

Francis and Chandra - 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. “**Aggregate Damages**” means the *Francis* Aggregate Damages Award and *Chandra* Aggregate Damages Settlement, combined into a single aggregate damages fund.
 - 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. “**Class Counsel**” means Koskie Minsky LLP.
 - f. “**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 Illness¹

(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 Statistics 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 Amnesic 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,

¹ All defined terms have the meanings set out in the Judgment dated April 20, 2020.

(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 Statistics 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 Amnesic 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 Aggregate Damages Award**” means the judgment of \$30,000,000² plus interest, less fees, disbursements, plaintiff honourarium, and CPF levies in the amount of \$10,220,027.75,³ on account of aggregate damages for the *Francis* Class, to be disseminated in accordance with this Protocol.
 - j. “**Incarcerated Class Member**” means a Class Member who remains incarcerated in a Correctional Institution.
 - k. “**Inmates**” are inmates as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22.
- 1.5 For this Protocol, it shall be considered one placement with consecutive days in 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.

2. Retainer of Class Counsel

- 2.1 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, Class Counsel shall continue to have a solicitor and client relationship with the Claimant.

² Judgment of Justice Perell dated April 20, 2020.

³ Order of Justice Perell dated July 8, 2021.

- 2.2 If a Claimant selects or is deemed to have selected Track 1, then Class Counsel or the lawyer retained to act for the Claimant cannot charge for their services for the Claimant with respect to the Track 1 claim.
- 2.3 If a Claimant selects Track 2 or 3 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.
- 2.4 Subject to the Court's approval, if a Claimant selects Track 2, Class Counsel or the lawyer retained to act for the Claimant may charge a fee for services with respect to the Track 2 claim, with such fee not to exceed 15% of the damages awarded plus reasonable disbursements, and any award of costs made in favour of the Claimant.
- 2.5 If the Claimant selects Track 3, the Class Counsel or the lawyer retained to act for the Claimant may charge a fee for their services as may be approved by the Court.

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 *Francis* Aggregate Damages Award and *Chandra* Aggregate Damages Settlement 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 trust account (“**Administrator’s Incarcerated Claimant Trust Account**”) for the purpose of holding in trust any monies owing to Incarcerated Claimants awarded under this Protocol that are not otherwise directed to be paid in accordance with instructions given by the Claimant on their Claim Form. The Administrator shall pay any monies owing to an Incarcerated Claimant to the Incarcerated Claimant upon his or her release from the correctional institution.
- 3.4 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; and
 - 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.
- 3.5 The Spreadsheet shall be updated in accordance with this Protocol as more information about Claimants is obtained through the claims process.
- 3.6 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.
- 3.7 Where mail to a Claimant is returned to the Administrator as undeliverable, the Administrator shall have no responsibility for locating the Claimant.
- 3.8 The Administrator shall provide a bilingual (English and French) toll-free support line to assist Claimants, or their authorized legal representative or guardian making inquiries on their behalf.
- 3.9 Subject to measures to combat COVID-19 and applicable security restrictions, Ontario shall provide to the Administrator and Class Counsel reasonable access to Claimants in Correctional Institutions for the purpose of delivering information about the case.
- 3.10 The Administrator will determine each Claimant’s eligibility to a share of Aggregate Damages with the information provided in the Final Spreadsheet and each Claimant’s Database file.
- 3.11 There is no appeal of the Administrator’s decision with respect to a Claimant’s eligibility to receive a share of Aggregate Damages made pursuant to the Final Spreadsheet.
- 3.12 For Track 1 Claims, the Administrator shall pay an eligible Claimant’s share of Aggregate Damages within 90 days after the following events have all occurred:
- a. The Claims Deadline has expired;
 - b. The time for Claimants to have submitted Track Selection Forms

