associated with administering the Protocol.

t. Under the *Francis/Chandra* Protocol, the Administrator will establish a trust

account to which class members can choose to direct payment of funds during a period of incarceration. (A large proportion of the class members are marginalized, and many lack access to bank accounts.) Unlike in the federal system, provincial inmates do not have inmate accounts to which funds can be paid. The Protocol enables class members to deposit awarded funds in the trust account until the end of any period of incarceration.

[15] The *Francis/Chandra* protocol is attached as Schedule “A” to these Reasons for Decision.

[16] On **March 15, 2022**, the *Chandra* action was certified for settlement purposes. The class period was for administrative segregation placements from September 19, 2018 to August 18, 2021, the date on which administrative segregation in Ontario’s correctional institutions was prohibited by Regulation.

[17] Also on March 15, 2022, I ordered that notice of the certification and notice of a settlement approval hearing be disseminated. The notices would also inform the class members of the *Francis/Chandra* Protocol. The notices were to be disseminated in both official languages through various channels beginning on April 25, 2022.

[18] Subsequently, direct notice was delivered to approximately one thousand individuals who had contacted Class Counsel about the two actions. Notice was published in nine newspapers. Indirect notice was disseminated to class members by means of distribution to six organizations that frequently assist incarcerated individuals in Ontario. Notices were posted within provincial correctional institutions in Ontario and in federal correctional institutions. Notice was posted in probation and parole offices.

[19] *Chandra* class members were given the opportunity to opt out from the action and/or object to the settlement. All class members were given the opportunity to object to the proposed Protocol.

[20] No class members opted out of the *Chandra* action. Four class members submitted written objections to the *Francis/Chandra* Protocol.

[21] On **July 27, 2022**, it was discovered that while notice had been disseminated in sixteen provincial correctional institutions as well as all parole and probation offices, notice had not been posted at the eight correctional institutions.

[22] On **August 8, 2022**, with the settlement approval hearing and the hearing to approve the *Francis/Chandra* Protocol scheduled for August 11, 2022 and in light of the problem with respect to the dissemination of notices, I made the following file direction:

#### **File Direction**

1. *Francis v. Ontario* is a class action against the province of Ontario that is at the distribution of judgment phase. *Chandra v. Ontario* is a certified class action against the province that, in effect, is a continuation of *Francis v. Ontario* and is at the settlement approval stage.

2. I have reviewed the plaintiff’s factum for the hearing in *Francis v. Ontario* and *Chandra v. Ontario*, scheduled for August 11, 2022. While I much appreciate the hard and productive work of counsel and the parties to date, it is apparent that for a variety of reasons, the motions to approve the settlement and to settle the distribution and individual issues protocol for both actions are not ready for argument on August 11, 2022.

3. I am, therefore, granting the requested extension of the opt-out and objections deadline but otherwise adjourning the motion for a date to be determined after the proposed amendments to the protocol in the BRG Class Action are settled.

4. The parties should deliver a consent Order extending the opt-out and objections deadline and proceed as outlined in the plaintiff's factum.

5. When the plaintiff, the moving party, is ready to proceed, then the motions to approve the settlement, to approve the protocols, and to approve any notice plans can be rescheduled by the plaintiff by counsel contacting my judicial assistant.

6. The parties are encouraged to resolve all outstanding matters so that the motions can be rescheduled for a date during the court's fall 2022 term.

[23] Thus, the hearing of the motions, originally set for August 11, 2022, was adjourned to give all class members the opportunity to object to the proposed settlement and the proposed protocol or to opt-out of *Chandra*. Moreover, the parties were considering revisions to the Protocol in light of the lessons being learned from the administration of the *Brazeau/Reddock/Gallone* Protocol.

[24] After the adjournment of the motions in August 2022, as alluded to above, the parties have spent the last year revising and refining the *Francis/Chandra* Protocol. Between **September 2022 and June 2023**, counsel attended numerous meetings and exchanged more than ten draft proposals – a herculean effort.

[25] On **July 4, 2023**, I made an order respecting the means by which the class would be notified of the revisions to the Proposed Protocol. A copy of the revised Protocol was posted to Koskie Minsky LLP's website on **August 31, 2023**.

[26] A notice regarding the hearing, including links to the revised version of the Proposed Protocol and a summary of major revisions since summer 2022, was sent to persons who registered with Koskie Minsky LLP for updates regarding the *Francis* and *Chandra* proceedings on **September 1, 2023**. A press release was issued on September 1, 2023.

[27] On **September 11, 2023**, the Administrator posted the revised version of the Proposed Protocol on the website established for the *Francis* and *Chandra* actions <https://www.ontarioadministrativesegregation.ca/> and the Administrator updated the Frequently Asked Questions portion of its website to provide a summary of the major revisions to the Proposed Protocol since summer 2022.

[28] An updated copy of the *Francis/Chandra* Protocol including Schedule B, pertaining to trust accounts for incarcerated class members, was posted on **September 14, 2023**.

[29] It is pertinent to note that many of the features of the *Francis/Chandra* Protocol – but not all of them – are based on the *Brazeau/Reddock/Gallone* Protocol, which itself has undergone intensive and prolonged scrutiny by this Court and by the Superior Court of Québec. The fact that substantially similar terms have been approved by this Court in a directly analogous case supports the conclusion that the Protocol should be approved.

[30] Last year, the Plaintiffs were pleased to seek the Court's approval to implement the original version of the Proposed Protocol. With the improvements and refinements to the Proposed Protocol negotiated over the last year, the Plaintiffs' recommendation is now stronger.

[31] Class Counsel's work toward the *Francis/Chandra* Protocol has been without remuneration since the approval of fees on the aggregate damages judgment in *Francis* on July 8, 2021. Since that time, Class Counsel has expended 779 hours of lawyer time. In addition, given the high volume of inquiries from class members regarding these actions, communications clerks with Class Counsel have devoted 1,521 hours to communications with class members.

[32] In the initial implementation and day-to-day administration of the *Francis/Chandra* Protocol, Class Counsel will be engaged in a significant amount of work including identifying, interviewing, and deciding on members of the Referee Roster; assessing the database maintained by the Administrator and assisting with the resolution of any technical issues; and the other ancillary matters which inevitably arise in the implementation of a large-scale claims process.

[33] There was a miniscule number of objectors, four written objections. These objections are idiosyncratic and have either been dealt with by the provisions of the revised *Francis/Chandra* Protocol or do not affect the overwhelming fairness and reasonableness of the *Chandra* settlement or the *Francis/Chandra* Protocol.

### **C. Discussion and Analysis**

[34] Section 27.1 (1) of the *Class Proceedings Act, 1992*, provides that a settlement of a class proceeding is not binding unless approved by the court. To approve a settlement of a class proceeding, the court must find that, in all the circumstances, the settlement is fair, reasonable, and in the best interests of the class.<sup>7</sup> For present purposes, the relevant provisions of s. 27 are as follows:

#### *Settlement*

27.1 (1) A proceeding under this Act may be settled only with the approval of the court.

[...]

(3) A settlement under this section is not binding unless approved by the court.

#### *Effect of settlement*

(4) If a proceeding is certified as a class proceeding, a settlement under this section that is approved by the court binds every member of the class or subclass, as the case may be, who has not opted out of the class proceeding, unless the court orders otherwise.

#### *Settlement must be fair and reasonable*

(5) The court shall not approve a settlement unless it determines that the settlement is fair, reasonable and in the best interests of the class or subclass members, as the case may be.

#### *Differences not a bar*

(6) The court may approve a settlement even if individual class or subclass members, including a representative party, are subject to different settlement terms.

#### *Evidentiary requirements*

(7) On a motion for approval of a settlement, the moving party shall make full and frank disclosure of all material facts, including, in one or more affidavits filed for

---

<sup>7</sup> *Kidd v. Canada Life Assurance Company*, 2013 ONSC 1868; *Farkas v. Sunnybrook and Women's Health Sciences Centre*, [2009] O.J. No. 3533 at para. 43 (S.C.J.); *Fantl v. Transamerica Life Canada*, [2009] O.J. No. 3366 at para. 57 (S.C.J.).



use on the motion, the party's best information respecting the following matters, which the court shall consider in determining whether to approve the settlement:

1. Evidence as to how the settlement meets the requirements of subsection (5).
2. Any risks associated with continued litigation.
3. The range of possible recoveries in the litigation.
4. The method used for valuation of the settlement.
5. The total number of class or subclass members, as the case may be.
6. A plan for allocating and distributing the settlement funds, including any proposal respecting the appointment of an administrator under subsection (14), and the anticipated costs associated with the distribution.
7. The number of class or subclass members expected to make a claim under the settlement and, of them, the numbers of class or subclass members who are and who are not expected to receive settlement funds.
8. The number of class or subclass members who have objected or are expected to object to the settlement, and the nature or anticipated nature of the objections.
9. A plan for giving notice of the settlement to class or subclass members in the event of an order under section 19, and the number of class or subclass members who are expected to obtain the notice.
10. Any other prescribed information.

[...]

*Supervisory role of the court*

(13) The court shall supervise the administration and implementation of the settlement.

*Court-appointed administrator*

(14) The court may appoint a person or entity to act as an administrator to administer the distribution of settlement funds.

*Duty of administrator, other person or entity*

(15) An administrator appointed by the court or, if no administrator is appointed, the person or entity who administers the distribution of the settlement funds, shall administer the distribution in a competent and diligent manner.

[35] In determining whether a settlement is reasonable and in the best interests of the class, the following factors may be considered: (a) the likelihood of recovery or likelihood of success; (b) the amount and nature of discovery, evidence or investigation; (c) the proposed settlement terms and conditions; (d) the recommendation and experience of counsel; (e) the future expense and likely duration of the litigation; (f) the number of objectors and nature of objections; (g) the presence of good faith, arm's-length bargaining and the absence of collusion; (h) the information conveying

to the court the dynamics of, and the positions taken by, the parties during the negotiations; and (i) the nature of communications by counsel and the representative plaintiff with class members during the litigation.<sup>8</sup>

[36] In determining whether to approve a settlement, the court, without making findings of fact on the merits of the litigation, examines the fairness and reasonableness of the proposed settlement and whether it is in the best interests of the class as a whole having regard to the claims and defences in the litigation and any objections raised to the settlement.<sup>9</sup> An objective and rational assessment of the pros and cons of the settlement is required.<sup>10</sup>

[37] The case law establishes that a settlement must fall within a zone of reasonableness. Reasonableness allows for a range of possible resolutions and is an objective standard that allows for variation depending upon the subject-matter of the litigation and the nature of the damages for which the settlement is to provide compensation.<sup>11</sup> A settlement does not have to be perfect, nor is it necessary for a settlement to treat everybody equally.<sup>12</sup>

[38] Generally speaking, the exercise of determining the fairness and reasonableness of a proposed settlement involves two analytical exercises. The first exercise is to use the factors and compare and contrast the settlement with what would likely be achieved at trial. The court obviously cannot make findings about the actual merits of the class members' claims. Rather, the court makes an analysis of the desirability of the certainty and immediate availability of a settlement over the probabilities of failure or of a whole or partial success later at a trial. The court undertakes a risk analysis of the advantages and disadvantages of the settlement over a determination of the merits. The second exercise, which depends on the structure of the settlement, is to use the various factors to examine the fairness and reasonableness of the scheme of distribution under the proposed settlement.

[39] The *Chandra* Settlement is fair, reasonable, and in the best interests of the class members. Typically, settlements are compared to the hypothetical of the risks and awards of carrying on with the litigation. There is nothing hypothetical about the *Chandra* settlement. It follows and is as favourable if not slightly more favourable than the award the class members will receive *per capita* in *Francis*, which result was based on an actual trial determination of the merits of the class members' claims.

[40] Each and every of the relevant criteria for assessing the fairness of the settlement strongly favours approving the settlement in *Chandra* which settlement reflects well on both sides of the litigation.

[41] Turning to the matter of the *Francis/Chandra* Protocol, following the common issues judgment, where there are individual issues to be determined, s. 25 of the *Class Proceedings Act*,

---

<sup>8</sup> *Kidd v. Canada Life Assurance Company*, 2013 ONSC 1868; *Farkas v. Sunnybrook and Women's Health Sciences Centre*, [2009] O.J. No. 3533 at para. 45 (S.C.J.); *Fantl v. Transamerica Life Canada*, [2009] O.J. No. 3366 at para. 59 (S.C.J.); *Corless v. KPMG LLP*, [2008] O.J. No. 3092 at para. 38 (S.C.J.).

<sup>9</sup> *Baxter v. Canada (Attorney General)* (2006), 83 O.R. (3d) 481 at para. 10 (S.C.J.).

<sup>10</sup> *Al-Harazi v. Quizno's Canada Restaurant Corp.* (2007), 49 C.P.C. (6th) 191 at para. 23 (Ont. S.C.J.).

<sup>11</sup> *Dabbs v. Sun Life Assurance Company of Canada* (1998), 40 O.R. (3d) 429 (Gen. Div.); *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 at para. 70 (S.C.J.).

<sup>12</sup> *McCarthy v. Canadian Red Cross Society* (2007), 158 ACWS (3d) 12 at para. 17 (Ont. S.C.J.); *Fraser v. Falconbridge Ltd.*, [2002] O.J. No. 2383 at para. 13 (S.C.J.).

1992, empowers the court to design the procedure for the individual issues trials. Section 25 is connected to sections 24, 26, and 27. The court's power under ss. 24 to 27 of the *Class Proceedings Act, 1992*, which are considerable,<sup>13</sup> is augmented by other sections of the *Class Proceedings Act, 1992*, most particularly s.12.

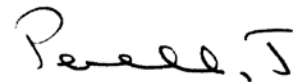
[42] As a matter of settlement (but subject to court approval), the parties can further augment the power of the court to devise a common issues protocol. In this regard, both parties are to be thanked for creatively contributing to the development of the *Francis/Chandra* Protocol. The result is excellent legal craftsmanship after an enormous amount of hard work.

[43] The *Francis/Chandra* Protocol is fair, reasonable, and in the best interests of the class members. Its provision for the payment of fees is appropriate remuneration to Class Counsel and is a fair and reasonable term.

[44] I approve the *Francis/Chandra* Protocol.

#### **D. Conclusion**

[45] For the above reasons the motions are granted. I have signed the Orders.



Perell, J.

Released: September 22, 2023

---

<sup>13</sup> *Jiang v. Peoples Trust*, 2017 BCCA 119; *Lundy v. VIA Rail Canada Inc.*, 2015 ONSC 7063.

