

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

CITATION: 2025 NBKB 058

BETWEEN:

ROBERT HAYES, on behalf of himself  
and other class members

Plaintiff

- and -

THE CITY OF SAINT JOHN,

Defendant

**DECISION**

BEFORE: Justice Darrell J. Stephenson

AT: Saint John, NB

DATE OF HEARING: February 18, 2025

DATE OF DECISION: March 10, 2025

COUNSEL:

John A. McKiggan, Q.C., Celeste Poltak, Adam Tanel and Elie Waitzer for Robert Hayes

Michael D. Brenton, K.C. and Emile Jerome for The City of Saint John

*Stephenson, J.*

[1] This is my decision in the matter of the September 30, 2024 Motion of the Plaintiff (the "**Motion**") requesting the approval of an individual issues protocol (the "**IIP**") in the within matter. Under the Motion, the Plaintiff also requested orders for security for costs and production of insurance information. The issues surrounding insurance were dealt with prior to, and the request for security for costs was not seriously pursued by the Plaintiff, at the hearing of the Motion.

[2] This is a class action pursuant to the **Class Proceedings Act** (New Brunswick) (the "**Act**"). The September 14, 2023 decision of our Court of Appeal (leave to appeal to the Supreme Court of Canada was denied) established that the Defendant is vicariously liable for the actionable physical, mental and/or sexual harm perpetrated upon class members by Kenneth Estabrooks between 1953 and 1975 when he was a police officer. That decision left open the need to establish a process to determine if a claimant was abused and, if so, the nature of that abuse, the harm caused by the abuse and the compensation to be awarded in consequence thereof. To those questions Justice Grant's March 28, 2024 decision added the issue of the need to assess, on an individual basis, whether class members' claims expired under pre-existing limitation of actions legislation.

[3] Section 29 of the Act provides the Court with broad discretion to establish a protocol to address the individual issues in question subject to a direction that it be the least expensive and most expeditious method that, in the view of the Court, accords justice to the class members and parties (Section 29(3) of the Act). In addition, Section 14 of the Act grants the Court the authority to impose any term or condition it considers appropriate in the conduct of a class proceeding to ensure its fair and expeditious determination.

[4] Turning to the establishment of an appropriate IIP, I first reflect on the history of this litigation by taking note of the following passages from our Court of Appeal's decision:

DRAPEAU, J.A.

I. Introduction and Overview

[1] On numerous occasions during his long career as a member of the Cit of Saint John police force, Kenneth Estabrooks used the power and status of his job to sexually abuse vulnerable and impressionable children, including the appellant, Robert Hayes. When Estabrooks initiated the abuse, which was often at the most repugnant end of the spectrum, he was wearing a City-issued police uniform and badge, and in control of a City patrol car, his City-issued handgun almost invariably visible and always within reach. In 1975, a Police Department investigation of complaints by two teenage boys confirmed recent sexual "improprieties" on Estabrooks' part, during working hours as a police officer. As a result, Estabrooks was transferred to the City Works Department to works as a labourer. . . . .

[2] In 2013, Mr. Hayes commenced an action in damages against the City, on the basis of its direct and vicarious liability for Estabrooks' sexual abuse while with the Police Department (1953-1975) . . . . . The action was subsequently certified under the *Class Proceedings Act*, R.S.N.B. 2011, c. 125, and the City's negligence and vicarious liability for the sexual abuse Estabrooks committed during working hours as a member of its police force became common issues. However, at the opening of trial, the claim in negligence for the Police Department period was abandoned. . . .

. . . . .

II Context

[4] On March 20, 1953, Kenneth Estabrooks became a member of the City police force. He resigned on October 29, 1975. At various times between those dates, he sexually abused numerous boys and girls, some on multiple occasions. As of 2013, seventy-nine living victims had been identified, with the youngest being seven years old at the time of Estabrooks' assault: . . . . . Apparently, no one in a position to help these children was aware of this serial sexual abuse.

[5] In the fall of 1975, two of Estabrooks' victims, both teenage boys, complained to the City Police Department. The ensuing investigation confirmed the allegations of sexual abuse fuelling the complaints. When confronted, Estabrooks admitted the allegations. The power imbalance between on the one hand, this six-foot tall 200-pound police officer in full uniform and, on the other hand, the teenage complainants, weighs heavily against taking seriously any suggestion they consented to the sexual acts.