- has expired;
 - c. The Referee has completed all Aggregate Damages Eligibility Assessments under 7.14, and the Final Spreadsheet has been prepared; and
 - d. The Administrator has determined all Claimants' eligibility for Aggregate Damages pursuant to the Final Spreadsheet.
- 3.13 For Track 2 and Track 3 Claims, the Administrator shall hold the Claimant's share of the Aggregate Damages Award in trust pending the completion of the Claimant's Track 2 or Track 3 Claim, after which the Administrator shall pay the Claimant their share of Aggregate Damages.
- 3.14 For successful Track 2 and Track 3 Claims, the Administrator shall pay:
- a. Any amounts owing to the Class Proceedings Fund, **if any**, including reimbursement for disbursements.
 - b. Class Counsel's and/or the lawyer retained by the Claimant's fee; and
 - c. The balance of the individual damages award, along with the Claimant's share of the Aggregate Damages, to the Claimant.
- 3.15 Where there are unclaimed funds from the distribution of Aggregate Damages, the Administrator shall make a cy-près payment as the Court may direct upon submissions by the parties upon disposition of all Claims made under this Protocol.
- 3.16 The Administrator shall pay any monies owing to an Incarcerated Class Member as directed by the Incarcerated Class Member on their Claim Form, in accordance with s.7.10(f) of this Protocol.
- 3.17 The Administrator may, but is not required to, reissue payments to a Class Member that were returned as undeliverable.
- 3.18 The Administrator shall comply with the *Personal Information Protection and Electronic Documents Act*, S.C. 2000 c. 5.
- 3.19 After the distribution of:
- a. Aggregate Damages;
 - b. Any awards for Track 2 or 3 Claimants; and
 - c. 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.

3.20 Any party or the Administrator may move to have any part of this report placed under seal.

3.21 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.

3.22 The reasonable fees and expenses of the Administrator under this Protocol shall be paid by Ontario as approved by the court.

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, 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 The Referee Roster shall have secure access to the Database files of i) the Track 2 Claimants' files and ii) the Aggregate Damages Eligibility Assessment files 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:
- a. the Notice of Judgment in *Francis*; and
 - b. the Notice of Settlement in *Chandra*
- in English that have been approved by the court and the French translations thereof, which will be prepared by the Administrator.
- 5.2 The Administrator shall make the availability of French and English versions of the Notice known to Claimants.
- 5.3 The reasonable cost of the Notice and the Notice Program shall be paid by Ontario.
- 5.4 Class Counsel shall post the Notice and the Claims Form on their websites.
- 5.5 The Administrator shall post the Notice and the Claims Form on its website and provide any other form of notice agreed to by Class Counsel and Ontario, such as advertisements on social media and the circulation of a press release approved by Class Counsel and Ontario. 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. The video will be posted on the websites of Class Counsel and the Administrator.
- 5.6 The Administrator shall provide the Notice and the Claims Form to any Claimant who requests it, together with a postage paid return envelope.
- 5.7 The date the Notice is first transmitted, posted, or otherwise disseminated to Class Members by the Administrator shall be the "**Notice Date**".
- 5.8 On or promptly after the Notice Date:
- a. the Administrator shall distribute the Notice and the Claims Form to all offices of:
 - Elizabeth Fry Society of Ontario;
 - St. Leonard's Society of Canada;
 - John Howard Society of Ontario;

- Operation Springboard;
 - Salvation Army Correctional & Justice Services;
 - Stonehenge Therapeutic Community;
 - Homewood Health Centre;
 - The Ontario Federation of Indigenous Friendship Centres;
 - Nishnawbe Aski Nation Legal Clinic (Thunder Bay);
 - Aboriginal Legal Services (Toronto);
 - The Chiefs of Ontario; and
 - Parole and Probation offices
- b. Ontario shall post the Notice and a reasonable quantity of the Claims Forms together with a postage paid return envelope in a conspicuous place within the common areas of each Correctional Institution, and make available reasonable facilities for Claimants to complete the Claims Form;
- c. The parties will seek consent from the Government of Canada for its agreement to post the Notice and a reasonable quantity of the Claims Forms together with a postage paid return envelope in a conspicuous place within the common areas of each Federal Correctional institution, and to make available reasonable facilities for Claimants to complete the Claims Form. In the event the Government of Canada withholds its consent, Class Counsel will seek such an order from the Court.
- d. Ontario shall make Claims Forms available and provide postage paid return envelopes to every probation and parole office in Ontario, and make available reasonable facilities for Claimants to complete the Claims Form. In addition, a copy of the Notice and the Claims Form shall be posted in a conspicuous place within a visible area of the probation and parole office. For greater certainty, Ontario correctional services staff shall not respond to Claimants' inquiries about the claims process under this Protocol, and shall be directed to refer all inquiries to the Administrator.