## Schedule “A”

### Distribution and Individual Issues Protocol

#### 1. General

- 1.1. Pursuant to the *Class Proceedings Act, 1992*, this Protocol governs:
  - a. the distribution of the aggregate damages award in *Francis*;
  - b. the distribution of the Aggregate Damages Settlement in *Chandra*;
  - c. the procedures for the determination of the individual issues in *Francis* and *Chandra*.
- 1.2. This Protocol may be amended by further order of the Court.
- 1.3. In this Protocol:
  - a. **“Administrative Segregation”** refers to segregation as outlined in section 34 of Regulation 778, R.R.O. 1990 under *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22.
  - b. **“Award Form”** is a form prepared by the Administrator that identifies the amounts awarded under Track 2 Box 1, Track 2 Box 2, and Track 2 Box 3, as applicable, together with the “final Track 2 quantum” calculation indicating all applicable deductions and additions, which is to be confirmed by the Court.
  - c. **“Chandra”** means the action styled *Chandra v Ontario*;
  - d. **“Chandra Aggregate Damages Settlement”** means the amount of \$13,000,000 as agreed by Ontario and Class Counsel in the *Chandra* Settlement Agreement, and as approved by the Court, to be the quantum of aggregate damages (inclusive of costs and disbursements) payable to the *Chandra* Class, to be disseminated in accordance with this Protocol.
  - e. The **“Chandra Class Period”** is from September 19, 2018 to August 18, 2021.
  - f. **“Claims Filing Deadline”** means the date by which the Claims Form must be electronically submitted, sent via mail (postmarked), or received in person by the Administrator, which date shall be one year after the Notice Date.
  - g. **“Claims Form”** means the electronic or paper claims form in English or in French that a Claimant must complete and submit before the Claims Filing Deadline to participate in the distribution of aggregate damages, and to be eligible to have their individual issues determined under Track 2 or Track 3.
  - h. The **“Claims Period”** shall run for one year from the Notice Date.
  - i. **“Class Counsel”** means Koskie Minsky LLP.
  - j. **“Class Member”** and **“Class”** means a person who is a member of the *Francis* Class or the *Chandra* Class, as set out by the Court in the *Francis* consent Certification Order, and in the *Chandra* Settlement Approval and Certification Order (reproduced and defined below), respectively, and who have not opted out of their respective classes:
    - i. The **“Francis Class”**:

All current and former inmates, who were alive as of April 20, 2015:

#### I. Inmates with a Serious Mental Illness<sup>14</sup>

(a) who were subjected to Administrative Segregation for any length of time at one of the Correctional Institutions between January 1, 2009 and September 18, 2018; and,

(b) who were diagnosed by a medical doctor before or during their incarceration with at least one of the following disorders, as defined in the relevant Diagnostic and Statistical Manual of Mental Disorders (“DSM”): Schizophrenia (all sub-types), Delusional

---

<sup>14</sup> All defined terms have the meanings set out in the Judgment dated April 20, 2020.

disorder, Schizophreniform disorder, Schizoaffective disorder, Brief psychotic disorder, Substance-induced psychotic disorder (excluding intoxications and withdrawal), Psychotic disorder not otherwise specified, Major depressive disorders, Bipolar disorder I, Bipolar disorder II, Neurocognitive disorders and/or Delirium, Dementia and Amnestic and Other Cognitive Disorders, Post-Traumatic Stress Disorder; Obsessive Compulsive Disorder; or Borderline Personality Disorder; and who suffered from their disorder, in a manner described in Appendix “A”, and,

(c) who reported such diagnosis and suffering to the Defendant’s agents before or during their Administrative Segregation;

and/or

#### II. Inmates in Prolonged Administrative Segregation

(a) who were subjected to Administrative Segregation for 15 or more consecutive days (“Prolonged Administrative Segregation”) at one of the Correctional Institutions between January 1, 2009 and September 18, 2018.

#### ii. The “*Chandra Class*”:

All current and former Inmates, who were alive as of May 14, 2018:

##### I. Inmates with a Serious Mental Illness

(a) who were subjected to Administrative Segregation for any length of time at one of the Correctional Institutions between September 18, 2018 and August 18, 2021,

(b) who were diagnosed by a medical doctor before or during their incarceration with at least one of the following disorders, as defined in the relevant Diagnostic and Statistical Manual of Mental Disorders (“DSM”): Schizophrenia (all sub-types), Delusional disorder, Schizophreniform disorder, Schizoaffective disorder, Brief psychotic disorder, Substance-induced psychotic disorder (excluding intoxications and withdrawal), Psychotic disorder not otherwise specified, Major depressive disorders, Bipolar disorder I, Bipolar disorder II, Neurocognitive disorders and/or Delirium, Dementia and Amnestic and Other Cognitive Disorders, Post-Traumatic Stress Disorder; Obsessive Compulsive Disorder; or Borderline Personality Disorder; and who suffered from their disorder, in a manner described in Appendix “A”, and,

(c) who reported such diagnosis and suffering to the Defendant’s agents before or during their Administrative Segregation;

and/or

##### II. Inmates in Prolonged Administrative Segregation

(a) who were subjected to Administrative Segregation for 15 or more consecutive days at one of the Correctional Institutions between September 18, 2018 and August 18, 2021.

#### Appendix “A” states as follows:

- Significant impairment in judgment (including all of the following: the inability to make decisions, confusion, and disorientation);
- Significant impairment in thinking (including both paranoia and delusions that make the offender a danger to self or others);
- Significant impairment in mood (including constant depressed mood plus helplessness and hopelessness; agitation; manic mood that interferes with ability to effectively interact with other offenders or staff);

- Significant impairment in communications that interferes with ability to effectively interact with other offenders or staff; hallucinations; delusions; or severe obsessional rituals that interferes with ability to effectively interact with other offenders or staff;
  - Chronic and severe suicidal ideation resulting in increased risk for suicide attempts; or
  - Chronic and severe self-injury.
- g. “**Court**” means the Ontario Superior Court of Justice.
- h. “**Correctional Institutions**” are correctional institutions as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22, excluding the St. Lawrence Valley Correctional and Treatment Centre.
- i. “**Francis**” means the action styled *Francis v Ontario*;
- j. “**Francis Aggregate Damages Award**” means the judgment of \$30,000,000 on account of aggregate damages for the *Francis* Class, to be disseminated in accordance with this Protocol.<sup>15</sup>
- k. **The “Francis Class Period”** is the presumptive class period for the *Francis* class from April 20, 2015 to September 18, 2018.
- l. The Gross Aggregate Damages Award (“**GADA**”) is the sum of the *Francis* Aggregate Damages Award (\$30,000,000) plus the *Chandra* Aggregate Damages Settlement (\$13,000,000). The total sum of the GADA is **\$43,000,000**.
- m. A “share of the **GADA**” for the purpose of the credit in ss. 10.43-10.44 for Track 2 claims and s. 11.10 for Track 3 claims is **\$41,300,423.86** divided by the total number of NADA Claimants calculated by the Administrator pursuant to s. 7.12(b).
- The **\$41,300,423.86** is the sum of the Assumed *Francis* Aggregate Damages Award (\$28,300,423.86) excluding pre-judgment interest,<sup>16</sup> plus the *Chandra* Aggregate Damages Settlement (\$13,000,000).
- n. “**Incarcerated Class Member**” means a Class Member who remains incarcerated in a Correctional Institution.
- o. “**Inmates**” are inmates as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22.
- p. “**Medical Professional**” means one or more accredited professional(s) licenced to practice in Canada as a medical doctor, psychiatrist, psychologist, or nurse practitioner.
- q. The Net Aggregate Damages Award (“**NADA**”) is **\$32,779,972.25**  
PLUS 3% Post-judgment interest on the *Francis* Aggregate Damages Award (\$30,000,000) accruing from April 20, 2020.

The **\$32,779,972.25** is the GADA (\$43,000,000) less the *Francis* deductions approved by Order dated July 8, 2021, totalling \$10,220,027.75 as follows:

<sup>15</sup> Judgment of Justice Perell dated April 20, 2020.

<sup>16</sup> Assumption: the same 2% pre-judgment interest rate payable on Track 2 awards was incorporated into the \$30,000,000 *Francis* Aggregate Damages Award. Annualized (without compounding) over the three years between April 20, 2017 and April 20, 2020 implies an Assumed Aggregate Award of \$28,300,423.86 and Assumed Pre-Judgment Interest of \$1,699,576.14.

Class Counsel's fees and disbursements for *Francis* in the amount of \$8,007,265.28;  
 The Class Proceedings Fund's levy applicable to *Francis* in the amount of \$2,197,773.47; and  
 The Honorarium payable to Conrey Francis in the amount of \$15,000.

- r. **"NADA Claimant"** means a Claimant:
- i. who has submitted a Claims Form by the Claims Filing Deadline;
  - ii. who:
    - A. claims to have been placed in Administrative Segregation in a Correctional Institution for 15 or more consecutive days on or after April 20, 2015 and up to and including August 18, 2021 and submitted a Claims Form, or
    - B. is confirmed under s. 7.10 to have been placed in Administrative Segregation in a Correctional Institution for 15 or more consecutive days on or after April 20, 2015 and up to and including August 18, 2021;
  - iii. who is not a Denied Prolonged Inmate due to an unsuccessful Aggregate Damages Eligibility Assessment determined before the Claims Filing Deadline, and
  - iv. whose Claims Form has not been denied by the Administrator under s. 7.8.
- s. A **"share of the NADA"** is the NADA (including applicable post-judgment interest) divided by the total number of NADA Claimants as of 30 days after the Claims Filing Deadline, calculated by the Administrator pursuant to s. 7.12(b).
- 1.5 For this Protocol, it shall be considered one placement with consecutive days in Administrative Segregation if the placements are: (1) separated by 24 hours or less, or (2) interrupted by a transfer to another institution and continued after the transfer.
- 1.6 Nothing in this Protocol precludes the parties from settling a claim proceeding on Tracks 2 or 3 of the Protocol.
- 1.7 Nothing in this Protocol precludes the parties from applying for an amendment to the Protocol. The parties may consent to procedural modifications to the Protocol, such as extensions of time for certain steps without requiring court approval, as long as such changes do not substantively affect the rights and remedies provided for in the Protocol.
- 1.8 Ontario shall obtain an order under the *Youth Criminal Justice Act*, S.C. 2002, c. 1, authorizing disclosure of Class Member youth records in accordance with this Protocol. No disclosure of youth records shall be made to the Administrator, experts, or any other parties until such Order is granted.
- 1.9 Within 60 days of the end of the Claims Period, the parties will seek the appointment of a case management judge for all Track 3 claims made under this Protocol.

## 2. Retainer of Class Counsel

- 2.1 If the Claimant elects to proceed with a Track 2, Box 1 claim, or if their claim is deemed to be a Track 2, Box 1 claim, Class Counsel shall continue to have a solicitor and client relationship with the Claimant, which relationship may be terminated by Class Counsel on notice to the Claimant. If the Claimant elects to proceed with a Track 2, Box 2/3 claim or a Track 3 claim, the Claimant shall be assigned to Class Counsel and may elect to enter into a solicitor-client relationship with Class Counsel, unless the Claimant in their Claims Form elects to be self-represented or provides the name and contact information for the lawyer retained to act for the Claimant.
- 2.2 If a Claimant is eligible for a share of the NADA as a Confirmed Prolonged Inmate, then Class Counsel or the lawyer retained to act for the Claimant cannot charge for their services for the Claimant with respect to the share of the NADA.

- 2.3 Class Counsel is entitled to a fee for services of 15%, plus HST, on the portion of the "final Track 2 quantum" corresponding with a Track 2, Box 1 award.
- (a) Where:
- (i) Ontario accepts a Claimant's SMI status and/or Box 3 Condition(s) pursuant to s. 8.8;
  - (ii) The Claimant elects to make a Track 2, Box 2 and/or Track 2, Box 3 claim; and
  - (iii) Track 2, Box 2 and/or Track 2, Box 3 damages are awarded based on Ontario's admission(s) under s. 8.8,
- Class Counsel shall be entitled to a fee for services of 15% plus HST on the portions of a Claimant's "final Track 2 quantum" corresponding with such amounts.
- (b) For the avoidance of uncertainty, where a Claimant elects to be represented by a lawyer other than Class Counsel, that counsel is entitled to charge a fee for services of up to 15% on the portions of the Claimant's "final Track 2 quantum" which are not awarded based on:
- (i) The Track 2, Box 1 Grid; or
  - (ii) An admission by Ontario under s. 8.8.
- 2.4 If the Claimant selects Track 3, counsel for the Claimant may charge a fee for their services on the "final Track 3 quantum" (pursuant to s. 11.10) and on the applicable interest and costs, plus disbursement amounts (pursuant to ss. 11.6, 11.9, 11.11-11.13), as may be approved by the Court.
- 2.5 If a Claimant selects Track 2 or 3 and is not self-represented and does not retain the services of another attorney, no Power of Attorney need be signed for Class Counsel to obtain the records held by Ontario relating to the Claimant subject to disclosure under this Protocol.
- 2.6 Subject to the court's approval, and subject to s. 2.3, Class Counsel for the lawyer retained for the claimant may charge a fee for services for the Track 2 claim, with such fee not to exceed 15% of the damages awarded plus reasonable disbursements, and any award of costs in favour of the claimant.

### 3. Administrator

- 3.1 "**Administrator**" means Epiq Class Action Services Inc.
- 3.2 Within 40 days of Court approval of this Protocol and the *Chandra* Settlement Agreement, Ontario shall transfer the NADA to the Administrator, in trust. The Administrator shall invest the Award at a Bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46.
- 3.3 The Administrator shall establish and maintain a separate trust account, preventing co-mingling of funds ("**Administrator's Incarcerated Class Member's Trust Account**"), for each Incarcerated Class Member owed monies awarded under this Protocol where such monies owed are not otherwise directed to be paid in accordance with instructions given by the Incarcerated Class Member on their Claims Form.
- 3.4 The operation of the Administrator's Incarcerated Class Member's Trust Account is set out in **Schedule "B"**.
- 3.5 Ontario shall make its best efforts to prepare an electronic spreadsheet with the information set out in a. to d. below for each inmate incarcerated in a Correctional Institution who was placed in Administrative Segregation during the *Chandra* Class Period and the *Francis* Class Period (the "**Spreadsheet**"). Within 90 days of approval of this Protocol, Ontario shall provide the Administrator and Class Counsel with its first iteration of the Spreadsheet. The Spreadsheet shall contain the following information about Claimants, if available:
- a. their name and any known aliases;



- b. their date of birth;
  - c. their OTIS number;
  - d. the date of placement and the release date for each placement in Administrative Segregation together with the corresponding Correctional Institution(s) where the Administrative Segregation placement(s) took place.
- 3.6 The Spreadsheet shall be updated in accordance with this Protocol as more information about Claimants is obtained through the claims process.
- 3.7 The Administrator shall distribute the Notice and the Claims Form approved by the Court in accordance with this Protocol, as set out in Section 5 – Notice and Notice Plan.
- 3.8 Where mail to a Claimant is returned to the Administrator as undeliverable, the Administrator shall have no responsibility for locating the Claimant.
- 3.9 The Administrator shall pay any monies owing to an Incarcerated Class Member as directed by the Incarcerated Class Member on their Claims Form, in accordance with Schedule "B" to this Protocol.
- 3.10 The Administrator shall comply with the *Personal Information Protection and Electronic Documents Act*, S.C. 2000 c. 5.
- 3.11 After the distribution of:
- a. The NADA;
  - b. Any awards for Track 2 or 3 Claimants;
  - c. Any residual amounts returned to Ontario pursuant to s. 7.14(d);
  - d. Any awards owing to Incarcerated Class Members held in Administrator's Incarcerated Class Member's Trust Accounts to the Accountant of the Superior Court of Justice under ss. 3.3, 3.34, and Schedule "B", and
  - e. Any *cy-près* payments;

the Administrator shall apply to be discharged and shall file with the Court a report containing its best information respecting the following:

- a. The total number of *Francis* Class Members claiming under this Protocol;
  - b. The total number of *Chandra* Class Members claiming under this Protocol;
  - c. The number of Class Members who received Notice under this Protocol, and a description of how notice was given;
  - d. The number of Claimants who made a claim pursuant to Track 1, 2, or 3 respectively;
  - e. The amounts distributed to Class Members and others and a description of how the awards were distributed;
  - f. The administrative costs associated with the distribution of the awards.
- 3.12 Any party or the Administrator may move to have any part of this report placed under seal.
- 3.13 The Administrator shall process all Claims made on behalf of Deceased Claimants and Persons Under a Disability (as those terms are defined in Schedule "A") in accordance with the Protocol for Payments for Deceased Claimants and Persons Under a Disability, attached hereto as Schedule "A".
- 3.14 Upon being discharged as Administrator, the Administrator shall retain in hard copy or electronic form, all documents relating to a Claim for two years after which the Administrator shall destroy the documents, and shall notify Ontario in writing that such documents have been destroyed.