[6] However, Estabrooks was not charged with any criminal offence, nor was he dismissed. Rather, Estabrooks was allowed to resign and was transferred to the City Works Department, purportedly to save his pension. . . .

[8] Estabrooks retired from employment with the City in 1983. In 1984, he was presented with an Honour Certificate signed by the Mayor and the Common Clerk for his faithful service over the previous 25 years, a timespan that included most of his career as a municipal police officer.

[9] In 1999, Estabrooks was charged with four counts of indecent assault against different male persons, one charge of indecent assault against a female person and one charge of anal intercourse with a male person. It was alleged the offences occurred during the Police Department period (1953-1975). Estabrooks was convicted on four counts of indecent assault, and sentenced to six years in the penitentiary, where he died in 2005. In his reasons for sentence, the judge explained Estabrooks would act as a "friendly police officer" to lure disadvantaged children into his police cruiser and sexually abuse them.

[10] As noted, by 2013, seventy-nine living victims had been identified. Several testified at the trial of the common issues. It was their evidence, which was not shaken by cross-examination, that the sexual abuse took place in a City police car, while Estabrooks was in uniform, and that they got into the vehicle, obeyed his commands and did not promptly report the sexual abuse because of his status as a police officer.

[11] In December 2013, Mr. Hayes, as a representative plaintiff, commenced the underlying action. . . .

[44] . . . . As noted in my introductory remarks, the uncontradicted evidence is that Estabrooks used the power and status of his job as a City police officer to sexually abuse vulnerable and impressionable children. He initiated each incident of sexual abuse while wearing a City-issued police uniform and badge, and in control of a City patrol car. The trial judge noted there could be no argument with the following submission, albeit "as far as it goes":

The plaintiff further submits that as children Mr. Hayes and the other Class Members who were abused by Estabrooks during this time were particularly vulnerable due to Estabrooks' status as a police officer and the inherent power that conferred on him. [para. 97]

[45] Following the criminal trial where he was found guilty of four charges of indecent assault on children while a police officer, the sentencing judge described Estabrooks' "system" for perpetrating the assaults; it involved acting as a "friendly police officer", picking up disadvantaged children, and sexually abusing them in the police car. The victims who testified at the common issues trial described how Estabrooks used his position of power and authority as a City police officer to achieve his deviant ends. Their evidence on point bears emphasizing:

- (a) The assaults took place in Estabrooks' City police car, while Estabrooks was in uniform;
- (b) Each of the victims got into Estabrooks' City police car and obeyed his commands because of his status as a police officer. Mr. O'Hearn testified Estabrooks threatened to put him in jail. And that he "got in the car because [Estabrooks] is a Saint John police officer [.]" Mr. Beshara testified he got into Estabrooks' police car "because he asked me to [...] and he is a police officer". Mr. Hayes complied with Estabrooks' demands because he was afraid of being sent to jail, and because Estabrooks threatened to kill his family with his handgun. Mr. Vautour testified he got in Estabrooks' police car because he believed police officers were trustworthy.

[46] Moreover, victims were reluctant to report the abuse because Estabrooks was a City police officer. The appellant highlights the following evidence to make the point. Mr. Thorne testified he felt the City police would not believe him because Estabrooks was "one of their own". Mr. O'Hearn testified his mother was too afraid of the police to file a complaint  
 . . . .

[5] I also noted Justice Grant's observation at paragraph 38 of his March 28, 2024 decision regarding the nature of vicarious liability:

"it is a legal doctrine which imputes the liability arising from one person's tortious conduct to another in certain situations".

[6] We know that over the period 1953-1975 Kenneth Estabrooks abused multiple vulnerable youth in the Saint John community while acting in his role as a police officer. The record before the Court is clear: many of his victims were targeted because they were poor and disadvantaged and felt powerless to resist the demands of a police officer. Further, the law is clear – the Defendant bears legal responsibility and liability for same.

[7] It has now been almost 50 years since the last victims, eligible to participate as class members in this litigation, could have been abused by Kenneth Estabrooks and this action has been before the Court for almost 12 years. The youngest potential victims are now in their late 50's – early 60's and the Plaintiff's counsel advises that a number of individuals eligible to participate in this litigation have died. Bottom line, the interest of justice and common decency demand that this litigation be dealt with on an expeditious basis.