6. Referees

- 6.1 In this Protocol, “**Referee Roster**” means the group of former judicial officers or senior legal practitioners agreed to by the parties and appointed by the Court under this Protocol to review and determine Track 2 claims, and make Aggregate Damages Eligibility Assessments under s. 7.14.
- 6.2 The duties of the Referee Roster include reviewing Claim Forms, Track 2 Selection Forms, Disclosure, the parties' Track 2 submissions and records, making s. 7.14 Aggregate Damages Eligibility Assessments, and preparing a report to the Ontario Superior Court of Justice on:

- a. whether a Track 2 Claimant is SMI;
 - b. the degree of pain and suffering experienced by an Inmate with a Serious Mental Illness Class Member while in Administrative Segregation;
 - c. whether the degree of pain and suffering is low, medium or high;
- whether or not the placement in Administrative Segregation caused or contributed to cause any of the following:

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”).

6.3 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.

6.4 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.

6.5 After a report is released, Ontario shall pay a member of the Referee Roster \$5,000 for a Track 2 report.

7. **Claims Process**

Eligibility

7.1 The *Chandra* class period is from September 19, 2018 to August 18, 2021 (the “**Chandra Class Period**”).

7.2 The presumptive class period for the *Francis* class is from April 20, 2015 to September 18, 2018 (the “**Francis Class Period**”).

7.3 Subject to rebutting the presumption that their individual claims for damages are statute-barred, the claims of *Francis* Class Members imprisoned in administrative

segregation before April 20, 2015, are statute-barred. A Class Member whose claim is presumptively statute barred must elect to proceed by Track 3.

- 7.4 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.

Aggregate Damages

- 7.5 A share in the Aggregate Damages Award is equal to the Aggregate Damages Award divided by the number of Class Members eligible to receive a share as determined by the Administrator on the basis of the Final Spreadsheet.
- 7.6 “**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 under Track 1, and to be eligible to have their individual issues determined under Track 2 or Track 3.
- 7.7 “**Claims Filing Deadline**” means the date by which the Claims Form must be electronically submitted, sent via mail, or received in person by the Administrator, which date shall be one year after the Notice Date.
- 7.8 A Claimant must submit a Claims Form to the Administrator before the Claims Filing Deadline. The Administrator shall deny Claim Forms received by the Administrator after the Claims Filing Deadline, and advise the Claimant in writing that the 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.
- 7.9 A Claimant whose claim is presumptively barred by a limitation period shall elect to proceed by Track 3.
- 7.10 In the Claims Form, a Claimant shall provide the following information:
- 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) to the Administrator's Incarcerated Claimant Trust Account;
- 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 acknowledgment 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 more than 15 consecutive days in Administrative Segregation;
- m. A list of placements in Administrative Segregation, with corresponding placement date, release date, locations and lengths of time, to the best of the Claimant's recollection; and
- n. A declaration that the information submitted in the Claims Form is true and correct.

7.11 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 minor deficiencies in the Claims Form. 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 Claim Form and to identify deficiencies. Claimants with deficient Claims Forms will have 60 days from the date on which they are contacted by the Administrator to provide the requested information and to address any identified deficiencies, failing which the Administrator shall reject the Claim Form. The Administrator must provide the Claimant and Class Counsel with its rejection in writing, and state the basis for its rejection. A Claimant whose claim is rejected under this paragraph may file a revised Claims Form within the Claims Period.