#### 4. Database

- 4.1 Within 90 days of approval of this Protocol, the Administrator shall develop a secure database in consultation with Ontario for all Claimants' documents and information (the "**Database**").
- 4.2 Each Claimant's file in the Database shall contain the information provided in the Claims Forms, the relevant portions of the Claimant's information contained in the Spreadsheet, all updated determinations under this Protocol, the choice of the selected Track, as well as all documents exchanged between a Claimant and Ontario, as authorized by the Claimant pursuant this Protocol.
- 4.3 Ontario shall have secure access to all Database files, as authorized by the Claimant pursuant to this Protocol.
- 4.4 Counsel shall have secure access to the Database files of the Claimants they represent, as authorized by the Claimant pursuant to this Protocol.
- 4.5 Each Referee shall have secure access to the Database files of the Claimants that they are assigned to assess, as authorized by the Claimant pursuant this Protocol.
- 4.6 The transmission and access of all documents shall be made via the Database. In cases where the Claimant is self-represented, the Administrator shall provide the Claimant an alternative means to transmit and access all documents related to their claim.

#### 5. Notice and Notice Plan

- 5.1 In this Protocol, "Notice" means the notice (including the Short Form Notice<sup>17</sup> and the Long Form Notice) substantially in the forms agreed to by the parties and approved by the court, providing Class Members with:
  - a) the Notice of Judgment in *Francis*;
  - b) the Notice of Settlement in *Chandra*; and
  - c) notice of the individual issues and claims process under this Protocol.
- 5.2 The Administrator shall translate the English Notice into French.
- 5.3 The reasonable cost of the Notice and the Notice Program shall be paid by Ontario.
- 5.4 The Administrator shall continue to provide a bilingual (English and French) toll-free support line to assist Claimants, family, or guardians, or other persons who make inquiries on behalf of Claimants.
- 5.5 The Notice will include the Administrator's toll-free phone number, email address, mailing address, and website address, and include similar information for Class Counsel.
- 5.6 The date the Notice is first transmitted, posted, or otherwise disseminated to Class Members by the Administrator shall be the "**Notice Date**".
- 5.7 Class Counsel and the Administrator shall post the Notice and the Claims Form, in English and French, on their websites, and make best efforts to ensure the Notice is not removed from the websites until the Claims Filing Deadline has expired.
- 5.8 Within 30 days of the Notice Date, the Administrator shall publish the English Short-Form Notice in ¼ of a page size in a weekend edition of the following newspapers:

---

<sup>17</sup> The parties shall make best efforts to have the Short Form Notice not exceed 1 page in length, and may prepare a poster containing similar content to the Short Form Notice for posting in the facilities identified in this Section 5.

- a. The Globe & Mail
  - b. The National Post
  - c. The Toronto Star
  - d. The Toronto Sun
  - e. The Ottawa Citizen
  - f. The Ottawa Sun
  - g. The Windsor Star
  - h. The Hamilton Spectator
  - i. The London Free Press
  - j. The Kingston Whig-Standard
  - k. The Chronicle Journal
  - l. The Brampton Guardian
- 5.9 The Administrator shall execute a bilingual digital social media advertising campaign for 4 weeks following the Notice Date, and for an additional 4-week period approximately 8 months after the Notice Date. This digital social media campaign will use sponsored display advertising to provide digital content agreed to by Ontario and Class Counsel, such as headlines, a link to the Administrator’s website, and abbreviated information contained in the Notice, on Google Display Network, Facebook, Twitter, Reddit, YouTube, and sponsored searches in Google, Bing and Yahoo. This campaign will target 2 million impressions on each of these networks and search engines.
- 5.10 The Administrator shall prepare and execute a press release in a form approved by Class Counsel and Ontario through a newswire service.
- 5.11 Access to Incarcerated Class Members shall be provided in accordance with the following provisions:
- a) At the commencement of the Claims Period, Class Counsel shall provide to Ontario, and keep current, a list of all staff (including lawyers, law clerks, law students, paralegals, or other staff) authorized by Class Counsel to provide Incarcerated Class Members with legal advice, information, or assistance with matters subject to this Protocol (the “Counsel List”).
  - b) Remote Access: Ontario shall provide persons on the Counsel List with reasonable remote access by telephone or by video conference (i) to Incarcerated Class Members during the Claims Period, and (ii) after the Claims Deadline, to an Incarcerated Class Member who has made a Claim, until their Claim has been finally determined. In Correctional Institutions where video conferencing is not available, Ontario shall make best efforts to provide scheduled blocks of time for Incarcerated Class Members to have confidential telephone access to persons on the Counsel List.
    - i. Scheduling will take place on a weekly basis and Class Counsel shall provide to each Correctional Institution, on a day to be agreed to with the Correctional Institution, a list of the Class Members at that Correctional Institution, including their full name and OTIS number, who they require access to that week.
  - c) In Person Access: subject to measures to combat COVID-19 and applicable access policies and security restrictions, Ontario shall provide counsel to Incarcerated Class Members, including Class Counsel, with reasonable in-person access to Class Members.
  - d) Ontario shall designate a person (or persons) as the point of contact for Class Counsel for issues relating to remote access to Incarcerated Class Members (the “Designate”).
  - e) If Class Counsel are unable to successfully schedule remote access with an Incarcerated Class Member on two or more consecutive occasions, they shall inform the Designate in a timely manner, identifying (a) the Incarcerated Class Member’s name and OTIS number, (b) the Correctional Institution, (c) the person(s) on the Counsel List requiring access, (d) the date(s) and time(s) where access was requested but was not granted.
  - f) The Designate shall then confer with Class Counsel and make best efforts to provide the person(s) on the Counsel List with remote access to the Incarcerated Class Member in a timely

manner.

- 5.12 The Administrator will prepare an educational video similar to that produced in *Brazeau, Reddock*, and *Gallone*, with the content to be approved by Ontario and Class Counsel, with screen captions, in both official languages. The video will be posted on the websites of Class Counsel and the Administrator.
- 5.13 Class Counsel shall provide the Administrator with the postal and email addresses of any Class Member that has provided such information to Class Counsel. The Administrator shall email the Short-Form Notice and Claims Form to any Class Member that has provided their email address to Class Counsel, and shall mail a copy of the Short Form Notice and Claims Form, together with a postage paid return envelope, to any Class Member that has provided their mail address to Class Counsel. Class Counsel is responsible for providing the Administrator with Class Members' addresses.
- 5.14 The Administrator shall provide the Notice, Claims Form, and a postage paid return envelope to any Class Member who requests it.
- 5.15 The Administrator shall distribute a reasonable number of copies of the English and French Short-Form Notice and the Claims Form, and provide additional copies upon request, to all offices of:
- a. Elizabeth Fry Society located in Ontario
  - b. John Howard Society located in Ontario
  - c. Aboriginal Legal Services (Toronto)
  - d. Chiefs of Ontario
  - e. Ontario Federation of Indigenous Friendship Centres
  - f. Nishnawbe Aski Nation Legal Clinic (Thunder Bay)
  - g. Salvation Army Correctional & Justice Services located in Ontario
  - h. Operation Springboard
  - i. Homewood Health Centre
  - j. Stonehenge Therapeutic Centre
  - k. Criminal Lawyers' Association
  - m. Ontario Halfway House Association
  - n. The 25 safe injection sites located in Ontario at addresses to be provided by Class Counsel.
- 5.16 Ontario shall provide a reasonable number of copies of the Short-Form Notice and Claims Form, in English and French, together with a postage paid return envelope, to each Ontario Correctional Institution. Ontario shall post a copy of the Short Form Notice in a conspicuous place in a common area in each Correctional Institution, and not remove it until the Claims Filing Deadline has expired. Ontario shall provide copies of the Claims Form, together with postage paid return envelopes, to unit offices in each Correctional Institution and make best efforts to ensure they remain available throughout the Claims Period. The Administrator shall facilitate these best efforts by providing additional copies upon request. In each Correctional Institution, Ontario will make available reasonable facilities for Claimants to complete the Claims Form. Ontario shall advise each Ontario correctional institution that correctional services staff shall not respond to Class Members' inquiries about the Notice or claims process, and instead shall direct all inquiries to the Administrator.
- 5.17 The Administrator shall provide a reasonable number of copies of the Short Form Notice and Claims Form, in English and French, together with a postage paid return envelope, to every probation and parole office in Ontario. The Administrator shall provide additional copies of these materials upon request. In addition, Ontario shall request each probation and parole office in Ontario i) post a copy of the Short Form Notice and the Claims Form in a conspicuous place within a visible area of each probation and parole office, ii) not remove the Short Form Notice or Claims Forms until the Claims Filing Deadline has expired, and iii) provide facilities at the probation and parole office for Claimants to complete the Claims Form. Ontario shall advise each Ontario probation and parole office that staff shall not to respond to Class Members' inquiries about the Notice or claims process, and instead shall direct all inquiries to the Administrator.
- 5.18 Ontario shall request that the Governments of Canada make best efforts to:

- a) post the English and French Short-Form Notice in a conspicuous place within the common areas of each Federal correctional institution, and not remove the posting until the Claims Filing Deadline has expired; and
  - b) ensure copies of the Notice and Claims Form, in English and French, together with a postage paid return envelope, are available in the common areas of each Federal correctional institution, and make available reasonable facilities for Claimants to complete the Claims Form. The Administrator shall provide a reasonable number of copies of these materials to Canada, and provide additional copies upon request.
- 5.19 The Claims Form will include instructions on how to complete the Claims Form, and explain how Claimants can submit their Claim.
- 5.20 To facilitate incarcerated individuals' communications with the Administrator and Class Counsel, Ontario will continue to ensure the toll-free numbers identified below may be called from the common area telephones in all Ontario correctional institutions:
- a. Administrator: 1-833-290-4730
  - b. Class Counsel: 1-844-819-8527.

## 6. Referees

- 6.1 In this Protocol, "**Referee**" or "**Referee Roster**" means the group of former judicial officers or senior legal practitioners, or one of them, as the case may be, agreed to by the parties and appointed by the Court under this Protocol, to inquire into and report their findings as to:
- a. whether a Claimant satisfies the SMI definition for Track 2, Box 2 claims pursuant to ss. 10.18-10.21 and, for Track 3 claims pursuant to s. 11.5;
  - b. whether the Claimant has established a Box 3 Condition, one year prior to, during, or one year after the Claimant's placement in Administrative Segregation under Track 2, Box 3 (pursuant to ss. 10.28-10.30);
  - c. Aggregate Damages Eligibility Assessments pursuant to s. 7.11;
  - d. Placement Length Determinations pursuant to s. 10.9;
  - e. Determinations on costs and disbursements alone, under s. 10.39.
- 6.2 No later than 60 days from the Notice Date, Class Counsel and Ontario shall constitute the Referee Roster, failing which the court shall appoint the Referee Roster from a list of candidates submitted by Class Counsel and/or Ontario.
- 6.3 A member of the Referee Roster shall be a qualified professional, agreed upon by the parties or failing that selected by the Court, drawn from the following groups:
- a. a senior practitioner of law in any Canadian jurisdiction;
  - b. a retired senior practitioner of law in any Canadian jurisdiction; or
  - c. a person who has acted as a judicial officer in any Canadian jurisdiction.
- 6.4 After a Referee's report is released, Ontario will pay the Referee as follows, or as revised in writing by the parties:
- a. Five thousand dollars (\$5,000.00) for Track 2 claims that include Box 3, where Ontario has not accepted the Claimant's Box 3 Condition;
  - b. One thousand dollars (\$1,000.00) for an Aggregate Damages Eligibility Assessment;
  - c. One thousand dollars (\$1,000.00) for SMI findings and reasons alone under a Track 2 claim that includes Box 2 but does not include Box 3, or under a Track 3 claim, and where Ontario has not accepted the Claimant's SMI status;
  - d. One thousand dollars (\$1,000.00) for a Placement Length Determination; and
  - e. One thousand dollars (\$1,000.00) for a determination on costs and disbursements alone,

under s. 10.39.

## 7. Claims Process

### *Eligibility*

- 7.1 Subject to rebutting the presumption that their individual claims for damages are statute-barred, the claims of *Francis* Class Members placed in Administrative Segregation before April 20, 2015, are statute-barred.
- 7.2 Ontario shall provide the Administrator with a list of the names of all persons who have opted out of the *Chandra* Class and *Francis* Class. The Administrator shall deny any Claims Form received by a person who has opted out of the *Chandra* Class or the *Francis* Class, and notify the Claimant, Class Counsel, and Ontario in writing of the basis for the denial.
- 7.3 A Claimant must submit a Claims Form to the Administrator before the Claims Filing Deadline. The Administrator shall deny Claims Forms received by the Administrator after the Claims Filing Deadline, except that any claims received by mail which are postmarked with a date before the Claims Filing Deadline may be accepted. The Claims Administrator shall advise a Claimant in writing that their Claims Form was denied as untimely. Claimants whose Claims Forms have been denied as untimely may seek leave from the Court to file a late Claims Form, but leave shall be granted only if the Claimant establishes that the failure to file a timely Claims Form was due to circumstances beyond their control or that provide a reasonable explanation for the delay. Such a Claimant is not eligible for a share of the NADA and must elect to proceed by Track 2 or 3.
- 7.4 A Claimant whose claim is presumptively barred by a limitation period shall elect to proceed by Track 3.
- 7.5 In the Claims Form, a Claimant shall provide the following information, and may attach additional pages to their Claims Form if the space provided is insufficient to do so:
- a. Their name and all aliases or previously used names;
  - b. Their date of birth;
  - c. Their OTIS number, if known;
  - d. Their mailing address, email address, and phone numbers, if any;
  - e. For other than Incarcerated Class Members, a direction as to how the Claimant should be paid their share of aggregate damages and their individual issues award (if any);
  - f. For Incarcerated Class Members, a direction to pay their share of aggregate damages and their individual issues award (if any) to i) a person designated by the Incarcerated Class Member; ii) a bank account designated by the Incarcerated Class Member; or iii) in accordance with Schedule "B" of this Protocol, to the Incarcerated Class Member's Trust Account and then to the Accountant of the Superior Court of Justice if the award remains unclaimed upon their release or the conclusion of the administration of this Protocol, together with a consent to share personal information necessary to establish, maintain and pay out such accounts;
  - g. An acknowledgement that the Administrator is authorized to contact the Claimant to obtain further information;
  - h. Their election to:
    - i. be a self-represented Claimant;
    - ii. appoint a new lawyer to act for them along with the name and contact information for the new lawyer; or
    - iii. continue to be represented by Class Counsel;
  - i. An acknowledgement that Ontario is authorized to upload relevant information in

the Claimant's file to the shared Database, for disclosure to the Administrator, counsel for Ontario, the Claimant's retained counsel, the Referee Roster, and to the Court;