[8] I am informed by counsel, as well as other judges who deal with class actions on a regular basis, that the vast majority of IIP's are settled consensually between the parties as part of a global settlement following a common issues judgment. Indeed, so rare are contested IIP's that neither party was able to point me to directly on-point authority.

[9] The Defendant's proposal is in essence for litigation in the ordinary course. The Plaintiff's initial proposal was for a two track process whereunder, in the case of track 1, the determination of whether abuse had occurred and the level of that abuse would be decided by an expert and damages quantified based on a fixed schedule with the Defendant having no right of cross-examination or to call its own evidence. The Plaintiff's second proposal eliminated the separate tracks, but contemplated pre-determined limits on the Defendant's entitlement to cross-examination and ability to call additional evidence.

[10] The Plaintiff contends that the Defendant's proposal will see this litigation drag on for many years and is not consistent with the interests of justice or the broad discretion accorded to the Court to establish an efficient process pursuant to the Act. For its part, the Defendant maintains that trial fairness dictates that the Court cannot contract out its decision-making authority or eliminate the entitlement of a party to seek cross-examination and/or call additional evidence without giving that party an opportunity to be heard. Defence counsel noted that the forms of IIP put forward by the Plaintiff as suggested models were consensual.

[11] We must first consider the number of possible claims we are building this model to assess. The obvious challenge is that, although we know that Kenneth Estabrooks abused many vulnerable youth, we cannot know how many claimants there will be until the process is underway. The Court of Appeal makes reference to there being 79 living victims in 2013. The Plaintiff's counsel tells us they have been contacted by 90 potential claimants of whom 53 have to date indicated they intend to participate in this proceeding. Evidence was also lead by the Plaintiff's counsel to the effect that approximately 160 potential victims of Kenneth Estabrooks could be expected to be alive as of December 2024 (see the affidavit of Peter Graham dated September 30, 2024). So, bottom line, while we do not know how many claims will be made, the record suggests there will be many.

[12] Keeping this reality in mind, I turn to some of the applicable jurisprudence referred by counsel – namely, ***Lundy v. Via Rail Canada Inc.*** 2015 ONSC 1879, ***Brazeau v. Canada***, 2020 ONSC 7229 and ***Cavanaugh v. Greenville Christian College***, 2022 ONWC 5405. These authorities tell me as follows:

- a) Sections 14 and 29 of the Act provide the Court with broad jurisdiction to make such orders as it considers appropriate to ensure the fair and expeditious determination of a proceeding,

provided always that the process is fair and just and the procedural and evidential choices accord justice to class members and defendants (see **Brazeau** paragraph 85, **Cavanaugh** paragraph 43 and **Lundy** paragraph 47);

- b) “what is consistent with justice will depend upon the nature of the particular case and upon the fundamental principles of justice and natural justice” (see **Brazeau** paragraph 85);
- c) each party must have a procedural and evidential means to make its case and the resulting decision must be capable of appellate review (see **Lundy** paragraph 47);
- d) absent agreement by the parties, the Court cannot outsource its adjudicative function or set damages based on a mechanical application of an established schedule (see **Brazeau** paragraphs 86 and 135 and **Lundy** paragraph 49);
- e) the Court has the ability to appoint managers, administrators and experts and to direct who is responsible for the payment of same where it considers such appointments necessary to facilitate the fair and expeditious determination of a proceeding (see **Brazeau** paragraphs 118-119);
- f) the Court may not absolutely preclude cross-examination, but may limit and/or require a party to justify same on a case-by-case basis (see **Lundy** paragraph 48);
- g) the Court may impose evidential constraints on the parties, or dispense with procedural steps, including discovery, provided such

choices are in accordance with the fundamental principles articulated in sub-paragraph (a) (see **Lundy** at paragraph 47); and

- h) the process cannot be a no cost regime for claimants in relation to their individual claims regardless of outcome (see **Lundy** paragraph 50 and Section 39 of the Act);

[13] So we need an IIP to assess and address the claims of at least 50 and perhaps many more claimants. The claims pertain to sexual abuse that happened 50 – 72 years ago to young people who were targeted because they were vulnerable and are now coming before the Court by way of an action that is almost 12 years old. Kenneth Estabrooks' repugnant behaviour has been known to representatives of the Defendant for many years. The record reflects that they chose initially to ignore it (apparently to save Kenneth Estabrooks' pension) and thereafter, as was their entitlement, to deny legal responsibility for same. In these circumstances, it would not be fair, reasonable or in the interests of justice to permit the normal litigation process, with its associated delays and procedural complexities, to run its course for each claim. That would take many years that, given the passage of time, reason and common sense tells us many of Kenneth Estabrooks' victims simply do not have.