- 7.12 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 section 3.4.
- 7.13 If the information in the Claim Form 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.
- 7.14 If the Claimant cannot be identified by the Administrator in the Spreadsheet, or if the Claimant's claim that he or she was placed in Administrative Segregation for 15 or more consecutive days is inconsistent with the information in the Spreadsheet, the Administrator shall provide the Claim Form to Ontario.
 - a. Ontario shall review the information provided by the Claimant in the Claim Form. Ontario shall either:
 - i. update the Spreadsheet 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; or
 - ii. provide the Administrator with:
 - Records that contain information that supports the Claimant's declared placement in Administrative Segregation for 15 or more days during the Francis Class Period and/or the Chandra Class Period;
 - 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; or
 - Records that contain information that does not support the Claimant's declared placement in Administrative Segregation for 15 or more days during the Francis Class Period and/or the Chandra Class Period (collectively, "**Ontario Class Membership Records**").
- iii. Ontario shall have 110 days from receipt of the Claim 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 he or she was 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 he or she was 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.
 - b. Within fifteen (15) days of receipt of Class Membership Records from Ontario, the Administrator shall then notify the Claimant and Class Counsel in writing that the Claimant cannot be identified in the Spreadsheet, and refer the Claimant's Claim Form and Ontario Class Membership Records to the Referee for a determination of fact. Within thirty (30) days, the Referee shall determine 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**") and shall advise the Administrator of the determination. The Administrator shall update the Spreadsheet accordingly.
 - c. At the end of the Claims Period, 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 during the Chandra Class Period and the Francis Class Period.

7.15 Within 30 days of completion of the Final Spreadsheet, the Administrator shall make best efforts to determine if the Claimant is eligible to receive a share of Aggregate Damages, and shall thereafter distribute the Aggregate Damages in accordance with s. 3.12.

- 7.16 Within sixty (60) days of receipt of a Claims Form that is not deficient, the Administrator shall notify the Claimant that a Track Selection Form should be completed, and the Claimant's counsel shall provide the Claimant with a Track Selection Form. If the Claimant is self-represented, the Administrator will provide the Claimant with a Track Selection Form at the same time Tier A Disclosure referred to at s. 8.5 is provided.
- 7.17 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 show that you were under a legal disability and could not start a lawsuit. Class Counsel may be able to assist you in making such a claim".

8. Two Tier Disclosure

- 8.1 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.
- 8.2 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.

- 8.3 Unredacted documents disclosed to counsel for a Claimant on a "counsel's eyes only" basis shall not be disclosed to the Claimant;
- 8.4 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.
- 8.5 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 which are relevant to making the determination of which Track to select to the Database ("**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 Claim Form.

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 Claim 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.

- 8.6 If a Claimant determines that the Tier A Disclosure is insufficient to select one of Track 1, Track 2, or Track 3, and to complete a Track Selection Form, the Claimant may request further disclosure from Ontario by submitting a written request to the Administrator. The Claimant shall endeavour to make any such request within 30 days of the Tier A Disclosure being made available to the Claimant, and shall be as precise as possible in their request. If any additional responsive records are identified, Ontario shall make best efforts to upload these documents within 90 days of notification of the request. For clarity, nothing in this paragraph obligates Ontario to provide additional Tier A Disclosure in the event no additional

records under s. 8.5 can be identified within this timeframe. In the event Ontario cannot identify or locate any additional Tier A Disclosure records for the Claimant relevant to the Claimant's placement in administrative segregation or status as an Inmate with Mental Illness, Ontario shall notify the Administrator, and the Administrator shall advise the Claimant in writing that no additional Tier A Disclosure documents were identified.