- j. A declaration that the Claimant claims to be an Inmate with a Serious Mental Illness, if applicable;
  - k. A check box indicating whether the Claimant requests Disclosure of the Claimant's Medical and Health Care file;
  - l. A check box indicating whether the Claimant spent 15 or more consecutive days in Administrative Segregation;
  - m. A check box indicating whether the Claimant was diagnosed by a Medical Professional with post traumatic stress disorder, together with the Claimant's approximate recollection of their date of diagnosis.
  - n. A check box indicating whether the Claimant experienced any of the following conditions, within one year prior to, during, or one year after their placement in Administrative Segregation, together with their approximate recollection of the date(s) the condition(s) were experienced:
    - i. Severe Clinical Depression;
    - ii. Self-injurious behavior;
    - iii. Substantial degradation in Axis I Disorders (excluding substance use disorders); or
    - iv. Substantial degradation of Borderline Personality Disorder (BPD);
  - o. A list of placements in Administrative Segregation, with corresponding placement date, release date, locations, and lengths of time, and description of their placement(s), to the best of the Claimant's recollection. The Claim Form shall advise Claimants that they must precisely explain each placement, as they will not be able to make further submissions if it is necessary for a Referee to determine their eligibility for a share of Aggregate Damages;
  - p. A declaration that the information submitted in the Claims Form is true and correct.
- 7.6 The parties acknowledge that ss. 7.5(m) and (n) are intended to facilitate early claim resolution, and a Claimant who indicates in their Claims Form that they experienced an enumerated condition under ss. 7.5(m) or (n) will not be obligated to select Track 2, Box 3 or Track 3 at the Track Selection stage.
- 7.7 Upon receipt of a Claims Form, the Administrator shall upload the Claims Form to the Database and examine the form to determine if it is complete. The Administrator will have discretion to accept a Claims Form despite minor deficiencies. If the Claims Form is not complete or contains significant deficiencies that prevent the Administrator from processing the Claims Form, the Administrator may contact the Claimant and Class Counsel to obtain further information to complete the Claims Form and to identify deficiencies. Claimants will have until the end of the Claims Filing Deadline or sixty (60) days from the date on which they are contacted (whichever is later) to address any identified deficiencies, failing which the Administrator will provide in writing its refusal to the Claimant. A Claimant whose claim is rejected under this paragraph may file a revised Claims Form within the Claims Period.
- 7.8 If a Claimant submitted a Claims Form, but (i) has no placements in Administrative Segregation that would make that person a member of the *Francis* Class or *Chandra* Class, or (ii) the person's claim predates the *Francis* Class Period, the Administrator will deny the Claim, and will provide in writing

its denial to the Claimant. Such a denial letter shall also include the following language, which may be varied on consent of the parties: “If you spent 15 or more days in administrative segregation before April 20, 2015, or if you have a serious mental illness and spent any time in administrative segregation before April 20, 2015, you or your representative must write to the Administrator. To succeed with any such claim, you will have to follow the Track 3 process under the Protocol, and you will have to prove to a Court that the limitation period legally does not apply to you. Class Counsel may be able to assist you in making such a claim”.

- 7.9 Within thirty (30) days of receipt of a Claims Form that is not deficient, the Administrator shall attempt to identify the Claimant in the Spreadsheet provided by Ontario under s. 3.5. If the information in the Claims Form regarding the Claimant’s declared placement lengths in Administrative Segregation accords with the information in the Spreadsheet, the Administrator will complete the Claimant’s file in the Database with the Spreadsheet’s information regarding the date of placement and the release date for each placement in Administrative Segregation together with the corresponding Correctional Institution(s) where the Administrative Segregation placement(s) took place. If the information in the Spreadsheet indicates a longer placement in Administrative Segregation than one declared by the Claimant on their Claims Form, or if the information in the Spreadsheet indicates additional placements that have not been declared by the Claimant on their Claims Form, the Administrator shall complete the Claimant’s file based on the Spreadsheet’s information.
- 7.10 If the data in the Spreadsheet indicates that the Claimant was placed in Administrative Segregation for 15 or more consecutive days between April 20, 2015 and August 18, 2021, the Administrator shall flag the Claimant in the Database as a Confirmed Prolonged Inmate.
- 7.11 If the Claimant cannot be identified by the Administrator in the Spreadsheet, or if the Claimant’s claim that they were placed in Administrative Segregation for 15 or more consecutive days is inconsistent with the information in the Spreadsheet, the Administrator shall flag the Claimant in the Spreadsheet as a Disputed Prolonged Inmate, and provide the Claims Form to Ontario.
- a. Ontario shall review the information provided by the Claimant in the Claims Form. Ontario shall either:
    - i. update the Spreadsheet and advise the Administrator to update the Database within 90 days confirming the Claimant was placed in Administrative Segregation for 15 or more consecutive days during the *Francis* Class Period and/or the *Chandra* Class Period, and revise the Claimant’s flag in the Spreadsheet from Disputed Prolonged Inmate to Confirmed Prolonged Inmate; or
    - ii. provide the Administrator with records that contain information that is relevant to the Claimant’s declared placement in Administrative Segregation for 15 or more days during the *Francis* Class Period and/or the *Chandra* Class Period (“**Ontario Class Membership Records**”).
  - b. If Ontario does not update the Spreadsheet under s. 7.11(a)(i) above, Ontario shall have 110 days from receipt of the Claims Form to provide Ontario Class Membership Records to the Administrator if the Claimant claims to have been placed in Administrative Segregation in one Correctional Institution or on only one occasion. If the Claimant asserts that they were placed in Administrative Segregation at two (2) or more different Correctional Institutions, Ontario shall have an additional 90 days to provide Ontario Class Membership Records. If the Claimant asserts that they were placed in Administrative Segregation on two (2) or more separate occasions at the same Correctional Institution, Ontario shall have an additional 30 days to provide Ontario Class Membership Records.



- c. Within fifteen (15) days of receipt of Class Membership Records from Ontario, the Administrator shall then notify the Claimant and counsel for the Claimant in writing that the Claimant cannot be identified in the Spreadsheet, and refer the Claimant's Claims Form and Ontario Class Membership Records to the Referee for a determination of fact. The Referee shall review the information provided by the Claimant on their Claims Form together with the Ontario Class Membership Records. Within thirty (30) days, the Referee shall determine, on a balance of probabilities, whether the Claimant was placed in Administrative Segregation for 15 or more consecutive days within the Chandra Class Period and/or the Francis Class Period (the "**Aggregate Damages Eligibility Assessment**"). The Referee shall have regard to the fact that before July 6, 2018, Ontario only tracked placements in designated segregation units, and did not track placements in conditions of segregation which took place elsewhere in a Correctional Institution. With respect to placements in Administrative Segregation alleged to have taken place prior to July 6, 2018, Ontario bears the burden of establishing that such placements claimed in support of establishing a total of 15 or more consecutive days in Administrative Segregation within the *Chandra* Class Period and/or the *Francis* Class Period did not occur. With respect to placements in Administrative Segregation alleged to have taken place on or after July 6, 2018, the information provided by the Claimant on their Claims Form, together with the Ontario Class Membership Records, must establish that the placements claimed in support of establishing 15 or more consecutive days in Administrative Segregation within the *Chandra* Class Period and/or the *Francis* Class Period did occur. The Referee shall advise the Administrator of its determination and the Administrator shall update the Database accordingly. If the Claimant is successful in the Aggregate Damages Eligibility Assessment, the Claimant shall be flagged in the Database as a Confirmed Prolonged Inmate. If the Claimant is unsuccessful, the Claimant shall be flagged in the Database as a Denied Prolonged Inmate.
- d. There is no appeal from an Aggregate Damages Eligibility Assessment.
- e. At the end of the Claims Period and following the completion of all Aggregate Damages Eligibility Assessments, the Administrator will produce a final spreadsheet ("**Final Spreadsheet**") to Class Counsel and the Defendants identifying all Claimants who were placed in Administrative Segregation for 15 or more consecutive days within the *Chandra* Class Period and/or the *Francis* Class Period, and who are therefore Confirmed Prolonged Inmates eligible to receive a share of the NADA, together with (1) names and claim numbers; and (2) representation status (and by whom).

7.12 The Administrator will calculate the share of the NADA and the share of the GADA 30 days after the Claims Filing Deadline as follows:

- a. The Administrator shall account to the parties with respect to the quantum of interest accrued on the aggregate damages awards in its possession.
- b. The Administrator shall review the Database and identify the total number of NADA Claimants as of 30 days from the Claims Filing Deadline. For greater certainty, the total number of NADA Claimants will include both i) Confirmed Prolonged Inmates, and ii) Disputed Prolonged Inmates.
  - i. If the accrued interest is greater than the post-judgment interest required to pay the shares of the NADA to the Confirmed Prolonged Inmates identified in the Database as of 30 days from the Claims Filing Deadline, Ontario shall not have to pay further amounts to the Administrator in order for the Administrator to distribute the shares of the NADA except as provided under s. 7.14.

- ii. If the accrued interest is less than the post-judgment interest required to pay the shares of the NADA to the Confirmed Prolonged Inmates identified in the Database as of 30 days from the Claims Filing Deadline, then Ontario shall have to pay to the Administrator the difference between the accrued interest and post-judgment interest owing pursuant to s. 1.3(q) within thirty (30) days of the Administrator accounting to the parties with respect to the quantum of interest accrued.
- c. To calculate the share of the NADA and the share of the GADA, the Administrator shall refer to the total number of NADA Claimants identified in s. 7.12(b) above.
- d. In calculating the share of the NADA and the share of the GADA, the Administrator will assume that there will be no additional NADA Claimants other than those identified in s. 7.12(b) above.
- e. The Administrator shall review the Database, and identify the total number of NADA Claimants who are flagged as Confirmed Prolonged Inmates as of 30 days from the Claims Filing Deadline.
- f. There is no appeal from the Administrator's decision with respect to a Claimant's eligibility to receive a share of the NADA.

7.13 Within 14 days of calculating the share of the NADA, the Administrator shall pay the shares of the NADA to the Confirmed Prolonged Inmates identified by the Administrator under s. 7.12(e) in accordance with the direction in each Claimant's Claims Form. The remainder of the NADA shall continue to be held by the Administrator, and shall be distributed pursuant to s. 7.14 below.

7.14 The following process applies to all NADA Claimants who were flagged in the Spreadsheet as Disputed Prolonged Inmates at the time the Administrator calculated the share of the NADA pursuant to s. 7.12:

- a. Where a NADA Claimant who was flagged as a Disputed Prolonged Inmate is subsequently flagged as a Confirmed Prolonged Inmate under s. 7.11 (i.e., either following a successful Aggregate Damages Eligibility Assessment, or a by an update to the Database by Ontario), the Claimant shall be entitled to payment of their share of the NADA as calculated under s. 7.12(c).
- b. Until the Final Spreadsheet is completed, the Administrator shall review the Spreadsheet on a monthly basis to determine whether the Database has been updated to identify additional NADA Claimants as Confirmed Prolonged Inmate(s). If additional Confirmed Prolonged Inmates are identified, the Administrator shall determine whether, on a pro rata basis, the accrued interest on the remaining amount of the NADA is greater or lesser than the amount required to pay post-judgment interest on any shares of the NADA payable to Confirmed Prolonged Inmate(s) identified that month, and Ontario shall pay any additional interest owing within 30 days of the Administrator's accounting.
- c. If additional Confirmed Prolonged Inmates are identified under the Administrator's monthly review under s. 7.14(b), the Administrator shall pay the Claimants' share of the NADA in accordance with the direction in the Claimant's Claims Form i) within 14 days of determining that no additional interest payment by Ontario under s. 7.12(b) is required, or ii) within 14 days of receipt of an interest payment from Ontario under s. 7.12(b).
- d. Upon completion of the Final Spreadsheet, the Administrator shall review the payments of shares of the NADA, and confirm to the parties that all NADA Claimants identified

on the Final Spreadsheet have received a share of the NADA. Any remaining shares of the NADA corresponding with NADA Claimants who are not on the Final Spreadsheet or are otherwise determined to be Denied Prolonged Inmates under s. 7.11 (i.e., because they were unsuccessful in any Aggregate Damages Eligibility Assessments completed after the share of the NADA was calculated) will be returned to Ontario, together with any remaining accrued interest.

- 7.15 For Track 1 (deemed to be Track 2, Box 1 claims), Track 2 and Track 3 Claims, the Administrator will pay, after the confirmation decision of the Court and payment by Ontario to the Administrator, as applicable:
- a. Any amounts owing to the Class Proceedings Fund, if any, including reimbursement for disbursements, for members of the *Francis* Class;
  - b. The fees, disbursements and costs for Class Counsel or counsel retained by the Claimant (pursuant to ss. 2.3 and 2.4); and
  - c. Following deductions of s. 7.15(a) and (b), the balance of the “final Track 2 quantum” (pursuant to s. 10.43) plus applicable interest (pursuant to ss. 10.45-10.48) or the balance of the “final Track 3 quantum” (pursuant to s. 11.10) plus applicable interest (pursuant to ss. 11.11-11.13).
- 7.16 If a payment is returned as undeliverable, the Administrator may, but is not required to, reissue a payment to a Class Member to the same address where the payment had been returned as undeliverable. If an updated or revised address is provided to the Administrator by Ontario, the Class Member, or their counsel, the Administrator shall reissue payment to that updated address.
- 7.17 If a Claimant cannot be located after any award is made under Tracks 1, 2, or 3, and the Claimant is not an Incarcerated Class Member, the Administrator will make best efforts to locate the Claimant based on available information. If any Claimants cannot be located and/or if any cheques are not cashed within 12 months of the time of the award, such funds shall be distributed by way of *cy-près* payment pursuant to a further order of the Court.

## 8. Two Tier Disclosure

- 8.1 The parties may agree in writing and without Court order to suspend all deadlines under this section while settlement negotiations are ongoing. Either party may revoke such suspension in writing on 30 days notice to the other party.
- 8.2 In disclosing any Claimant records in accordance with this Protocol, Ontario may, at its discretion, redact Claimant records on one or more of the following grounds:
- (i) the records contain information that identifies, or may identify, the names or identities of correctional staff, police, or confidential informants;
  - (ii) the records contain information identifying other inmates;
  - (iii) the records contain information that may put Ontario staff or any member of the public at risk;
  - (iv) the records contain security information that may put the safety and security of a correctional facility at risk; or
  - (v) the records contain information that is protected by a legal privilege.
- 8.3 If Ontario redacts a document, Ontario shall upload the redacted version of the document to the Database, but shall also disclose the unredacted version to counsel for the Claimant on a “counsel’s eyes only” basis unless the document contains information protected by a legal privilege. Ontario is not required to provide unredacted information to which a legal privilege applies.
- 8.4 Unredacted documents disclosed to counsel for a Claimant on a “counsel’s eyes only” basis shall not be disclosed to the Claimant.
- 8.5 If a Claimant intends to rely on unredacted documents in making a Claim, such unredacted documents may only be submitted to the Referee Roster and the Court under seal, and will in no circumstances

form part of any publicly-accessible record. For greater clarity, where i) Ontario has redacted a document and ii) the Claimant intends to rely on that document in its unredacted form and has submitted it to the Referee Roster and the Court, the unredacted document will remain under seal notwithstanding the confirmation motion process under s. 10.49, and shall not be publicly accessible at any time.