[14] However, in the absence of agreement between the parties, it would be equally untenable to establish a process whereunder liability was determined by an expert, the Defendant had pre-determined limits on its ability to cross-examine witnesses or call evidence and/or damages were set based on a fixed scale. Such limitations would be inconsistent with the above-referenced authorities, procedural fairness and the interests of justice.

[15] By reasons of the foregoing, I am unable to accept the procedural recommendations of either party. Therefore, I have prepared the draft IIP attached hereto. I am satisfied that Sections 14 and 29 of the Act, coupled with

the jurisprudential principles referenced in paragraph 12, afford me the jurisdiction to impose this IIP on the parties. However, consistent with Justice Perell's observations in paragraph 47 of *Lundy*, I will provide the parties an opportunity to provide input and edits and will look to the parties to prepare the required appendices.

[16] A few brief comments on the attached. As already noted, the Defendant is vicariously liable for the actions of Kenneth Estabrooks and the record establishes that many vulnerable youth were abused in this community. It follows that the Defendant should bear the cost of the procedures outlined in the IIP to identify exactly who was abused, the nature of that abuse, the harm caused thereby, the damages recoverable as a consequence of same and the eligibility of claimants to participate as class members. The Defendant will of course have the ability to seek recovery of costs from unsuccessful claimants as contemplated in Section 39 of the Act.

[17] The age of the claimants and record of abuse already before the Court necessitate the involvement of the administrator, experts and possible mediators provided for in the draft IIP to ensure claims are dealt with on an expeditious basis and justice is accorded to class members and the Defendant. The realities referenced in paragraph 13 dictate that the claims process cannot be permitted to drag on for an extended period. My expectation is that the administrator will function in a role akin to that of a monitor in a CCAA proceeding to work in support of the Court to ensure that the claims process moves expeditiously.

[18] We will discuss the attached draft at the March 13, 2024 appearance as well as the process to identify the administrator and experts and finalize the necessary appendices.

DATED at the City of Saint John, NB this \_\_\_ day of March, 2025

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Mr. Justice Darrell J. Stephenson  
Court of King's Bench – Trial Division

Court File Number: S/C/533/13

IN THE COURT OF KING'S BENCH OF  
NEW BRUNSWICK

À LA COUR DU BANC DU ROIS  
DU NOUVEAU-BRUNSWICK

TRIAL DIVISION

DIVISION DE PREMIERE  
INSTANCE

JUDICIAL DISTRICT OF SAINT JOHN

CIRCONSCRIPTION JUDICIAIRE  
DE SAINT JOHN

B E T W E E N:

E N T R E:

**ROBERT HAYES, on behalf of himself  
and other class members**

Plaintiff

– and –

(Demandeur)

**THE CITY OF SAINT JOHN**, a body  
corporate by Royal Charter, confirmed and  
amended by Acts of the Legislative Assembly  
of the Province of New Brunswick

Defendant

(Defendeur)

### **PROCESS FOR RESOLVING INDIVIDUAL ISSUES**

#### **A. Definitions**

1. For the purposes of this Individual Issues Protocol and attached Appendices (collectively, the "**Protocol**" or "**IIP**") the following definitions apply:
  - a. "**Abuse Expert**" means the person or persons appointed by the Court to assess Claimants and deliver reports in accordance with Part "F" of this Protocol;
  - b. "**Act**" means the Class Proceedings Act, R.S.N.B. 2011, c.125
  - c. "**Action**" means the class proceeding, including all amendments thereto, commenced by Robert Hayes in the Court of King's Bench of New Brunswick against the City of Saint John, having Court File No. S/C/533/13, and certified as a class proceeding by Order of this Court on February 9, 2017;
  - d. "**Administrator**" means the person or entity appointed by the Court to administer the Claims Process;