- 8.7 The Claimant shall return a completed Track Selection Form to the Administrator in writing or electronically within 60 days of Tier A Disclosure, or 30 days after any additional Disclosure under s. 8.6 is made available to the Claimant. If the Claimant fails to submit the Track Selection Form within this timeframe, the Administrator will either: (a) deem the Claimant to have selected Track 1 if the Claim Form and Final Spreadsheet have provided the Administrator with sufficient information to determine whether the Claimant is eligible for Aggregate Damages, or (b) will deny the claim, and notify the Claimant and the parties in writing with the basis for the denial, if the Administrator has determined the Claimant is not eligible to a share of Aggregate Damages.
- 8.8 Within 90 days of receipt of a Track Selection Form in which a Claimant selects Track 2 or Track 3, Ontario shall review the locations, archives, notifications, and inmate-specific records identified in the subsections below to 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**").

- 8.9 Should a Claimant determine that their Tier B Disclosure is insufficient to prepare their Track 2 or Track 3 submissions, the Claimant may request further Tier B Disclosure from Ontario by submitting a written request to the Administrator. The Claimant shall endeavour to 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.
- 8.10 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.
- 8.11 The Administrator shall report their decision respecting the Claimant's eligibility to receive a share of Aggregate Damages to the parties, who shall report that decision to the Court.

9. Track 1 Claims

- 9.1 A Claimant who selects Track 1 is entitled to a share in the distribution of Aggregate Damages if the Administrator is able to confirm:
- a. The Claimant was placed in Administrative Segregation for fifteen (15) or more consecutive days on or after April 20, 2015, on the basis of the Final Spreadsheet or in accordance with s. 7.12;
 - b. The Claimant has not opted out of the *Chandra* Class or the *Francis* Class, as applicable; and
 - c. The Claimant is a member of the *Francis* Class and/or the *Chandra* Class.
- 9.2 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.
- 9.3 Where a Claimant selects Track 1, or is deemed by the Administrator to have elected to proceed on Track 1, the Administrator shall determine the Claimant's eligibility to receive a share of the distribution of Aggregate Damages by reviewing the information in their Database and the Final Spreadsheet.

10. Track 2 Claims

- 10.1 A Claimant who selects Track 2 is entitled to a share in the distribution of

Aggregate Damages if the Administrator is able to confirm on the basis of the Final Spreadsheet:

- a. The Claimant was placed in Administrative Segregation for fifteen (15) or more consecutive days on or after April 20, 2015;
 - b. The Claimant has not opted out of the *Francis* Class or the *Chandra* Class, as applicable; and
 - c. The Claimant is a member of the *Francis* Class or the *Chandra* Class.
- 10.2 The Claimant’s share of Aggregate Damages is a credit to the payment of any individual issues damages awarded under Track 2. The balance of the claim shall be determined in accordance with the procedures for Track 2.
- 10.3 Where a Claimant elects to proceed in Track 2 for individual issues damages, they shall be deemed to have released Ontario from all other claims arising from their placement(s) in Administrative Segregation save for Aggregate Damages and the claims as set out in the damages grid set out below (“**Damages Grid**”):

CRITERIA FOR AWARD	AWARD
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
Additional damages if an Inmate with Serious Mental Illness:	
If the Referee concludes the level of harm is low	Up to \$10,000
If the Referee concludes the level of harm is medium	Up to \$15,000
If the Referee concludes the level of harm is high	Up to \$20,000
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):	

If the Referee concludes the level of harm is low	Up to \$20,000
If the Referee concludes the level of harm is medium	Up to \$30,000
If the Referee concludes the level of harm is high	Up to \$40,000