- 8.6 Ontario shall make best efforts to conduct a search for Claimant records relevant to the Claimant's placement in Administrative Segregation or status as an Inmate with a Serious Mental Illness and upload the following documents ("**Tier A Disclosure**"):
- a. A printout of the Claimant's OTIS Client Profile and OTIS Reports
  - b. The Claimant's Segregation Decision/Review Form(s);
  - c. The Claimant's Segregation Observation Form(s); and
  - d. The Claimant's Medical and Health Care file, if requested in the Claims Form. The Claimant may subsequently request their Medical and Health Care file prior to Tier B disclosure, in which case it will be provided along with Tier B disclosure.
- 8.7 If the Claimant underwent an Aggregate Damages Eligibility Assessment, Ontario shall have 50 days from the date the Aggregate Damages Eligibility Assessment is complete to provide Tier A Disclosure. If the Claimant did not undergo an Aggregate Damages Eligibility Assessment, Ontario shall have, from the date the Claims Form is uploaded to the Database by the Administrator, i) 110 days to provide Tier A Disclosure, and ii) an additional 90 days to deliver Tier A Disclosure if the Claimant was placed in Administrative Segregation at two (2) or more different Correctional Institutions, or an additional 30 days to deliver Tier A Disclosure if the Claimant was placed in Administrative Segregation on two (2) or more separate occasions at the same Correctional Institution.
- 8.8 Where a Claimant has declared on their Claims Form that:
- a. They are SMI and were placed in Administrative Segregation for at least one day after April 20, 2015; and/or
  - b. They experienced a Box 3 Condition one year before, during, or one year after their placement in Administrative Segregation,  
at any time before the time period for providing Tier A disclosure under s. 8.7 has elapsed, Ontario may advise a Claimant and their counsel that Ontario accepts:
    - a. The SMI status of a Claimant; and/or
    - b. A Box 3 Condition.
- 8.9 Within 30 days of such notification by Ontario, the Claimant may renounce all disclosure and proceed to Track Selection, in which case the Claimant must select Track 2 Box 2 (if SMI status is declared by the Claimant and accepted by Ontario) and/or Track 2 Box 3 (if a Box 3 Condition declared by the Claimant and accepted by Ontario), and Track 2 Box 1, if eligible. There will be no further opportunity to switch Tracks once Track Selection is made.
- a. If the Claimant renounces disclosure under this section, no affidavits or Position Statements under s. 10.37 will be exchanged.
  - b. If a Claimant declares in their Claims Form both SMI and a Box 3 Condition, and Ontario accepts only an SMI declaration or a Box 3 Condition, but not both, and the Claimant does not

renounce disclosure under this section, the parties shall confer in good faith to determine whether modifications to the Tier A and Tier B disclosure process set out herein are appropriate for the particular Claimant. If no agreement on modifications is reached within 60 days from the date of Ontario's acceptance of SMI or a Box 3 Condition, Ontario shall produce Tier A and Tier B Disclosure as outlined above in ss. 8.6 and 8.11, with the timeline for Tier A production under s. 8.6 beginning from the date the 60 days in this section have expired.

- c. If the Claimant does not renounce disclosure at this time, Tier A disclosure shall be provided as set out in s. 8.6 and the Claimant may select any of Track 2 Box 1, Box 2, or Box 3.
  - d. A Claimant who elects to make a claim under Track 3 may rely on an admission of SMI status and/or Box 3 Condition given by Ontario under s. 8.8 in their motion for summary judgment.
- 8.10 A NADA Claimant who is eligible to receive a share of the NADA may make a Track 1 selection (deemed to be Track 2, Box 1) prior to Tier A disclosure, or following Tier A and prior to Tier B disclosure, by renouncing all subsequent disclosure. If disclosure is renounced to make a Track 1 selection, there will be no further opportunity to switch Tracks once the Claims Filing Deadline has passed.
- 8.11 After the Tier A disclosure has been uploaded in a Claimant's Database, the Claimant will have fourteen (14) days to renounce Tier B Disclosure. If the period of 14 days has elapsed and no renunciation of Tier B Disclosure has been made, within 120 days following the end of the 14-day renunciation period, Ontario shall review the locations, archives, notifications, and inmate-specific records identified in the subsections below and identify additional relevant documents, if any, and upload such records to the Database:
- a. OTIS and OTIS Reports where applicable (including but not limited to mental health alerts, housing history, and care in placement records);
  - b. The Claimant's physical or hard copy inmate file stored at the Correctional Institution(s) in which the Claimant was placed in Administrative Segregation during the Class Period;
  - c. The applicable archive or offsite record centre, in the event that the Correctional Institution informs Ontario that the Claimant's physical or hard copy inmate file has been stored off-site at same;
  - d. The Claimant's physical or hard copy Medical and Health Care file and Psychology files stored at the Correctional Institution(s) in which the Claimant was placed in Administrative Segregation during the Class Period;
  - e. The applicable archive or offsite record centre, in the event that the Correctional Institution informs Ontario that the Claimant's physical or hard copy Medical and Health Care file and Psychology files has been stored off-site at same; and
  - f. Statistics Unit records (collectively, "**Tier B Disclosure**").
- 8.12 A Claimant may request further Tier B Disclosure from Ontario by submitting a request to the Administrator. The Claimant must make any such request within ninety (90) days of receipt of their Tier B Disclosure and shall be as precise as possible in their request. Ontario shall make best efforts to upload the additional documents, if any, within ninety (90) days of notification of the request.

*Track Selection*

- 8.13 If the Claimant is self-represented, the Administrator will provide the Claimant with a Track Selection

Form at the same time it provides the Tier B Disclosure along with a letter explaining to the self-represented Claimant when such Track Selection Form must be returned to the Administrator.

- 8.14 A Claimant will advise the Administrator of their Track Selection within ninety (90) days of receipt of Tier B Disclosure, even if the Claimant has made a Further Tier B disclosure request. If the Claimant renounces Tier A or Tier B Disclosure under ss. 8.9 or 8.11, the Claimant shall advise the Administrator of their Track Selection within ninety (90) days of renouncing such disclosure.
- 8.15 If Track 2 is selected, the Claimant will indicate which Track 2 Boxes are being claimed (i.e., Box 1 and/or Box 2 and/or Box 3). If Track 3 is selected, the Claimant will indicate being SMI or not.
- 8.16 A Claimant who is not eligible to receive a share of the NADA must select “Box 2” for Track 2 claims (and may also select Box 3), or they must select “SMI” for Track 3 claims. If a Claimant does not select “Box 2” (Track 2) or “SMI” (Track 3), the Administrator may contact the retained counsel or self-represented Claimant to obtain their selection.
- 8.17 If a Claimant fails to advise the Administrator of their Track Selection within the time-frame in s. 8.14, the Administrator will, subject to reasonable extensions which may be agreed to by the parties or ordered by the Court, either: (a) deem the Claimant to have selected Track 1 (Track 2, Box 1) if the Claimant was placed in Administrative Segregation for 15 or more consecutive days on or after April 20, 2015, and, if applicable, deem the Claimant to have Selected Track 2 Box 2 and/or Track 2, Box 3 if Ontario has accepted the Claimant’s SMI Status and/or Box 3 Condition, or (b) discontinue the Claim and notify the parties if the Administrator has determined the Claimant was not placed in Administrative Segregation for 15 or more consecutive days on or after April 20, 2015.
- 8.18 In circumstances where Ontario has already been released of a Claimant’s rights for compensation with respect to their placement in Administrative Segregation, Ontario may move before the court, on notice to the Claimant, to have the Claimant excluded from the benefit of any award or the possibility to make any Track selection in the class actions.

### **9. Track 1 Claims**

- 9.1 A Claimant who selects Track 1 is entitled to a share of the NADA if the Claimant is a Confirmed Prolonged Inmate.
- 9.2 A Claimant who has made a Track 1 selection will be deemed to have made a Track 2 Box 1 selection.
- 9.3 Where a Claimant elects to proceed on Track 1, or is deemed by the Administrator to have elected to proceed on Track 1, they shall be deemed to have released Ontario from all other claims arising from their placement(s) in Administrative Segregation.

### **10. Track 2 Claims**

- 10.1 The parties to a Track 2 claim, several Track 2 claims, or to the Protocol at large, may agree in writing and without the need for a Court order to suspend all deadlines under this section while settlement negotiations are ongoing. Either party may revoke such suspension in writing on 30 days notice to the other party.
- 10.2 Where a Claimant selects Track 2, they will be deemed to have released Ontario from all claims arising from their placement(s) in Administrative Segregation save for the claims made with respect to their Track 2 claim.
- 10.3 The ranges of potential awards available under Track 2 are generally governed by the amounts set out in the following grid and interpreted as set out in ss. 10.4-10.48:

<b>BOX 1</b> <b>CRITERIA FOR AWARD</b>	<b>AWARD</b>
15-29 consecutive days in administrative segregation	Up to \$10,000
30-44 consecutive days in administrative segregation	Up to \$15,000
45-80 consecutive days in administrative segregation	Up to \$20,000
81-100 consecutive days in administrative segregation	Up to \$30,000
More than 100 consecutive days in administrative segregation	Up to \$40,000
<b>BOX 2</b> <b>Additional damages if SMI:</b>	
Lump Sum ("A"):	\$5,000.00
Lump Sum per separate qualifying placement in administrative segregation ("B"):	\$500.00
Per qualifying day ("C"):	\$90.00
Maximum A+B+C:	\$20,000.00
<b>BOX 3</b> <b>Additional damages for any one or more of: Post-traumatic stress disorder, Severe Clinical Depression, Self-injurious behavior, substantial degradation in Axis I Disorder (excluding substance use disorders), or substantial degradation of Borderline Personality Disorder ("BPD"):</b>	
<p>If Referee determines the Claimant, during the <i>Francis</i> Class Period or the <i>Chandra</i> Class Period,</p> <p>A) has either</p> <ul style="list-style-type: none"> <li>i) at least one placement in Administrative Segregation of fifteen or more consecutive days; or</li> <li>ii) is SMI, and had at least one placement in Administrative Segregation for at least one day;</li> </ul> <p>B) <b>and</b>, within one year prior to, during, or one year after the Claimant's placement in Administrative Segregation during the <i>Francis</i> Class Period and/or <i>Chandra</i> Class Period, the Claimant: was diagnosed by a Medical Professional with post traumatic stress disorder, an Axis I Disorder (excluding substance use disorders) or BPD; and/or has a written record of conduct consistent with one or more of severe clinical depression, self-injurious behavior, a substantial degradation in Axis I Disorder (excluding substance use disorders), or substantial degradation of BPD.</p>	

1-14 consecutive days in administrative segregation	Up to \$5,000
15-29 consecutive days in administrative segregation	Up to \$10,000
30-44 consecutive days in administrative segregation	Up to \$15,000
45-80 consecutive days in administrative segregation	Up to \$20,000
81-100 consecutive days in administrative segregation	Up to \$30,000
More than 100 consecutive days in administrative segregation	Up to \$40,000

*Disputed Placement(s) or Placement Length(s) in the Spreadsheet*

- 10.4 The data regarding a Claimant's placement(s) in Administrative Segregation and length(s) thereof identified in the Spreadsheet (as updated under s. 3.6 or s. 7.11 and in effect at the time of the Claimant's Track Selection) shall apply to the Claimant's Track 2 Claim, unless the Claimant notifies the Administrator at the time of Track Selection i) that they dispute the placement(s) or placement length(s) recorded in the Spreadsheet; ii) which placement(s) or placement length(s) are being disputed; and iii) of the Claimant's position on their placement(s) or placement length(s), to the extent that they differ from those provided on the Claims Form.
- 10.5 The Administrator shall promptly notify Ontario of any Track Selection in which a Claimant disputes the placement(s) or placement length(s) recorded in the Spreadsheet.
- 10.6 Within 60 days of being notified by the Administrator of a Track Selection in which the Claimant disputes the placement(s) or placement length(s) recorded in the Spreadsheet, Ontario may advise the Administrator that it accepts the placement(s) or placement length(s) in the Claimant's Track Selection, or in the Claimant's Claims Form if the Claimant has not provided different information in their Track Selection. The Database shall then be updated accordingly, and the data therein shall apply to the Claimant's Track 2 Claim.
- 10.7 If the 60 days elapse without Ontario advising the Administrator of a decision under s. 10.6 above, the Claimant shall provide the Administrator with records relevant to the Claimant's disputed placement(s) or placement length(s), together with a written position statement not exceeding 5 pages. Such materials shall be provided to the Administrator no later than 120 days after the Track Selection was made, and shall then be promptly uploaded to the Database by the Administrator.
- 10.8 Within 60 days of the Claimant's delivery of the placement records and position statement under s. 10.7 above, Ontario may:
- a. Accept the placement(s) or placement length(s) declared in the Claimant's Track Selection, or in the Claimant's Claims Form if the Claimant has not provided different information in their Track Selection, at which point the Database shall be updated accordingly and the data therein apply to the Claimant's Track 2 Claim; or
  - b. Provide the Administrator with records relevant to the disputed placement(s) or placement length(s), where such records have already been disclosed to the Claimant in Tier A or Tier B disclosure, and/or a written position statement not exceeding 5 pages. For greater certainty, this subsection does not require Ontario to produce documents that have not otherwise been disclosed to the Claimant, or to produce any documents or a written position statement in response to a disputed placement at all. Any such materials shall be promptly uploaded to the Database by the Administrator.



- 10.9 If the Claimant’s placement(s) or placement length(s) remain disputed, the Administrator shall refer the Claimant’s Claims Form, the disputed placement(s) or placement length(s) identified in the Spreadsheet, and any materials provided to the Administrator under ss. 10.7 and 10.8, to the Referee for a determination of fact in connection with only the placement(s) or placement length(s) that are disputed by the Claimant. The Referee shall review the material provided. Within thirty (30) days, the Referee shall determine, on a balance of probabilities, the placement(s) or placement length(s) that were disputed by the Claimant (the “Placement Length Determination”). For greater certainty, data in the Spreadsheet regarding a Claimant’s placement(s) or placement length(s) that was not disputed by the Claimant at the time of Track Selection shall not be the subject of a Placement Length Determination by the Referee. The Referee shall have regard to the fact that before July 6, 2018, Ontario only tracked placements in designated segregation units, and did not track placements in conditions of segregation which took place elsewhere in a Correctional Institution. The Referee shall advise the Administrator of its determination, the Administrator shall update the Database accordingly, and the data therein shall apply to the Claimant’s Track 2 Claim.
- 10.10 There is no appeal from a Placement Length Determination.
- 10.11 At any point prior to a Placement Length Determination being made by the Referee, the parties may agree to revise some or all of the data in the Database regarding a Claimant’s placement(s) or placement length(s). The parties shall advise the Administrator of any such agreement, the Administrator shall update the Database accordingly, and the data therein shall apply to the Claimant’s Track 2 Claim.