- e. "**Claim**" means a claim made by a Claimant by filing a Claim Form with the Administrator in accordance with this Protocol;
- f. "**Claimant**" means any person who files a Claim in accordance with this Protocol;
- g. "**Claims Deadline**" means the date by which all Claims must be submitted to the Administrator in order to be eligible for consideration under the Claims Process as determined in accordance with paragraph 12;
- h. "**Claim Form**" means the form and accompanying affidavit annexed hereto as Appendix "A" through which Class Members may make Claims;
- i. "**Claims Process**" means the procedure for the submission, review and determination of Claims set out in this Protocol;
- j. "**Class Counsel**" means Koskie Minsky LLP and McKiggan Hebert;
- k. "**Class Members**" means all persons who allege they suffered injury, loss or damage as a result of being sexually abused by Kenneth Estabrooks in the City of Saint John between 1953 and 1975 to which the Common Issues Judgment is of application;
- l. "**Common Issues Judgment**" means the judgment granted by the Court of Appeal of New Brunswick, dated September 14, 2023, in favour of the Plaintiff and other Class Members on the question of whether the Defendant is vicariously liable for physical, mental, and/or sexual harm perpetrated by Kenneth Estabrooks between 1953 and 1975 when he was a police officer;
- m. "**Court**" means the New Brunswick Court of King's Bench;
- n. "**Economic Expert**" means the person or persons appointed by the Court to assess pecuniary losses sustained by Claimants in accordance with Part "G" of this Protocol;
- o. "**Experts**" means the Abuse Experts and the Economic Experts;
- p. "**Effective Date**" has the meaning ascribed thereto in sub-paragraph 10(e);
- q. "**Excluded Claim**" means a Claim by a person who has previously and validly opted out of the Action in writing or who has previously settled claims against the Defendant and has executed a release or consent judgment dismissing claims in favour of the Defendant in relation to matters that are the subject of the Action, or that otherwise presents a bar to recovery in the Action;
- r. "**Former Limitations Acts**" means the *Limitation of Actions Act*, R.S.N.B. 1952, c. 133 and the *Limitation of Actions Act*, R.S.N.B. 1973, c. L-8;

- s. “**Hearing Record**” has the meaning ascribed thereto in paragraph 29;
- t. “**Individual Issues**” has the meaning ascribed thereto in paragraph 35;
- u. “**Notice**” means the form of Notice of this Order and Claims Process set out in Appendix “B”; and
- v. “**Statement of Claim**” means the pleadings by way of which the Action was commenced.

**B. Class Counsel**

- 2. Class Counsel or the lawyer retained to act for a Claimant may charge a fee for their services with respect to the Claim of such Claimant as approved by the Court.
- 3. If a Claimant does not retain Class Counsel to act for them with respect to their Claim, Class Counsel will be entitled to a Class Counsel fee in respect of the work to obtain the Common Issues Judgment in an amount to be determined by this Court.

**C. Appointment of Administration**

- 4. The Court shall appoint the Administrator to oversee and administer the Claims Process and in such capacity the Administrator shall function as an independent officer of the Court and shall be entitled to retain counsel to assist and advise in the performance of its duties hereunder and its reporting to the Court. The mandate of the Administrator shall be to assist the Court with the expeditious and efficient disposition of the Claims having regard to the realities referenced in paragraph 32.
- 5. The Administrator shall perform the functions set out herein and shall provide the assistance, reporting and support to the Court, Class Counsel, the Defendant, the Claimants and the Experts contemplated hereunder. In so doing, the Administrator shall incur no liability, save and except for gross negligence or wilful misconduct.
- 6. All costs of administration of the Claims Process shall be paid by the Defendant. The Administrator shall provide monthly statements of account to the Defendant, Class Counsel and the Court, which shall be tabulated on a time spent basis, and paid by the Defendant following approval by the Court at a monthly case management conference.

**D. Notice Process**

- 7. The Administrator, Class Counsel and the Defendant shall distribute the Notice in accordance with the Notice Program set out in Appendix "C".
- 8. The Administrator shall provide a bilingual (English and French) toll-free support line to assist Claimants.
- 9. Class Counsel shall post the Notice and the Claim Form on their website.