10.4 The process for making a Track 2 claim shall be as follows:

- a. Within ninety (90) days of the Tier B Disclosure or further disclosure being made available to the Claimant under s. 8.9, the Claimant shall file with the Administrator:
 - i. An Affidavit from the Claimant of no more than twenty (20) pages in length, excluding exhibits, in support of the Track 2 Claim;
 - ii. A concise Position Statement of no more than ten (10) pages; and
 - iii. All records and 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 quantum claimed under the Damages Grid.
- b. The Administrator shall then upload the Claimant's documents into the Database, and notify the parties.
- c. Within sixty (60) days of being notified by the Administrator, Ontario may file with the Administrator:
 - i. An Affidavit from a representative of the Ontario of no more than twenty (20) pages in length, excluding exhibits, in support of the Track 2 Claim;
 - ii. A concise Position Statement of no more than ten (10) pages;
 - iii. 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.
- d. The Administrator shall promptly upload Ontario's documents (if any) into the Database, and notify the parties.
- e. Within fifteen (15) days of the Administrator notifying the parties of the upload of Ontario's documents, the parties shall inform each other and the Administrator, whether or not they intend to engage in cross-examinations, who they intend to examine, and whether these examinations will be oral or written. Any such examinations shall be limited to sixty (60) minutes of questions per party or the equivalent in written interrogatories and must be completed within sixty (60) days of notification of the intent to cross-examine.

- f. 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.
 - g. Within ten (10) days of confirmation that no cross-examinations will be conducted or receipt of copies of transcripts from cross-examinations or copies of written interrogatories, whichever is later, the Administrator will assign a Referee to assess the Claimant's file and will provide access to the Referee to the Claimant's Database file and all materials filed pursuant to this section 10.4.
- 10.5 The Referee shall review the affidavits, position statements, transcripts, and records produced by the Claimant and Ontario (if any), and:
- a. Approve a Track 2 individual damages award in full, in an amount not exceeding the amount claimed by the Claimant in their Track Selection Form (in any event, not to exceed \$100,000);
 - b. Approve a Track 2 individual damages award in part;
 - 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 individual damages award in its entirety.
- 10.6 The Referee shall give written reasons for any determination made under section 10.5, and deliver written reasons to the Administrator stating the basis for their determination (the "**Determination**"). The Referee shall deliver the Determination to the Administrator, who shall promptly upload the Determination into the Database.
- 10.7 Where a Claimant selects Track 2, the parties and the Referee 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 by the use of Administrative Segregation. The findings of fact in the *Francis* summary judgment motion are also applicable where a Claimant selects Track 2 in respect of placements which occurred during the *Chandra* Class Period.
- 10.8 Upon completion of the Referee's Determinations of Track 2 Claims, 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 Determinations made within that period in accordance with the following procedures:
- a. The parties shall serve a joint motion record containing copies of all Determinations 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, the Claimant or

- Ontario may oppose the confirmation of the Determination by filing with the court written submissions of no more than five pages in length (excluding appendices).
- c. Where three or more Claimants represented by the same counsel are of the view that the Referee has made a common error which appears in the three or more Determinations relating to the Claimants, or where Ontario is of the view that the referee has made a common error which appears in three or more Determinations, the Claimants or Ontario may oppose the confirmation of the Determinations by filing with the court written submissions of no more than eight pages in length (excluding appendices).
 - d. The responding party(ies) may file with the Court written submissions of no more than five pages in length (excluding appendices) for each opposed Determination, 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.
 - e. The party(ies) alleging the Referee made an 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 [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 Determination confirmation stage. The record before the Court hearing in respect of any opposed confirmations may only consist of the written submissions in [b.] – [e.], above, case law, and any records or materials that were before the Referee making the Determination.
 - h. The party(ies) opposing confirmation bears the burden of demonstrating that the Referee made the alleged error.
 - i. If the Court is not satisfied that the Referee has made an error, the Court shall confirm the Determinations at issue.
 - j. Should the Court conclude that the Referee 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 ii) refer the Track 2 Claim to the Referee for reconsideration on the basis of that direction. The direction shall also be binding on all future Track 2 Claims.
 - k. Each Determination shall be confirmed by the Court, revised and confirmed pursuant to the Court's directions, or referred back to the Referee 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 of the Determination (not exceeding \$12,000 and reasonable disbursements if successful), together with costs (if any) of any contested confirmation under s. 10.8.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 of a Determination is opposed under this section 10.8, 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 in the Determination, or the party(ies) who successfully obtains confirmation of the opposed Determination).
 - i. For greater clarity, costs awarded pursuant to 10.8.n are payable in addition to any costs awarded by the Referee pursuant to s. 10.5.c.
 - ii. For greater clarity, the responding party is only entitled to costs pursuant to 10.8.n if it takes an adverse position pursuant to 10.8.c.