**Track 2, Box 1 Assessment Process**

- 10.12 To receive compensation under Track 2, Box 1, a Claimant must have had a placement in Administrative Segregation for fifteen (15) or more consecutive days on or after April 20, 2015 and before August 18, 2021. For clarity, if a placement started prior to and ended after April 20, 2015, the placement will only qualify if it includes fifteen (15) or more consecutive days counting from April 20, 2015 inclusive; the days prior to April 20, 2015 do not count.
- 10.13 For Claims where only Track 2, Box 1 has been selected, no Referee will be assigned to the Claim unless a Placement Length Determination is required under s. 10.9.
- 10.14 The quantum (pursuant to ss. 10.15-10.17.1), and the “final Track 2 quantum” (pursuant to s. 10.43), together with the applicable interest on the “final Track 2 quantum” (pursuant to ss. 10.45-10.48), will be calculated by the Administrator.
- 10.15 Each individual qualifying placement (pursuant to s. 10.12) will be calculated using the following refined Box 1 Grid:

<b>BOX 1 GRID - CRITERIA FOR AWARD</b>					
<b>Number of cumulative days</b>	<b>Amount « award »</b>	<b>Number of days</b>	<b>Amount « award »</b>	<b>Number of days</b>	<b>Amount « award »</b>
<b>Range of 15-29 days</b>					
15	\$666.66				
16	\$1,333.33	55	\$16,527.77	95	\$27,500
17	\$2,000	56	\$16,666.66	96	\$28,000
18	\$2,666.66	57	\$16,805.55	97	\$28,500
19	\$3,333.33	58	\$16,944.44	98	\$29,000

20	\$4,000	59	\$17,083.33	99	\$29,500
21	\$4,666.66	60	\$17,222.22	100	<b>\$30,000</b>
22	\$5,333.33	61	\$17,361.10	<b>Range of more than 100 days</b>	
23	\$6,000	62	\$17,500	101	\$30,500
24	\$6,666.66	63	\$17,638.88	102	\$31,000
25	\$7,333.33	64	\$17,777.77	103	\$31,500
26	\$8,000	65	\$17,916.66	104	\$32,000
27	\$8,666.66	66	\$18,055.55	105	\$32,500
28	\$9,333.33	67	\$18,194.44	106	\$33,000
<b>29</b>	<b>\$ 10,000.00</b>	68	\$18,333.33	107	\$33,500
<b>Range of 30-44 days</b>		69	\$18,427.22	108	\$34,000
30	\$10,333.33	70	\$18,611.11	109	\$34,500
31	\$10,666.66	71	\$8,750	110	\$35,000
32	\$11,000	72	\$18,888.88	111	\$35,500
33	\$11,333.33	73	\$19,027.77	112	\$36,000
34	\$11,666.66	74	\$19,166.66	113	\$36,500
35	\$12,000	75	\$19,305.55	114	\$37,000
36	\$12,333.33	76	\$19,444.44	115	\$37,500
37	\$12,666.66	77	\$19,583.33	116	\$38,000
38	\$13,000	78	\$19,722.22	117	\$38,500
39	\$13,333.33	79	\$19,861.10	118	\$39,000
40	\$13,666.66	80	\$ 20,000.00	119	\$39,500
41	\$14,000	<b>Range of 81-100 days</b>		<b>120</b>	<b>\$ 40,000</b>
42	\$14,333.33	81	\$20,500	121	\$ 40,000
43	\$14,666.66	82	\$21,000	122	\$ 40,000
44	\$15,000	83	\$21,500	123	\$ 40,000
<b>Range of 45-80 days</b>		84	\$22,000	124	\$ 40,000
45	\$15,138.88	85	\$22,500	Etc.	\$ 40,000
46	\$15,277.77	86	\$23,000		

47	\$15,416.66	87	\$23,500		
48	\$15,555.55	88	\$24,000		
49	\$15,694.44	89	\$24,500		
50	\$15,833.33	90	\$25,000		
51	\$15,972.22	91	\$25,500		
52	\$16,111.11	92	\$26,000		
53	\$16,250.00	93	\$26,500		
54	\$16,388.88	94	\$27,000		

- 10.16 In the case of multiple qualifying placements of more than fifteen (15) consecutive days, the calculated awards are added together to provide the total Box 1 damages. The maximum available amount for sum total Box 1 damages is forty thousand dollars (\$40,000). For example, if a Claimant had three separate placements after April 20, 2015 of twenty-nine (29) consecutive days, forty-four (44) consecutive days and eighty (80) consecutive days, the Box 1 Grid would provide ten thousand dollars (\$10,000), fifteen thousand dollars (\$15,000) and twenty thousand dollars (\$20,000) respectively. Although this adds up to forty-five hundred dollars (\$45,000), the sum total Box 1 damages would still be forty thousand dollars (\$40,000).
- 10.17 Where applicable, the Administrator may order payment of costs and disbursements incurred by counsel for the Claimant in connection with an uncontested application for a Small Estates Certificate required by the Estate Executor (defined in Schedule "A") to make or continue Track 2, Box 1 claim, up to a maximum of \$1,000 where the:
- i) Track 2, Box 1 claim is unsuccessful and, but for the claim, the Small Estates Certificate would not otherwise have been required; or
  - ii) Track 2, Box 1 payment is \$10,000.00 or less and, but for this payment, a Small Estates Certificate would not otherwise have been required.
- 10.17.1 Where a Track 2, Box 1 claim is unsuccessful but the Small Estates Certificate would still have been required under the law absent any claim in order to administer a solvent estate, or a Track 2, Box 1 payment of more than \$10,000 is made to the estate, any legal fees connected with the application for a Small Estate Certificate shall be paid by the estate in the normal course.

#### **Track 2, Box 2 Assessment Process**

- 10.18 Unless Ontario has accepted the Claimant's SMI status declared on their Claims Form, the Administrator will assign the Claim that includes a Track 2, Box 2 selection to a Referee within ten (10) days of confirmation that no cross-examinations will be conducted or upon receipt of the parties' addendums (if any) (pursuant to s. 10.37(i)). The Administrator will also provide the assigned Referee with access to the Claimant's Database and all materials filed by the parties pursuant to s. 10.37. A Claimant that has selected both Boxes 2 and 3 will be assigned one Referee to assess their Claim.
- 10.19 A Track 2, Box 2 Claimant must satisfy the criteria for Serious Mental Illness ("SMI") set out in the *Francis* or *Chandra* class definition at s. 1.3.j.i.I and s. 1.3.j.ii.I above, and have at least one placement in Administrative Segregation during the *Francis* Class Period and *Chandra* Class Period (i.e. between April 20, 2015 and August 18, 2021).
- 10.20 Unless Ontario has agreed not to contest the Claimant's SMI status declared on their Claims Form under s. 8.8, the Referee will assess a Claimant's SMI eligibility with reference to two SMI criteria:

- a. whether there is an Axis 1 (excluding substance use disorders) or Borderline Personality Disorder diagnosis by a medical doctor prior to or during a placement in Administrative Segregation; and if the answer is yes;
  - b. whether there is evidence of suffering from a Claimant's Axis 1 Disorder, or Borderline Personality Disorder in a manner described in Appendix A of the *Francis/Chandra* SMI class definition (i.e., evidence of Rx [medical prescription] and/or Tx [treatment] and/or self-injurious behaviours and/or transfer to immediate care of tertiary mental health level of care units).
- 10.21 If the Referee finds that both SMI criteria (pursuant to s. 10.20) are satisfied, their report should include the approximate date when both SMI criteria are first satisfied.
- 10.22 If the Referee finds that a Claimant meets the SMI criteria, the quantum of damages will be determined by the Administrator (pursuant to s. 10.3, Box 2 and s. 10.23).
- 10.23 A Track 2, Box 2 “qualifying day” in Administrative Segregation is a day on or after April 20, 2015 that is also after the date the two SMI criteria in s. 10.20 are satisfied. For each qualifying day spent in Administrative Segregation, a Claimant is entitled to ninety dollars (\$90) per qualifying day and five hundred dollars (\$500) per unique qualifying placement in Administrative Segregation (“qualifying placement” is a placement of any length with at least one qualifying day, separated by a minimum of 24 hours from any other placement(s)). Any Claimant who has established the two SMI criteria in s. 10.20 and with at least one qualifying day is also entitled to a single lump sum of five thousand (\$5,000). A Box 2 damages award is capped at twenty-thousand dollars (\$20,000).
- 10.24 While there is no requirement to file an affidavit in support of a Track 2, Box 2 claim, each party has the option of filing affidavit(s) (pursuant to ss. 10.37(a) and (c)), unless Ontario has accepted the Claimant's SMI declaration in their Claims Form and the Claimant has renounced disclosure under ss. 8.8-8.9.
- 10.25 If Ontario has accepted the Claimant's SMI declaration in their Claims Form and the Claimant has renounced disclosure under ss. 8.8-8.9, the Track 2, Box 2 award will be calculated by the Administrator based on the formula set out in s. 10.3, Box 2 and s. 10.23.

*Track 2, Box 3 Assessment Process*

- 10.26 Unless Ontario has accepted the Claimant's Box 3 Condition, the Administrator will assign the Claim that includes a Track 2, Box 3 selection to a Referee (the same Referee assigned for a Box 2 Track 2 claim, if any) within ten (10) days of confirmation that no cross-examinations will be conducted or upon receipt of the parties' addendums (if any) (pursuant to ss. 10.37(e)-(i)). The Administrator will also provide the assigned Referee with access to the Claimant's Database and all materials filed by the parties pursuant to s. 10.37. A Claimant that has selected both Boxes 2 and 3 will be assigned one Referee to assess the Claim.
- 10.27 Where a Claimant selects Track 2, Box 3, the parties are bound by the findings of fact made in the reasons for decision of Justice Perell in the *Francis* summary judgment motion reported at *Francis v. Ontario*, 2020 ONSC 1644, including on general causation of harm.
- 10.28 The Referee will assess whether the Claimant has established one year prior to, during, or one year after the Claimant's placement in Administrative Segregation: i) a diagnosis by a Medical Professional of one or more of post-traumatic stress disorder (PTSD), an Axis 1 Disorder (excluding substance use disorders) or bipolar disorder (BPD), or, ii) a written record of either a diagnosis by a Medical Professional of, or conduct consistent with one or more of, severe clinical depression, self-injurious behavior, substantial degradation in Axis I Disorder (excluding substance use disorders), or substantial degradation of BPD (any of which independently constitutes a “**Box 3 Condition**”).

10.29 The Referee will consider the parties’ arguments surrounding an alleged Box 3 Condition when determining whether or not a Claimant is eligible for a Track 2 Box 3 award. If the Referee determines the Claimant has satisfied the criteria for a Track 2 Box 3 claim, the quantum of Track 2 Box 3 damages will be determined by the Administrator under the Track 2 Box 3 Grid.

10.30 To be eligible to receive compensation under Track 2, Box 3, a Claimant must have:

- a. Either:
  - i. been placed in Administrative Segregation for fifteen (15) or more consecutive days during the *Francis* Class Period or during the *Chandra* Class Period,<sup>18</sup> or;
  - ii. a determination by the Referee that the Claimant is SMI pursuant to Track 2 Box 2; and
- b. if i. or ii. (or both) are satisfied, one year prior to, during, or one year after the Claimant’s placement in Administrative Segregation, the Claimant:
  - i. was diagnosed by a Medical Professional with PTSD, BPD, or an Axis I Disorder (excluding substance abuse disorders); or
  - ii. has a written record of a diagnosis by a Medical Professional, or a written record of conduct consistent with, one or more of: severe clinical depression, self-injurious behavior, substantial degradation in Axis I Disorder (excluding substance use disorders), or substantial degradation of BPD.

10.31 Compensation for each individual qualifying placement (pursuant to s. 10.30) will be calculated using the following grid (the “Track 2 Box 3 Grid”):

Number of cumulative days	Award Amount (\$)				
		8	2857.12	17	6000.00
		9	3214.26	18	6333.33
<b>Range of 1 – 14 Days</b>		10	3571.40	19	6666.66
1	357.14	11	3928.54	20	7000.00
2	714.28	12	4285.68	21	7333.33
3	1071.42	13	4642.82	22	7666.66
4	1428.56	<b>14</b>	<b>5000</b>	23	8000.00
5	1785.70	<b>Range of 15-29 Days</b>		24	8333.33
6	2142.84	15	5333.33	25	8666.66
7	2499.98	16	5666.66	26	9000.00

<sup>18</sup> For clarity, if a placement started prior to and ended after April 20, 2015, the placement will only qualify if it includes fifteen (15) or more consecutive days counting from April 20, 2015 inclusive; the days prior to April 20, 2015 do not count.

27	9333.33	51	\$15,972.22	77	\$19,583.33
28	9666.66	52	\$16,111.11	78	\$19,722.22
29	10000.00	53	\$16,250.00	79	\$19,861.10
<b>Range of 30-44 Days</b>		54	\$16,388.88	80	\$ 20,000.00
30	10,333.33	55	\$16,527.77	<b>Range of 81-100 Days</b>	
31	10,666.66	56	\$16,666.66	81	\$20,500
32	11,000	57	\$16,805.55	82	\$21,000
33	11,333.33	58	\$16,944.44	83	21,500
34	11,666.66	59	\$17,083.33	84	22,000
35	12,000	60	\$17,222.22	85	22,500
36	12,333.33	61	\$17,361.10	86	23,000
37	12,666.66	62	17,500	87	23,500
38	13,000	63	17,638.88	88	24,000
39	13,333.33	64	17,777.77	89	24,500
40	13,666.66	65	17,916.66	90	25,000
41	14,000	66	\$18,055.55	91	25,500
42	14,333.33	67	\$18,194.44	92	26,000
43	14,666.66	68	\$18,333.33	93	26,500
44	15,000	69	\$18,427.22	94	27,000
<b>Range of 45-80 Days</b>		70	\$18,611.11	95	27,500
45	\$15,138.88	71	\$18,750	96	28,000
46	\$15,277.77	72	\$18,888.88	97	28,500
47	\$15,416.66	73	\$19,027.77	98	29,000
48	\$15,555.55	74	\$19,166.66	99	29,500.00
49	\$15,694.44	75	\$19,305.55	100	<b>\$ 30,000</b>
50	\$15,833.33	76	\$19,444.44	<b>Range of 101-120 Days</b>	

101	\$30,500
102	31,000
103	31,500
104	32,000
105	32,500
106	33,000
107	33,500
108	34,000
109	34,500
110	35,000
111	35,500
112	36,000
113	36,500
114	37,000
115	37,500
116	38,000
117	38,500
118	39,000
119	39,500
<b>120</b>	<b>40,000</b>
<b>Range of 120 or More Days</b>	
121	<b>\$ 40,000.00</b>
122	\$ 40,000.00
123	\$ 40,000.00
124	\$ 40,000.00
Etc.	\$ 40,000.00

- 10.32 In the case of multiple qualifying placements, the calculated awards are added together to provide the total Box 3 damages. The maximum available amount for sum total Box 3 damages is forty thousand dollars (\$40,000). For example, if a Claimant had three separate placements after April 20, 2015 of ten (10) consecutive days, fifty-five (55) consecutive days and ninety (90) consecutive days, the Track 2 Box 3 Grid would provide \$3,751.41, \$16,527.77, and \$25,000 (totaling \$45,279.18), the sum total Box 3 damages would still be forty thousand dollars (\$40,000).
- 10.33 Unless Ontario has agreed not to contest the Claimant's Box 3 Condition declared on their Claims Form under s. 8.8, the Referee will assess a Claimant's Box 3 Condition as follows:
- a. Upon weighing the Claimant's materials and Ontario's materials provided in support of the Track 2 Box 3 claim (including the Claims Form, Track Selection, affidavit(s) if any, position statements, and records attached thereto, as applicable) on the balance of probabilities, has the Claimant established that, within one year prior to, during, or one year after, the Claimants' placement in Administrative Segregation:
    - i. a Medical Professional diagnosed the Claimant with PTSD, BPD, or an Axis 1 Disorder (excluding substance use disorders)?
    - ii. there is a written record of a diagnosis by a Medical Professional of, or a written record of the Claimant engaging in conduct consistent with, one or more of severe clinical depression, self-injurious behavior, substantial degradation in Axis I Disorder (excluding substance use disorders), or substantial degradation of BPD?
  - b. In considering whether the Claimant has established a Box 3 Condition:
    - i. While there is no requirement to file an affidavit in support of a Track 2, Box 3 claim, each party has the option of filing affidavit(s) (pursuant to ss. 10.37(a) and (c)).
    - ii. Claimants bear the burden of proof. If the Claimant chooses not to swear an affidavit, such a circumstance could affect the Claimant's ability to prove, for example, that a Box 3 Condition was present during the time frame. However, no negative inference may be drawn from the Claimant's failure to file an affidavit.
    - iii. The Referee may consider the following questions, but if considered, must be answered in writing in the Referee's determination:
      - If the parties do not agree that an individual making a diagnosis is a Medical Professional, what is the diagnosing individual's credentials, and do these credentials satisfy the definition of a Medical Professional under this Protocol?
      - Was the Claimant prescribed any medication for mental health? If so, what was the reason for the prescription, and by whom were they prescribed? What is the name, dose and reason for prescription? Why does this prescription indicate it is more likely than not the Claimant has established a Box 3 Condition during the applicable time frame? Was an increase or elevation in staff interventions necessary (without a formal transfer to another level of care) for medical or psychological reasons, and, if so, for what frequency and/or duration? Why do these actions indicate it is more likely than not the Claimant has established a Box 3 Condition during the applicable time frame?
      - What was the Claimant's level of care (primary, intermediate, or tertiary) (ie. frequency and/or duration of support from any of a medical doctor, nurse practitioner, social worker, psychiatric or mental health nurse, psychologist or



psychiatrist)? Do these actions indicate it is more likely than not the Claimant has established a Box 3 Condition during the applicable time frame, and why?