10. The Administrator shall:
  - a. create an informational website about the Claims Process;
  - b. post the Notice and the Claim Form on the website;
  - c. provide any other form of notice agreed to by Class Counsel and the Defendant, or otherwise ordered by the Court;
  - d. provide the Notice and the Claim Form to any Claimant who requests it, in either English or French, together with a postage paid return envelope; and
  - e. advise Class Counsel, the Defendant and the Court of the date on which all notification actions detailed in paragraphs 7, 8, 9 and 10(a) – (c) have been completed (the “**Effective Date**”)
  
11. Where mail or email to a Claimant is returned to the Administrator as undeliverable, the Administrator shall:
  - a. advise Class Counsel of the identity of any Claimant whose mail or email is returned undeliverable within five (5) days of the mail or email being returned as undeliverable;
  - b. attempt to reach the Claimant through any alternative contact information the Claimant provided on the Claim Form; and
  - c. carry out a National Change of Address (NCOA) search to determine whether the Claimant has moved to a new address, and if so, attempt to contact the Claimant at that address.

#### **D. Claims Process**

12. The Claims Deadline shall be the date falling two (2) years following the Effective Date, subject always to Section 29(5) of the Act.
13. The Claims Process is intended to be expeditious, cost effective, and trauma-informed. The Court will supervise the administration and implementation of the Claims Process through active case management and retain its supervisory jurisdiction pursuant to the Act.
14. Any Class Member who wishes to make a Claim under this Protocol must deliver to the Administrator a Claim Form by the Claims Deadline.
15. There shall be no cap on the damages that may be sought by a Claimant. Damage awards under this Protocol are in the sole discretion of the Court.
16. The Claim Form must be completed in the format set out in Appendix “A” accompanied by a properly sworn affidavit which sets out the prescribed information. Submission of a Claim Form to the Administrator constitutes acknowledgement by a Claimant that:

- a. the Administrator is authorized to contact the Claimant to obtain further information;
- b. by submitting the Claim Form they release the Defendant from all claims asserted in the Statement of Claim and seek to recover only the damages specified in the Claim Form;
- c. by submitting the Claim Form they authorize the Administrator to obtain copies of any necessary medical, financial or other records that do not accompany the Claim Form from the relevant service providers; and
- d. the information set out in the Claim Form is true and correct

#### **E. Claim Verification**

- 17. The Administrator shall provide copies of each Claim Form received from a Claimant to Class Counsel and the Defendant within ten (10) days of receipt and examine the form to determine if it is complete. Each of Class Counsel and the Defendant shall have fourteen (14) days following their receipt of a Claim Form to provide any comments to the Administrator with respect to the completeness and/or adequacy of the information set out therein in relation to the Claim made thereunder. They shall also inform the Administrator of any basis upon which the Claim of any Claimant should reasonably be regarded as an Excluded Claim. The Administrator may address any queries it has with respect to the completeness of a Claim Form (including those arising from commentary from Class Counsel or the Defendant) to the Court at a monthly case management conference.
- 18. Thereafter, the Administrator shall contact the Claimant to obtain any further information that it regards as reasonably necessary to complete the Claim Form for purposes of assessment by the Expert(s) and Court on the basis contemplated under this Protocol. The Administrator will have discretion to accept a Claim Form despite any minor deficiencies, and to request information directly from third party service providers on the basis authorized under the Claim Form. Claimants will have ninety (90) days from the date on which they are contacted by the Administrator to address any identified deficiencies, failing which the Administrator will provide in writing its refusal to the Claimant and report to the Court in respect of same at the next monthly case management conference. The Administrator has discretion to grant extensions of this deadline where the Administrator considers the granting of same to be reasonably appropriate in the circumstances, including by reason of the time required to obtain necessary medical, financial or other records to support a Claim.
- 19. Following acceptance of a complete Claim Form, the Administrator shall verify that the Claimant is presumptively eligible, as follows:
  - a. confirm the identity of the Claimant;
  - b. confirm that the Claimant is a Class Member; and

- c. confirm with Class Counsel and the Defendant that the Claim is not an Excluded Claim.
20. If the Administrator verifies that the Claimant is presumptively eligible, the Administrator shall confirm same to Class Counsel and the Defendant who shall then have fourteen (14) days to identify areas of inquiry or concern to be addressed by the relevant Expert(s). Following expiration of that period the Administrator shall forward the Claim Form to the Abuse Expert selected by the Administrator and, if the Claim includes pecuniary losses, the Economic Expert selected by the Administrator for assessment on the basis contemplated hereunder taking into account any input received from Class Counsel and/or the Defendant.