10.9 Damages awarded under Track 2 shall accrue pre-judgment interest:

- a. for members of the *Francis* Class at the rate of 2%, calculated from April 20, 2017; and
- b. for members of the *Chandra* Class at the rate of 2%, calculated from May 14, 2020.

10.10 Damages awarded under Track 2 shall accrue post-judgment interest at the rate of 2%, from the date of the Determination, or from the Court's disposition of a Determination whose confirmation was opposed.

10.11 Where the Claimant makes a successful claim under Track 2, Ontario shall pay any award to the Administrator within 40 days of the Court's confirmation of the Determination.

10.12 The Administrator shall pay any successful award to the Track 2 Claimant (net of their Aggregate Damages share) within 30 days of receipt of the payment from Ontario.

11. Track 3 Claims

11.1 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.

- 11.2 Track 3 Claims under this Protocol shall address the following:
- a. Claims for damages exceeding \$100,000;
 - b. Claims asserting punitive damages; and
 - c. Claims in which the Claimant seeks to rebut the presumptive limitation period in the *Francis* Class Period.
- 11.3 A Claimant who selects Track 3 is entitled to a share in the distribution of Aggregate Damages if the Administrator is able to confirm:
- a. The Claimant was placed in Administrative Segregation for fifteen (15) or more consecutive days on or after April 20, 2015;
 - b. The Claimant has not opted out of the *Chandra* Class or the *Francis* Class, as applicable; and
 - c. The Claimant is a member of the *Francis* Class or the *Chandra* Class.
- 11.4 The Claimant's share of Aggregate Damages is a credit to the payment of any individual issues damages awarded under Track 3. The balance of the claim shall be determined in accordance with the procedures for Track 3.
- 11.5 Where a Claimant selects Track 3, the Administrator shall report their decision respecting the Claimant's eligibility to receive a share of Aggregate Damages to the parties who shall report that decision to the Court.
- 11.6 Where the Claimant selects Track 3, the claim shall proceed by an individual issues summary judgment motion – without the involvement of the Administrator except as identified elsewhere in this Protocol - in accordance with the Ontario Rules of Practice before a judge of the Ontario Superior Court of Justice, as follows:
- a. Within 90 days of the Tier B Disclosure or within 30 days of further Disclosure under s. 8.9 being made available to the Claimant, the Claimant shall serve on Ontario a Statement of Claim;
 - b. Within 30 days of receipt of the Statement of Claim, Ontario shall deliver its Statement of Defence;
 - c. Within 20 days after receipt of the Statement of Defence, the Claimant shall deliver:
 - i. Their Reply,
 - ii. A Notice of Motion for Summary Judgment, and (iii) their supporting affidavit(s) for the motion, including any expert reports;

- d. Within 90 days after receipt of the Claimant's Notice of Motion for Summary Judgment, Ontario shall deliver its affidavits (including any expert reports) to respond to the summary judgment motion;
 - e. Within 30 days after receipt of Ontario's responding materials, the Claimant may deliver their reply affidavits, if any;
 - f. After 30 days from the receipt of Ontario's responding materials, the Claimant shall bring a motion to fix a timetable for the balance of the summary judgment motion.
- 11.7 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 164, 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.
- 11.8 Damages awarded under Track 3 shall accrue pre-judgment interest at the rate of 2%. Damages awarded under Track 3 shall accrue post-judgment interest at the rate of 2% from the date of the judgment.