- Did the Claimant suffer from episodic conditions or symptoms? If so, what was the frequency of the episodes? What was the intensity of the episodes? What, if any commentary, did medical and psychological staff report about those episodes? Do these conditions and commentary indicate it is more likely than not the Claimant has established a Box 3 Condition during the applicable time frame, and why?

- 10.34 If the Referee finds that there was a Box 3 Condition, their report should include the approximate date(s) the Box 3 Condition(s) were diagnosed, or dates that conduct was demonstrated by written records, as applicable.
- 10.35 If the Referee finds that that there was a Box 3 Condition, the quantum of damages will be determined by the Administrator under the Track 2, Box 3 Grid.
- 10.36 If Ontario has accepted a Claimant's Track 2, Box 3 Condition declaration in their Claims Form and the Claimant has renounced disclosure under ss. 8.8-8.9, the Track 2, Box 3 award will be calculated by the Administrator based on the Track 2, Box 3 Grid.

*Track 2, Boxes 2 and 3 Claim Process*

- 10.37 The process for making a Track 2, Box 2 and/or 3 Claim will be as follows:
- a. Within ninety (90) days of the later of i) a Track 2 selection, ii) an update to the Database pursuant to an agreement reached under s. 10.6 or s. 10.8, or iii) the issuance of a Placement Length Determination, the Claimant:
    - i. May file with the Administrator an affidavit from the Claimant of no more than twenty (20) pages in length, excluding exhibits;
    - ii. Will file with the Administrator a concise Position Statement of no more than ten (10) pages; and
    - iii. Will file any records or evidence in the possession of the Claimant not already produced by Ontario in its Disclosure (including, for example but without limitation, any assessments or medical/psychiatric reports), upon which the Claimant intends to rely in support of the Claim. These documents must be referred to in the Claimant's Position Statement for ease of reference for the Referee, and are not included in the Position Statement or Affidavit page limit.
  - b. The Administrator will then upload the Claimant's submissions into the Database, and notify the parties.
  - c. Within ninety (90) days of the notification in s. 10.37(b), Ontario:
    - i. May file with the Administrator an affidavit from a representative of Ontario of no more than twenty (20) pages in length, excluding exhibits;
    - ii. Will file with the Administrator a concise Position Statement of no more than ten (10) pages;

- iii. Will file any records in the possession of Ontario not already produced by Ontario in its Disclosure relevant to the assertions made or records produced by the Claimant. These documents must be referred to in Ontario's Position Statement for ease of reference for the Referee, and are not included in the Position Statement or Affidavit page limit.
  - d. The Administrator will upload Ontario's documents into the Database, and notify the parties.
  - e. Within fifteen (15) days of the completion of s. 10.37(c), the parties will inform each other and the Administrator, whether or not they intend to engage in cross-examinations on the affidavit(s) filed, who they intend to examine, and whether these examinations will be oral or conducted as written interrogatories. Any such examinations will be limited to the equivalent of sixty (60) minutes of questions per party for each examination.
  - f. All cross-examinations must be completed within sixty (60) days of being notified of the intention to cross-examine.
  - g. For written interrogatories, the questions must be provided to the opposing party within thirty (30) days of being notified of the intention to cross-examine. Responses to written interrogatories must be provided to the cross-examining party within thirty (30) days of receipt of the questions. All responses to written interrogatories must be provided in the form of a sworn/affirmed statement (before a Commissioner of Oaths) from the individual being cross-examined.
  - h. Within sixty (60) days of any election to engage in cross-examinations, if one is made, the parties must also file with the Administrator and provide to each other transcripts of any such cross-examinations or copies of written interrogatories they conducted.
  - i. Within thirty (30) days of cross-examinations, the parties may file with the Administrator and serve on each other: (i) transcripts (if any), and ii) an addendum position statement (if any) of no more than 5 pages.
- 10.38 The Referee shall review the affidavits, Position Statements, transcripts, and records produced by the Claimant and Ontario (if any), and:
- a. Make an SMI determination under Track 2 Box 2 (pursuant to s. 10.20), if claimed;
  - b. Make a Box 3 Condition assessment under Track 2 Box 3 (pursuant to s. 10.33), if claimed;
  - c. Determine an appropriate cost award (if any), in an amount up to \$12,000, and assess and approve reasonable disbursements;
  - d. Deny a Track 2 Box 2 or Track 2 Box 3 Claim in its entirety.
- 10.39 Where a Claimant's entitlement to an award under Track 2 (exclusive of costs and disbursements) can be determined in its entirety by the Administrator and without a determination by Referee (i.e., where the parties have agreed to the quantum of the Claimant's award, or where the Claimant has made a Track 2 Box 1 claim only and no Placement Length Determination was required, or where Ontario has accepted the Claimant's SMI status and/or Box 3 Condition and no Placement Length Determination was required, under ss. 8.8, s. 10.6, and s. 10.8), a party claiming costs shall provide to the other party with i) the time incurred and rates claimed in respect of costs, and ii) copies of invoices in respect of disbursements. The parties shall make best efforts to agree on an amount of costs and disbursements.

Where agreement cannot be reached, either party may refer the Claim to the Referee for a Determination on costs and disbursements alone, with the exchange of materials to be as set out in s. 10.37 above (with Position Statements and records addressing only the questions of costs and disbursements). If the Referee's Determination awards costs to the Claimant (exclusive of disbursements) in an amount that is less than 7% of the Track 2 award calculated by the Administrator, the Claimant's Final Track 2 Quantum shall be decreased by \$1,000 or such amount as is payable to the Referee under s. 6.4(e) for making a determination on costs and disbursements.

- 10.40 Where applicable, in making an order for payment of costs and disbursements under s. 10.39, the Referee may order payment of costs and disbursements incurred by counsel for the Claimant in connection with an uncontested application for a Small Estates Certificate required by the Estate Executor (defined in Schedule "A") to make or continue Track 2 claim, up to a maximum of \$1,000, where the:
- i) Track 2, Box 2 and/or Track 2, Box 3 claim is unsuccessful and, but for the claim, the Small Estates Certificate would not otherwise have been required; or
  - ii) Track 2, Box 2 and/or Track 2, Box 3 payment is less than \$10,000.00 and, but for the payment, the Small Estates Certificate would not otherwise have been required.
- 10.40.1 Where a Track 2, Box 2 or Track 2, Box 3 claim is unsuccessful but the Small Estates Certificate would still have been required under the law absent any claim in order to administer a solvent estate, or a Track 2, Box 2 or 3 payment of more than \$10,000 is made to the estate, any legal fees connected with the application for a Small Estate Certificate shall be paid by the estate in the normal course.
- 10.41 The Referee shall give written reasons for any Track 2 Box 2 and Track 2 Box 3 determinations, or determinations on costs and disbursements under s. 10.39 above, and deliver written reasons to the Administrator of no more than ten (10) pages in length, stating the basis for their determination (the "**Determination**"). The Referee shall deliver the Determination to the Administrator within 90 days after being assigned a Claim, and shall promptly upload the Determination into the Database.
- 10.42 The parties may advise the Administrator at any time of any agreement that may impact Claim assignment.

*Share of the GADA Credit and Pre/Post Judgment Interest (Track 2)*

- 10.43 A Claimant's "final Track 2 quantum" is calculated by crediting the Claimant's share of the GADA (i.e. if the Claimant received a share of the NADA) against the sum of the quantum awarded in Boxes 1, 2, and 3:
- $$\text{Final Track 2 quantum} = (\text{Box 1} + \text{Box 2} + \text{Box 3}) \text{ MINUS share of GADA.}$$
- 10.44 If the share of the GADA is higher than the "final Track 2 quantum," then the Claimant will only receive their share of the NADA as damages. If the Claimant was not eligible for a share of the NADA, the value of the "share of GADA" in the formula above will be zero (0).
- 10.45 A Claimant's "final Track 2 quantum" will accrue pre-judgment interest at the annual rate of two percent (2%), calculated i) for placements during the *Francis* Class Period, from April 20, 2017 until the date of the Court's confirmation Order, and ii) for placements during the *Chandra* Class Period, from May 14, 2020 until the date of the Court's confirmation Order.
- 10.46 The Administrator shall calculate the "final Track 2 quantum" and prepare a Track 2 Award Form identifying amounts awarded under Track 2 Box 1, Track 2 Box 2, and Track 2 Box 3, as applicable, together with the "final Track 2 quantum" calculation.

- 10.47 Where the Claimant makes a successful Claim under Track 2, Ontario will pay the “final Track 2 quantum” and pre-judgment interest to the Administrator calculated under s. 10.45 above within forty-five (45) days after the date of the Court’s confirmation Order. If paid within the forty-five (45) days, there will be no post-judgment interest.
- 10.48 If Ontario does not pay the “final Track 2 quantum” and pre-judgment interest to the Administrator within forty-five (45) days after the date of the Court’s confirmation Order, Ontario will pay post-judgment interest that will accrue at the annual rate of two percent (2%) until the date the payment is sent to the Administrator.

*Motion for Confirmation*

- 10.49 Within every 6-month period from the beginning of the Claims Period, the parties shall jointly make a motion to the Court for the confirmation of all Track 2 Award Forms made within that period in accordance with the following procedures:
- a. The parties shall serve a joint motion record containing copies of the Track 2 Award Forms and all Determinations issued in respect of those Track 2 Award Forms issued within the 6-month period for which confirmation is sought.
  - b. Where a Claimant or Ontario is of the view that the Referee has made an error in a Determination, or the Administrator made an error in respect of the Track 2 Award Form, the Claimant or Ontario may oppose the confirmation of the award by filing with the court written submissions of no more than five pages in length (excluding appendices).
  - c. Where Ontario or counsel representing three or more Claimants are of the view that a common error has been made which appears in the three or more Determinations or Track 2 Award Forms, the Claimants or Ontario may oppose the confirmation by filing with the court written submissions of no more than eight pages in length (excluding appendices).
  - d. If the responding party(ies) disagree that an error has been made, the responding party(ies) may file with the Court written submissions of no more than five pages in length (excluding appendices) for each opposed confirmation, or up to eight pages in length (excluding appendices) if responding to a written submission in respect of a common error alleged to appear in three or more Determinations or Track 2 Award Forms.
  - e. The party(ies) alleging the error may file a reply of no more than three pages (excluding appendices).
  - f. A Claimant, group of Claimants, or Ontario may file written submissions exceeding the lengths outlined in ss. 10.49(b)-(e) above only if the parties agree or with leave of the Court.
  - g. The Claimant, group of Claimants, or Ontario may not introduce new evidence at the Motion for Confirmation. The record before the Court hearing in respect of any opposed confirmations may only consist of the written submissions in ss. 10.49(b)-(e), above, case law, and any records or materials that were before the Administrator or Referee.
  - h. The party(ies) opposing confirmation bears the burden of demonstrating that the Referee or Administrator, as the case may be, made the alleged error.

- i. If the Court is not satisfied that the Referee or Administrator has made an error, the Court shall confirm the Track 2 awards at issue.
- j. Should the Court conclude that the Referee or Administrator has made an error, the Court shall make a direction in respect of the error, and may, at its discretion, i) revise the Determination or Track 2 Award Form, or ii) refer the Track 2 Claim to the Referee or the Track 2 Award Form back to the Administrator for reconsideration or recalculation on the basis of that direction. The direction shall also be binding on all future Track 2 Claims.
- k. Each Determination and Track 2 Award Form shall be confirmed by the Court, revised and confirmed pursuant to the Court's directions, or referred back to the Referee or Administrator, as the case may be, for reconsideration on the basis of the Court's directions.
- l. For clarity, the entitlement of a Claimant to an individual damages award under Track 2, together with entitlement to costs (not exceeding \$12,000 and reasonable disbursements if successful), together with costs (if any) of any contested confirmation under s. 10.49(n) below, shall be finally determined by the Court.
- m. The decision of the Court is final and binding, and shall not be subject to further appeal or review.
- n. Where confirmation is opposed under this section (s. 10.49), ordinary costs rules pursuant to the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 apply with respect to the Court's disposition of the opposed confirmation, and may be awarded by the Court to the successful party (i.e. the party(ies) who successfully demonstrates an error, or the party(ies) who successfully obtains confirmation of the opposed Determination or Track 2 Award Form).
  - i. For greater clarity, costs awarded pursuant to s. 10.49(n) are payable in addition to any costs awarded by the Referee pursuant to s. 10.38 or s. 10.39.
  - ii. For greater clarity, the responding party is only entitled to costs pursuant to s. 10.49(n) if it takes an adverse position pursuant to s. 10.49(d).
- o. The confirmation motion materials will be filed under seal. Thereafter, the parties may make submissions to keep the record sealed. The Court will decide whether any part of the motion materials shall remain sealed. If there are no submissions from either party to seal the record, the Court will automatically lift the seal.