#### **F. Assessment by Abuse Expert**

21. The Abuse Expert shall assess each Claimant whose Claim is forwarded to them by the Administrator.
22. The report of the Abuse Expert shall address the following:
- a. the nature and extent of the abuse claimed to have been suffered by the Claimant;
  - b. the degree of pain, suffering and/or trauma experienced by the Claimant;
  - c. the Independent Expert's opinion as to whether the harm experienced is logically connected to the abuse claimed to have been suffered by the Claimant; and
  - d. any information which is responsive to the areas of inquiry proposed by Class Counsel or the Defendant.
23. Based on their assessment of the information set out in the Claim Form, and the Claimant's responses to questions during the interview, the Abuse Expert is entitled to give an opinion that the Claimant experienced abuse of a different nature or frequency than that alleged in the Claim Form, or that the Claimant suffered harm of a different degree than alleged in the Claim Form.
24. The process for the Abuse Expert's interview will be as set out in the report of Dr. Wolfe and Dr. Jaffe, attached as Appendix "D" subject to further directions from the Court. The process will include, at the discretion of the Abuse Expert, the administration of the following tests: Structured Screening of Mental Health Concerns, Personal Assessment Inventory, and Trauma Symptom Inventory-2.
25. The Abuse Expert shall provide copies of their report to the Administrator, Class Counsel and the Defendant, within thirty (30) days of the date they assess a Claimant, and shall make their file data available for inspection by the Defendant or Class Counsel upon request. The Defendant shall pay the Abuse Expert's fees and disbursements in the amount approved by the Court.

#### **G. Assessment by Economic Expert**

26. The Administrator shall forward a copy of the Claim Form and the Abuse Expert's report for each Claimant, who seeks recovery of pecuniary losses, to the Economic Expert within ten (10) days of receipt of the Abuse Expert's report.
27. The Economic Expert shall prepare, for each such Claimant, a report detailing and quantifying any pecuniary losses the Claimant has suffered as a consequence of the harm documented in the report of the Abuse Expert on the basis of the economic data set out in the Claim Form. The Economic Expert may also interview the Claimant if they consider same to be necessary in order to prepare their report. Based on their assessment of the Claim Form, and the Abuse Expert's report, the Economic Expert is entitled to give an opinion that the Claimant suffered pecuniary losses of a different nature or quantum from that alleged in the Claim Form.
28. The Economic Expert shall provide copies of their report to the Administrator, Class Counsel and the Defendant within thirty (30) days of the date they receive the Abuse Expert's report and shall make their file data available for inspection by the Defendant or Class Counsel upon request. The Defendant shall pay the Economic Expert's fees and disbursements in the amount approved by the Court.

#### **H. Case Management**

29. For each Claimant, the Administrator shall file with the Court a record including copies of the Claim Form, Abuse Expert's report and Economic Expert's report, if any, (collectively, the "**Hearing Record**") within ten (10) days following receipt of all such documentation.
30. The Court shall establish a schedule of monthly case management conferences to commence in \_\_\_\_\_ 2025 and continue until all Claims have been resolved or as otherwise directed by the Court. Each case management conference shall be scheduled for three (3) hours unless otherwise directed by the Court, and will be extended as required to accommodate all matters which come before the Court for direction pursuant to this Protocol in that month. Matters to be dealt with at case management conferences shall include:
  - a) any request for directions by the Administrator with respect to the sufficiency of a Claim Form, the appropriateness of directions provided by Class Counsel or the Defendant with respect to a Claim or an Expert's report or the need for Court intervention to obtain a necessary record;
  - b) the scheduling of Claim hearings in the manner contemplated in Part "I";
  - c) whether a Claim should be referred to mediation as contemplated in paragraph 33;
  - d) if, and the extent to which, cross-examination of a Claimant or Expert will be permitted at a Claim hearing;