### **11. Track 3 Claims**

- 11.1 The parties may agree in writing to suspend all deadlines under this section while settlement negotiations are ongoing. Either party may revoke such suspension in writing on 30 days notice to the other party. If a Court ordered timetable is in place, the parties may agree to suspend or vary the timetable and seek approval of same from the Court in writing and on consent.
- 11.2 Nothing in this Protocol shall prevent the parties from mediating one or more Track 3 claims.
- 11.3 Where a Claimant elects to proceed on Track 3, their individual issues claim shall be determined in accordance with the Track 3 summary judgment procedure described in this Protocol.
- 11.4 A Claimant who has selected Track 3 is deemed to have released Ontario from all claims arising from their placement(s) in Administrative Segregation save for the Claims made with respect to their Track 3 Claim.
- 11.5 Where a Claimant who has no placement in administrative segregation of 15 or more consecutive days

between April 20, 2015 and September 18, 2021 selects Track 3 and indicates in their Claims Form they are SMI, the Administrator will advise the parties, that the matter will proceed on a preliminary basis before a Referee similar to the process for a Track 2, Box 2 Claim. Once advised by the Administrator, the process will be as follows:

- a. Within thirty (30) days of the above notification, the Claimant:
  - i. May file with the Administrator an affidavit from the Claimant of no more than thirty (30) pages in length, including exhibits;
  - ii. May file with the Administrator an affidavit from one (1) expert of no more than twenty (20) pages in length, including exhibits; and
  - iii. Shall file with the Administrator a concise Position Statement of no more than ten (10) pages. Relevant documents from the Claimant's Tier A and Tier B disclosure referred to in the Position Statement must be attached to the Claimant's Position Statement for ease of reference for the Referee. These documents do not need to be attached to an affidavit, and are not included in the Position Statement page limit.
- b. The Administrator will upload the Claimant's materials from the list i. to iii. above into the Database, and notify the parties.
- c. Within thirty (30) days of the above notification, Ontario:
  - i. May file with the Administrator an affidavit of no more than thirty (30) pages in length, including exhibits;
  - ii. May file with the Administrator an affidavit from one (1) expert of no more than twenty (20) pages in length, including exhibits; and
  - iii. Will file with the Administrator a concise Position Statement of no more than ten (10) pages. Relevant documents from the Claimant's Tier A and Tier B disclosure referred to in the Position Statement will be attached to Ontario's Position Statement for ease of reference for the Referee. These documents do not need to be attached to an affidavit, and are not included in the Position Statement page limit.
- d. The Administrator will upload Ontario's materials from the list i. to iii. above into the Database, and notify the parties and assign the Claim to a Referee for SMI assessment (pursuant to ss. 10.20-10.22).
- e. The Referee will inquire into and report to the parties their findings of the SMI assessment.
- f. The Referee's report will be no more than five (5) pages in length and will be delivered within thirty (30) days after being assigned a Claim. If after receiving the Referee's report a Claimant wishes to proceed with their Track 3 Claim, they will follow the standard procedure set out below (except s. 11.6(i) shall read: "Within sixty (60) days of receipt of the Referee's report, the Claimant shall serve on Ontario their Statement of Claim").

11.6 A Track 3 Claim will proceed by summary judgment motion – without the involvement of the Administrator except as identified elsewhere in this Protocol – in accordance with the Ontario *Rules of Civil Procedure* before a judge of the Ontario Superior Court of Justice, as follows:

- i. Within ninety (90) days of the later of the Track 3 selection (pursuant to s. 8.14) or (90) days from any further Tier B disclosure, the Claimant will serve on Ontario their Statement of Claim;

- ii. Within ninety (90) days of receipt of the Statement of Claim, Ontario will deliver its Statement of Defence;
  - iii. Within twenty (20) days after receipt of the Statement of Defence, the Claimant may deliver a Reply;
  - iv. Within ninety (90) days after receipt of the Statement of Defence, the Claimant will serve a Notice of Motion for Summary Judgment;
  - v. Within ninety (90) days after serving a Notice of Motion for Summary Judgment, the Claimant will deliver any supporting affidavits for the motion;
  - vi. Within ninety (90) days after receipt of the Claimant's supporting affidavits, Ontario will deliver its affidavits to respond to the summary judgment motion;
  - vii. Within thirty (30) days after receipt of Ontario's responding materials, the Claimant may deliver their reply affidavits, if any;
  - viii. After thirty (30) days from the receipt of Ontario's responding materials, the Claimant will take steps to fix a timetable for the balance of the summary judgment motion.
- 11.7 A Claimant may obtain a date for the hearing of their motion for summary judgment after the steps in s. 11.6(i)-(iv) have been taken.
- 11.8 Where a Claim proceeds under Track 3, the parties are bound by the findings of fact made in the reasons for decision of Justice Perell in the *Francis* summary judgment motion reported at *Francis v. Ontario*, 2020 ONSC 1644, including on general causation of harm. The findings of fact in the *Francis* summary judgment motion are also applicable where a Claimant is a member of the *Chandra* Class and selects Track 3.
- 11.9 Where applicable, and in addition to a costs order which may be made in a Track 3 claim, Ontario will pay up to a maximum of \$1,000.00 in legal fees and disbursements incurred by counsel for the Claimant in connection with an uncontested application for a Small Estates Certificate required by the Estate Executor (defined in Schedule "A") to make or continue Track 3 claim, where the Track 3 claim is unsuccessful and, but for the claim, a Small Estates Certificate would not have otherwise been required.

*Share of the GADA Credit and Pre/Post Judgment Interest (Track 3)*

- 11.10 The Court's "final Track 3 quantum" ordered on summary judgment will include a credit for the Claimant's share of the GADA (i.e., if eligible for a share of the NADA).
- 11.11 A Claimant's "final Track 3 quantum" will accrue pre-judgment interest at the rate of two percent (2%), until the date of the Court's Order on summary judgment, unless the Court orders otherwise.
- 11.12 Where the Claimant makes a successful Claim under Track 3, Ontario will pay the "final Track 3 quantum" and pre-judgment interest within sixty (60) days after the date of the Court's Judgment ordering the "final Track 3 quantum". If paid within the sixty (60) days, there will be no post-judgment interest.
- 11.13 Notwithstanding ss. 11.11 and 11.12, if there is appeal of the Court's Order on summary judgment, applicable pre- and post-judgment interest will follow final disposition of the appeal, with post-judgment interest accruing at the rate of 2% from the date of judgment.

**Schedule “A”**

**PROTOCOL FOR PAYMENTS FOR DECEASED CLAIMANTS AND PERSONS UNDER DISABILITY**

1. Testate Estates:

(a) Where a Claimant has died after filing a Claims Form or a Claims Form is submitted to the Administrator on behalf of a Deceased Claimant’s Estate (in either case a “Deceased Claimant”) and the person authorised under the Deceased Claimant’s Will or another person appointed to administer the Testate Estate (the “Estate Executor”) has submitted the information required by Section 1(b) to the Administrator, the Estate Executor shall have authority to provide instructions on the Claims of the Estate of the Deceased Claimant,

(b) In order to act on behalf of a Deceased Claimant’s Testate Estate, the Estate Executor in Section 1(a) shall submit to the Administrator

- i. a Claims Form (if a Claims Form was not submitted by such Deceased Claimant or their Personal Representative prior to the death of the Deceased Claimant)

and, if the Testate Estate is subject to the:

- ii. Laws of Ontario:

- a. a copy of the Small Estates Certificate with a copy of the Will appended; or
- b. a copy of the Certificate of Appointment of Estate Trustee with a copy of the Will appended; or

- iii. *Indian Act*, R.S.C., 1985, c. I-5:

- a) any authorization required or granted pursuant to that legislation and a copy of the Will; or

- iv. Laws of a Province within Canada, other than Ontario and not subject to the *Indian Act*, R.S.C., 1985, c. I-5,

- a) proof of authorisation from a Court of that jurisdiction with a copy of the Will appended.

2. Intestate Estates

- a) Where a person seeks to submit a Claims Form on behalf of a Deceased Claimant who died intestate, or continue a Claim on behalf of a Deceased Claimant’s intestate estate (in either case act as the “Estate Executor”), and such person has submitted to the Administrator the information required under Section 2(b), the Estate Executor shall have authority to provide instructions on the Claims of the Estate of the Deceased Claimant.

- b) In order to act on behalf of a Deceased Claimant’s Intestate Estate, the Estate Executor in Section 2(a) shall submit to the Administrator:

- a. A Claims Form (if a Claims Form was not submitted by such Deceased Claimant or their Personal Representative prior to the death of the Deceased Claimant) and, if the Intestate Estate subject to the:

- i. Laws of Ontario:

- a. a copy of the Small Estates Certificate; or



b. a copy of the Certificate of Appointment of Estate Trustee; or

ii. *Indian Act*, R.S.C., 1985, c. I-5:

a. the authorization required or granted pursuant to that legislation.

### 3. Estate Claims Deadline

- a) If a Claims Form has been submitted to the Administrator by a person seeking to act on behalf of the Estate of a Deceased Claimant, but that person has not submitted all of the information required under Sections 1(b) or 2(b), whichever is applicable, the person must comply with Sections 1(b) or 2(b), and submit to the Administrator the requisite information within one hundred and eighty (180) days of the Claims Filing Deadline (the “Estate Claims Deadline”).
- b) If a Claims Form is submitted to the Administrator by a person seeking to act on behalf of the Estate of a Deceased Claimant, but that person has not submitted all of the information required under Sections 1(b) or 2(b), whichever is applicable, within ninety (90) days of the Estate Claims Deadline, the Administrator shall make reasonable efforts to send notice that the remaining information under Section 1(b) or 2(b) is outstanding, and such notice shall be sent to that person if they provided contact information or, if they did not, to the last known address of the Deceased Claimant.
- c) If no person submits the information required under Sections 1(b) or 2(b), whichever is applicable, on behalf of the Estate of a Deceased Claimant to the Administrator within two (2) years of the Estate Claims Deadline, the Administrator will pay the Deceased Claimant’s counsel, if any, their fees and disbursements, as approved by the Court, and pay any applicable levy to the Class Proceedings Fund. Thereafter, the Administrator shall pay the balance of any amounts to which the Deceased Claimant was entitled under this Individual Issues and Distribution Protocol *cy-près* as directed by the Court with the recommendation of Class Counsel.
- d) Notwithstanding anything in this Schedule, if a Claimant dies following the expiry of any of the deadlines stipulated in this provision but before their Claims have been finally determined, their Claims may be continued by an Estate Executor who satisfies the requirements of Sections 1(b) or 2(b).

### 4. Payments to Estates

The Administrator shall pay to the Estate Executor of Deceased Claimant’s Estate any amounts to which the Deceased Claimant would have been entitled to under this Distribution and Individual Issues and Distribution Protocol, with such payment made payable to “The Estate of” such Deceased Class Member.

### 5. Person Under Disability

- a) If a Claimant who submitted a Claims Form to the Administrator prior to the Claims Filing Deadline is or becomes a person who is unable to manage or make reasonable judgments or decisions in respect of their affairs by reason of mental incapacity and for whom a Personal Representative, as defined below, has been appointed pursuant to the applicable provincial or federal legislation (a “Person Under Disability”) prior to their receipt of any amounts to which they are entitled under this Individual Issues and Distribution Protocol, and the Administrator receives notice that such Claimant is a Person Under Disability prior to paying such amounts, the Administrator shall pay the person appointed pursuant to the applicable provincial or federal legislation to manage or make reasonable judgments or decisions in respect of the affairs of a Person Under Disability, including an administrator for property (the “Personal Representative”) of such Claimant any amounts to which the Claimant is entitled under this Individual Issues and Distribution Protocol, and if the Administrator receives no such notice, the Administrator shall pay such amounts to the Claimant.

- b) If Claimant is or becomes a Person Under Disability prior to submitting a Claims Form to the Administrator, the Personal Representative of the Claimant may provide instructions and submit a Claims Form on behalf of such Claimant prior to the Claims Filing Deadline and the Administrator shall pay the Personal Representative of the Claimant any amounts to which the Claimant is entitled under this Individual Issues and Distribution Protocol.

**Schedule "B" – Administrator's Incarcerated Class Member Trust Account**

1. The Administrator shall make best efforts to pay any monies owing to an Incarcerated Class Member from the Incarcerated Class Member's Trust Account to the Incarcerated Class Member upon their release from the Correctional Institution.
2. Upon the transfer of monies owing to the Incarcerated Class Member into their trust account, the Administrator will notify the Incarcerated Class Member that a Trust Account has been established and provide them with the Administrator's contact information. The Incarcerated Class Member, or their counsel, if any, shall make best efforts to notify the Administrator of the Incarcerated Class Member's release date 30 days in advance of that date. The Administrator may seek confirmation from Ontario as to whether the Incarcerated Inmate has been released on the date specified.
3. Upon the earlier of an Incarcerated Class Member (a) submitting a payee designation form to the Administrator or (b) being released from the Correctional Institution, the Administrator shall issue the payment to the formerly Incarcerated Class Member's address, unless Class Counsel, the Incarcerated Class Member's counsel, or the Incarcerated Class Member indicate otherwise.
4. No funds other than the payments owing under this protocol, and any interest generated on such funds, may be held in the Incarcerated Class Member's Trust Account.
5. No withdrawals may be made from an Incarcerated Class Member's Trust Account except as required by an Order of the Court, subject to paragraphs 1, 3, 7, and 8 of this Schedule.
6. Notwithstanding anything in this Schedule, Ontario shall be responsible for all costs associated with the administration of each Incarcerated Class Member Trust Account subject to paragraph 7 of this Schedule.
7. A care and management fee may be paid to the financial institution from the monies held in an Incarcerated Class Member's Trust Account, provided that the fee shall at no time erode the capital.
8. Upon all claims under this Protocol having been finally determined as contemplated by s. 3.11(b) of the Protocol, if i) a payment cannot be completed under paragraph 3 of this Schedule, above, or ii) an Incarcerated Class Member has not been released from the Correctional Institution, the Administrator shall pay each remaining award and any accumulated interest to the Accountant of the Superior Court of Justice to be held to the credit of the Class Member in accordance with the *Trustee Act*, R.S.O. 1990, c. T.23, as amended.
9. To effect payment of a Class Member's award, and any accumulated interest, to the Accountant of the Superior Court of Justice, the Administrator shall also deliver to the Accountant of the Superior Court of Justice:
  - a) A certified cheque payable to the Accountant of the Superior Court of Justice in the amount of the Class Member's award;
  - b) A copy of the Order approving this Protocol; and
  - c) An affidavit specifying the Class Member's full name, date of birth, Correctional Institution where the Incarcerated Class Member is incarcerated (for the purpose of communicating with the Incarcerated Class Member if need be), address and contact information (if known), the amount of the award and any accumulated interest, the date the award was confirmed by the Court, and confirmation that no further monies are, or will be, owing to the Class Member under this Protocol. A copy of the affidavit will be provided to Ontario, Class Counsel, and the Class Member's counsel if different than Class Counsel.
10. A Class Member whose award under this Protocol is held by the Accountant of the Superior Court of Justice may apply to the Court for the release of same on notice to Ontario and Class Counsel or the Class Member's counsel (if different than Class Counsel).

**CITATION:** Francis v. Ontario, 2023 ONSC 5355  
**COURT FILE NO.:** CV-18-591719-00CP  
**COURT FILE NO.:** CV-20-641003-00CP  
**DATE:** 20230922

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**CONREY FRANCIS**

Plaintiff

- and -

**HIS MAJESTY THE KING IN RIGHT OF  
ONTARIO**

Defendant

**AND BETWEEN:**

**ADRIAN CHANDRA**

Plaintiff

- and -

**HIS MAJESTY THE KING IN RIGHT OF  
ONTARIO**

Defendant

---

**REASONS FOR DECISION**

---

PERELL J.

**Released:** September 22, 2023