- e) if, and the limitations applicable to, any additional evidence beyond the Hearing Record that may be introduced at a Claim hearing;
  - f) the appointment of additional Experts from time to time;
  - g) the approval of payments to the Administrator and Experts and any necessary directions with respect to same; and
  - h) any other matter the Court regards as relevant or appropriate for the fair and efficient functioning of the Claims Process established under this Protocol.
31. At each case management meeting, the Court will review and provide directions with respect to the hearing of each Claim the Hearing Record for which is filed not less than ten (10) days before the date thereof, and will expect counsel to attend prepared to discuss same.
32. The Administrator and Experts will be selected from lists jointly provided by Class Counsel and the Defendant, and the Court and parties are cognizant of and have each acknowledged the reality that this Protocol has been designed to address, in an expeditious and compassionate manner, the consequences of physical, mental and sexual harm perpetrated by Kenneth Estabrooks upon vulnerable youth during the period of 1953-1977. As such, it is anticipated that Claim hearings will, as a matter of general course, be conducted on the basis of the documentation set out in the Hearing Record and the submissions of counsel. However, in the interests of justice and having regard to the need for an appropriate record, it is recognized that in some instances cross-examination and the submission of additional evidence may be appropriate. The Court reserves the right to direct any party requesting same to file a Motion specifying the cross-examination they are requesting and/or additional evidence they wish to call for disposition at the next monthly case management meeting.
33. The Court further reserves the right, pursuant to its inherent supervisory jurisdiction with respect to class actions, to refer a Claim to mediation where it considers such referral to be appropriate in the circumstances having regard to the nature of same, the circumstances of the Claimant or the interests of justice. The terms of mediation and the duration of the mediation process shall be set by the Court following consultation with counsel. Should mediation prove unsuccessful, the mediator shall inform the Court of same and the Claim shall return to Court at the next monthly case management meeting for the scheduling of a Claim hearing. The fees and disbursements of the mediator shall be paid by the Defendant following approval by the Court.

## **I. Claims Hearing**

34. Claim hearings shall, as a matter of general course, be conducted in accordance with the procedures governing summary judgment hearings in New Brunswick, without the hearing of *viva voce* evidence. Hearings shall be scheduled for three (3) hours. The Hearing Record shall serve as the motion record and briefs shall be filed in accordance with usual practice. Notwithstanding the foregoing, where the Court grants leave for

cross-examination and/or the calling of additional evidence, it shall provide appropriate directions for the conduct of the necessary mini-trial and schedule the hearing for such time as may be required to accommodate same.

35. At the Claim hearing, the Court will determine the following individual issues for each Claim, as applicable ("**Individual Issues**"):
  - a. whether the Claim expired under the Former Limitations Acts prior to the enactment of the *Limitations of Actions Act*, S.N.B. 2009, c. L-8.5;
  - b. whether the Claimant was abused by Kenneth Estabrooks between 1953 and 1975 in circumstances to which the Common Issues Judgment is of application; and
  - c. the value of the Claimant's damages including pre-judgment interest up to the date of the summary judgment decision, as well as post-judgment interest to accrue thereafter.
36. The Defendant may waive its right to contest any of the Individual Issues for each Claimant.
37. The Court will award costs in accordance with Rule 59 together with reasonable disbursements taking into account all relevant factors, including the time expended by Class Counsel to obtain the Common Issues Judgment, the reality that the Defendant has born all costs associated with the implementation and administration of this Protocol and the matters addressed in the summary judgment hearing.

**Appendix "A"**  
**Attach Claim Form and form of affidavit**

**APPENDIX "C"**  
**NOTICE PROGRAM**

Notice shall be provided as follows:

- (1) By placing the Notice on Class Counsel's and the Administrator's website.
- (2) By placing advertisements in the Telegraph-Journal, CBC News (National), and CBC News (New Brunswick), five times per publication.
- (3) By placing advertisements online targeting the City of Saint John and New Brunswick using Google Ads and Facebook Ads.
- (4) Class Counsel will provide a copy of the Notice and Claim Form to any Class Member who has contacted Class Counsel.
- (5) The Defendant will cause Investigative Solutions Network Inc. ("ISN") to provide the Notice to every person it contacted in relation to its investigation regarding Kenneth Estabrooks.
- (6) The Defendant will provide the Notice to every counsellor/psychologist it is aware of who has been providing counselling services to persons who claim to have suffered abuse by Kenneth Estabrooks.